# 1AC – Federal Wiretapping Act

## 1AC

### Framework

#### The standard is minimizing harm to vulnerable populations.

#### Decision-making cannot be entirely objective – social ideologies render certain populations as disposable and manage risk unevenly.

Elizabeth A. Povinelli, 2013

Povinelli is Franz Boas Professor of Anthropology and Gender Studies, Director of the Institute for Research on Women and Gender and the Co-Director of the Centre for the Study of Law and Culture at Columbia University. “Necropolitics”; The Anthropology of Biopolitics; February 23, 2013; <https://anthrobiopolitics.wordpress.com/2013/02/23/necropolitics/>”

In what might be seen as biopolitical ‘social disposability’ rather than ‘social death’, the work of critical educational theorist Henry Giroux, in “Reading Hurricane Katrina” (2006), makes an assumption about biopower similar to Mbembe’s regarding the late-modern era of perpetual terror and insecurity. However, in focusing on the United States, he is drawn more to what he sees as the ‘politics of disposability’ as the particular form of necropower, rather than emphasizing the power of death in relation to projects of sovereignty. For Giroux, the hyper-neoliberal racial state, since Reagan, has silently governed in the interests of Corporate America at the expense of human lives, by utilizing the repressive power of color-blind ideology to implement policy reforms which increasingly silently neglect disadvantaged populations further into the margins, thereby permitting their disposability (letting them die). To demonstrate that the governmentality of the racial state has changed in form from prior eras, Giroux compares the 1955 murder of Emmett Till (which helped spark civil rights movement activity) with the deaths of over one thousand racial minorities caused (superficially, he would argue) by hurricane Katrina in 2005, to show the difference in what these cases revealed about the racial state: “Till’s body allowed the racism that destroyed it to be made visible, to speak to the systemic character of American racial injustice. The bodies of the Katrina victims could not speak with the same directness to the state of American racist violence but they did reveal and shatter the conservative fiction of living in a color-blind society” (p.174). Of course, I have to wonder whether Giroux would still maintain his belief expressed here, that Katrina shattered the imaginary reality of U.S. color-blindness- to which an abundance of evidence to support this ideology’s heightening continuation today continues to surface at an ongoing rate. Nevertheless, the importance of the Katrina example, for Giroux, is to highlight how the informed decision-making of the Bush administration’s actions leading up to and after Katrina hit reveal the racial state’s knowing involvement in an anti-democratic project of sustaining insecurity in a particular fashion. That is, by knowingly rendering already-marginalized groups vulnerable to natural disasters like Katrina, which were expected to hit and devastate the gulf region of the U.S., the neoliberal state proved its complicity in the biopolitical project of not only letting die, but of actively disposing what it had redlined as value-less portions of the U.S. population. In effect, by implementing a politics of disposability in the era of neoliberal insecurity, the U.S. government was reducing its populace to a politics of “bare life”.

#### Ethical calculi are not neutral – privileged lives always matter more than the underprivileged because of mechanisms of power – you should forefront combating cognitive biases.

Walter Mignolo, 2007

Mingnolo is an Argentinian semiotician and professor at Duke. “The De-Colonial Option and the Meaning of Identity in Politics”

The rhetoric of modernity (from the Christian mission since the sixteenth century, to the secular Civilizing mission, to development and modernization after WWII) occluded—under its triumphant rhetoric of salvation and the good life for all—**the perpetuation of** the logic of **coloniality**, that is, of massive appropriation of land (and today of natural resources), massive exploitation of labor (from open slavery from the sixteenth to the eighteenth century, to disguised slavery, up to the twenty first century), and the dispensability of human livesfrom the massive killing of people in the Inca and Aztec domains to the twenty million plus people from Saint Petersburg to the Ukraine during WWII killed in the so called Eastern Front.4 Unfortunately, not all the massive killings have been recorded with the same value and the same visibility. The unspoken criteria for the value of human lives is an obvious sign (from a de-colonial interpretation) of the hidden imperial identity politics: that is, the value of human lives to which the life of the enunciator belongs becomes the measuring stick to evaluate other human lives who do not have the intellectual option and institutional power to tell the story and to classify events according to a ranking of human lives; that is, according to a racist classification.5

#### High magnitude scenario planning results in compassion fatigue – overexposure to crisis exhausts society’s political mobility for collective problem solving in favor of individual security and artificially magnifies perceptual likelihood of low probability events.

Timothy Recuber, 2011

Recuber is a doctoral candidate in sociology at the Graduate Center of the City University of New York, he has taught at Hunter College in Manhattan. “CONSUMING CATASTROPHE: AUTHENTICITY AND EMOTION IN MASS-MEDIATED DISASTER" gradworks.umi.com/3477831.pdf

The emotional component of disaster consumption is therefore an important part of these processes. Sociologists who study disaster have long disputed the conventional wisdom that mass panic is the defacto public response to disasters, especially on the ground in affected communities (Quarantelli, 2001; Tierny, 2007). But while it is true that disaster-struck communities tend to exhibit a whole host of positive, pro-social responses, it does not mean that mass media accounts of disaster may not inspire panic in distant spectators who are less directly affected. Divorced from the kinds of sustaining, ad-hoc, local communities that maintain order and provide support during and in the immediate aftermath of disasters (see Solnit, 2009), those who merely consume distressing stories and images at a distance may be more likely to take drastic measures or respond with maudlin or hysterical emotional displays. Of course, mass media today tend to operate in crisis mode at all times, even over seemingly trivial matters (McRobbie and Thornton, 1995), making the shock and immediacy of disaster-related stories an overly familiar style of communication and thus, at times, contributing to the onset of what has come to be known as “compassion fatigue” (Moeller, 1999). On the other hand, and at the very least, American audiences of disasters have demonstrated over the past decade that distant or unaffected spectators are likely to feel that they too have been vicariously traumatized, and thus enfranchised to participate in mass-mediated rituals of commemoration, or to claim the social and political status of victim (see Savage, 2006; Kaplan, 2005). 12 Such vicarious trauma is often the result of very genuine emotional responses by these distant spectators. In fact, as discussed in Chapter Three, one of the most powerful norms that has emerged regarding the role of the spectator of disaster is the obligation to show empathy towards those directly affected. Media texts have particular ways of presenting the suffering others designed to draw out these reactions, as I show through an analysis of two news programs, one reality television show, and one documentary film devoted to Hurricane Katrina and the Virginia Tech shootings. This empathy for the suffering of distant others is rehearsed today even in non-disaster related media programming, but it is particularly prevalent when large-scale tragedies result in not only live television news broadcasts, but also the many commemorative events and products whose proceeds are supposed to benefit those distant others. Consuming such experiences and products marks one as an ethical, moral person with the capacity to understand the pain of others. Unlike classical forms of Enlightenment sympathy, however, in which detached spectators sought to actually alleviate the suffering of unfortunate others whose causes they found worthy, the empathy on display when one buys a Virginia Tech t-shirt or a record benefitting New Orleans musicians, or when one watches television programs devoted to these disasters, seems to be as much about self-improvement as the improvement of the conditions of those less fortunate. This is not to say that such consumption is not driven by sincere concern for disaster victims, but simply that mass culture tends to direct such concern towards viewing habits and consumption practices that help the self-image of the viewer or purchaser at least as much as they help any disaster-stricken communities. The consumption of disaster thus encourages a kind of “political anesthesia” that reduces one’s ability to recognize the collective solutions to problems, as well as one’s willingness to work towards them (Szasz, 2007). Instead, the authentically threatening quality of disasters often nurtures a paradoxically fantastic desire to secure the safety of oneself and one’s family through private acts of consumerism. But these fantasies are often backwards looking; they envision the next disaster as a similar chain of catastrophic events that, having recently happened, is actually unlikely to happen again due either to officialdom’s new awareness of this problem or simply to the remote odds of two similar disasters happening in such close succession. Of course, in the current American political moment of ascendant neo-liberal governance, such individualistic strategies of preventative consumption may constitute the only preventative measures being taken on one’s behalf.

### Advantage 1 is Illegal Surveillance

#### Local police departments engage in massive illegal wiretapping operations – Riverside County alone enacted 20% of the nation’s wiretap warrants and intercepted information from more than 52,000 people causing hundreds of arrests and seizing millions of dollars nationwide.

Tim Cushing, 2015

“California Police Used Illegal Wiretap Warrants In Hundreds Of Drug Prosecutions” https://www.techdirt.com/articles/20151121/06351232876/california-police-used-illegal-wiretap-warrants-hundreds-drug-prosecutions.shtml

So, a federal agency has already been exposed as participating in likely illegal activity related to one of the most intrusive surveillance options it has at its disposal. Now, [Heath and Kelman are back with more bad news from Riverside](http://www.usatoday.com/story/news/2015/11/19/riverside-county-wiretaps-violated-federal-law/76064908/). It's not just the feds. It's also the locals. **Prosecutors in the Los Angeles suburb responsible for a huge share of the nation’s wiretaps almost certainly violated federal law when they authorized widespread eavesdropping that police used to make more than 300 arrests and seize millions of dollars in cash and drugs** throughout the USA**. The violations could undermine the legality of as many as 738 wiretaps approved in Riverside County, Calif., since the middle of 2013**, an investigation by USA TODAY and The Desert Sun, based on interviews and court records, has found. Prosecutors reported that **those taps**, often conducted by federal drug investigators, **intercepted phone calls and text messages by more than 52,000 people.** **This 4th Amendment-violating joint task force involved local cops, federal agents and a very complicit District Attorney's office**. As Heath and Kelman explain, changes made to federal law in the 1960s (and upheld by the Supreme Court [in 1974](https://scholar.google.com/scholar_case?case=13882476521514079694&)) as a response to the exposure of the FBI's secret surveillance of civil rights leaders require the government to obtain authorization from the presiding DA before heading to court with a wiretap warrant request. However, **in Riverside County, home to 20% of the nation's approved wiretap warrants, this approval process was frequently delegated to the DA's underlings**. Former DA Paul Zellerbach -- who presided over the massive increase in Riverside County wiretap applications -- rarely performed this task himself. Despite a federal court ruling that only the district attorney himself should usually approve wiretaps, Zellerbach said in two interviews over the past month that he could not recall having reviewed or personally authorized any of the county’s wiretap applications and said he was unaware of the details of the requests. Instead, he said, he delegated that job to one of his assistants. “I didn’t have time to review all of those,” Zellerbach said. “No way.” A [2013 Ninth Circuit Appeals Court decision](https://www.documentcloud.org/documents/2516883-12-50063.html#document/p7/a262477) says Zellerbach (and other DAs) can delegate this authority, but only when the District Attorney isn't physically available ("absent") and designates someone to act in their place. For Zellerbach, this exception was the rule. His delegation of the approval process often occurred while he was present in his office, as Heath and Kelman discovered. [R]ecords show Riverside prosecutors routinely requested wiretaps on days when he was working. Federal court records show prosecutors applied for five wiretaps Feb. 18, 2014, for example, when Zellerbach appeared at a news conference to talk about metal thefts. The next week, prosecutors applied for nine more wiretaps on a day when Zellerbach’s office posted a photo on Twitter of him meeting with a delegation of Chinese officials in his office conference room. In each case, reports by the federal court administrative office list [Assistant DA Jeffrey] Van Wagenen, not Zellerbach, as the person who approved the surveillance. Not only has the DEA been acquiring wiretap warrants in a way that makes the cases too toxic for the DOJ to pursue in federal court, but the apparently illegality of the District Attorney's actions should make the cases toxic anywhere. Any evidence obtained directly or indirectly from the wiretaps could easily be suppressed. The fact that so many warrants lead back to a single judge and a single DA's office means defendants shouldn't have too much trouble determining whether this apparently illegal surveillance helped build a case against them.

#### Wiretapping is not neutral – surveillance is increasingly racialized and targeted at people of color – it is a system of overt racism and brings the constant worry of “am I being watched”?

Alvaro M. Bedoya, 01/18/16

Executive Director of the Center on Privacy & Technology and Adjunct Professor of Law at Georgetown Law. “The Color of Surveillance”, <http://www.slate.com/articles/technology/future_tense/2016/01/what_the_fbi_s_surveillance_of_martin_luther_king_says_about_modern_spying.html>

There is a myth in this country that in a world where everyone is watched, everyone is watched equally. It’s as if an old and racist J. Edgar Hoover has been replaced by the race-blind magic of computers, mathematicians, and Big Data. The truth is more uncomfortable. Across our history and to this day, people of color have been the disproportionate victims of unjust surveillance; Hoover was no aberration. And while racism has played its ugly part, the justification for this monitoring was the same we hear today: national security. The FBI’s violations against King were undeniably tinged by what historian David Garrow has called “an organizational culture of like-minded white men.” But as Garrow and others have shown, the FBI’s initial wiretap requests—and then–Attorney General Robert Kennedy’s approval of them—were [driven](http://www.theatlantic.com/magazine/archive/2002/07/the-fbi-and-martin-luther-king/302537/) by a suspected tie between King and the Communist Party. It wasn’t just King; Cesar Chavez, the labor and civil rights leader, was [tracked](http://articles.latimes.com/1995-05-30/news/mn-7622_1_united-farm-workers) for years as a result of vague, confidential tips about “a communist background,” as were many others. Across our history and to this day, people of color have been the disproportionate victims of unjust surveillance. Many people know that during World War II, innocent Americans of Japanese descent were surveilled and detained in internment camps. Fewer people know that in the wake of World War I, President Woodrow Wilson openly [feared](https://books.google.com/books?id=a7UMG78Z9i0C&pg=PA31&lpg=PA31&dq=%E2%80%9Cthe+greatest+medium+in+conveying+Bolshevism+to+America%22&source=bl&ots=wsqe70kNcM&sig=7QY10OKgyhXebru5PgBmEgEsmds&hl=en&sa=X&ved=0ahUKEwicpd2IkILKAhXELSYKHTohDZcQ6AEIIzAC#v=onepage&q=) that black servicemen returning from Europe would become “the greatest medium in conveying Bolshevism to America.” Around the same time, the Military Intelligence Division created a special “Negro Subversion” section devoted to spying on black Americans. Near the top of its list was W.E.B. DuBois, a “rank Socialist” whom they tracked in Paris for [fear](https://books.google.com/books?id=rc-uwLkQmFAC&pg=PA55&lpg=PA55&dq=%22may+attempt+to+introduce+socialist+tendencies+at+the+peace+conference%22&source=bl&ots=ZXuYY9eXJO&sig=fIetYtSO0OzPsRlJbWZeAcScFgg&hl=en&sa=X&ved=0ahUKEwiL3tjXlILKAhWKOiYKHROdB2UQ6AEIIDAB#v=onepage&q=%22may%20attempt%20to%20introduce%20socialist%20tendencies%20at%20the%20peace%20conference%22&f=false) he would “attempt to introduce socialist tendencies at the Peace Conference.” This pattern is not limited to the past. For years after Sept. 11, the New York Police Department—with significant [help](http://www.ap.org/Content/AP-In-The-News/2011/With-CIA-help-NYPD-moves-covertly-in-Muslim-areas) from the CIA—monitored bookstores, restaurants, and nightclubs in Muslim neighborhoods and placed informants, known as “mosque crawlers,” in places of worship, where they reported on sermons and recorded the license plates of innocent congregants. (The program was notoriously [ineffective](http://www.ap.org/Content/AP-In-The-News/2012/NYPD-Muslim-spying-led-to-no-leads-terror-cases), and the NYPD [settled](http://www.nytimes.com/2016/01/08/nyregion/new-york-to-appoint-monitor-to-review-polices-counterterrorism-activity.html?emc=edit_na_20160107&nlid=72560359&ref=cta&_r=0) two lawsuits over this conduct earlier this month.) Other reports show that the Department of Homeland Security—an agency founded to protect against terror attacks—has been [tracking](https://theintercept.com/2015/07/24/documents-show-department-homeland-security-monitoring-black-lives-matter-since-ferguson/) Black Lives Matter activists. If you name a prominent civil rights leader of the 20th or 21st centuries, chances are strong that he or she was surveilled in the name of national security. Every day, we hear about the power and promise of pervasive surveillance. We are losing sight of its victims. Instead, an NSA debate that could have surfaced a long line of black, Latino, Asian, and Muslim victims of surveillance was cast as an argument between the U.S. military and Snowden—national security versus the hackers. This narrow focus may have blinded Congress to a little known but especially troubling aspect of the NSA scandal. In June 2013, the headlines were that the NSA was logging everyone’s phone calls. We now know that the NSA’s call records program—the single largest domestic spying program in our nation’s history—was effectively beta-tested for almost a decade on American immigrants. In 1992, the Drug Enforcement Administration began a call records program that’s considered the [blueprint](http://www.usatoday.com/story/news/2015/04/07/dea-bulk-telephone-surveillance-operation/70808616/) for the NSA’s program, which began after Sept. 11 and received court approval in 2006. The DEA program logged virtually all calls made from the United States to a list of countries, regardless of who made them or why. Over time, 116 countries were added to that list—including Mexico and most of Central and South America. This means that for almost a decade before the NSA call records program, countless immigrants’ calls were tracked by the DEA when they called home. This is particularly true for Hispanic immigrants, who make up a large part of what is now the largest minority group in the country. We do not know what transpired in Congress’ closed-door discussions about the NSA or DEA call records programs, but public debates largely ignored these facts. The next NSA debate will peak at the end of 2017. That’s the expiration date of another surveillance law that allows the government to read—without a warrant—certain messages stored on companies’ U.S. servers where at least one party to the communication was a foreigner living abroad. Will Congress probe the likely disparate impact of this law? If not, when will Congress reckon with the color of surveillance? Today’s surveillance debate concerns encryption. Led by FBI Director James Comey, leaders in law enforcement are [calling](http://www.nytimes.com/2015/11/19/us/politics/fbi-director-repeats-call-that-ability-to-read-encrypted-messages-is-crucial.html) for technology companies to build “backdoors” into their products to let government investigators read—or listen—to otherwise inaccessible encrypted communications. Comey is no J. Edgar Hoover. He requires that all new FBI agents visit King’s memorial site in Washington and study the agency’s treatment of King. As a personal reminder, he keeps on his [desk](http://www.theguardian.com/us-news/2015/feb/12/fbi-director-racism-police-james-comey-cultural-inheritance) a copy of the original FBI request to wiretap King. But wiretaps were only the beginning of the government’s violations against King—or the broader civil rights movement. The FBI used information gleaned from taps and secret listening devices to smear King to the press and potential funders, and to engage in repugnant, [sexual blackmail](http://www.nytimes.com/2014/11/16/magazine/what-an-uncensored-letter-to-mlk-reveals.html?_r=0). And government surveillance went far beyond King. It extended to Chavez, Fannie Lou Hamer, and Whitney Young of the National Urban League. It extended to their forefathers, DuBois, Marcus Garvey, and countless others who knew that the government was watching—and listening—waiting for them to make a mistake.

### Plan

#### Thus the plan: The United States Federal Government will issue a statutory enactment which precludes qualified immunity from being used as a defense by police officers in suits regarding the Federal Wiretap Act.

### Solvency

#### First - qualified immunity kills the effectiveness of the Federal Wiretapping Act – it lets officers get away with civil rights abuses that the statue was built to punish.

Kathleen Lockard, 2001

“Qualified Immunity as a Defense to Federal Wiretap Act Claims” The University of Chicago Law Review, Vol. 68, No. 4, pg 1393-1395

While, in general, statutes are interpreted to preserve common law meanings and doctrines, that presumption does not survive if contrary to the purpose of the statute.'81 This principle underlies obstacle preemption analysis. "Congress' general purpose in enacting a law may prevail over [the common law meaning] rule of statutory construction." Courts in various contexts have used the purpose of the statute to trump common law presumptions concerning the right of a discharged seaman to wages under the Shipping Commissioners Act,'83 director liability standards under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989,'84 and standards as to tra speed and warning devices under the Federal Railway Safety Act of 1970."' The Supreme Court has declined to expand the applicability a statutory defense when contrary to the purpose of the statute.18 The purpose of the statute approach suggests a resolution of the qualified immunity question under the FWA. The purpose of the FWA, as reflected by the plain language of the statute, is to discourage unauthorized wiretapping and disclosure of the content of a wiretap.18 Allowing officials to assert qualified immunity contravenes the goal of the statute, to prohibit unauthorized wiretaps. The statute's comprehensive regulation of wiretapping confirms that the purpose of the statute is to deter government activity in this area. The FWA thus has a clear purpose that courts should not hesitate to further through the use of obstacle preemption. Further, Congress enacted this purpose with detailed provisions. Congress detailed every aspect of the use and authorization of wire- taps, and authorized civil suits to enforce the prohibition. Thus the statute should not be open to judicial augmentation.'89 Courts have consistently found a clear purpose in the FWA to limit the ability of government officials to use wiretapping to intrude on the privacy of the general public. "[T]he legislation therefore spe cifically put strict limits on wiretapping and on how it could be used.... In construing the statute, it should always be remembered that 'although Title III authorizes invasions of individual privacy under individual circumstances, the protection of privacy was an overriding congressional concern."''19 Finally, the statute imposes elaborate safeguards to deter abuse and embodies congressional intent to curtail 191 wiretapping. Allowing an objective qualified immunity defense under the FWA does not conform with the purpose of the statute, and thus qualified immunity should be preempted as an obstacle to the statute's purposes. Because of the procedural differences between the two defenses discussed in Part I.C, allowing a defendant to assert qualified immunity reduces the probability that the case will survive summary judgment or even a motion to dismiss. Thus, **the deterrent effect of allowing civil suits for violations of the FWA protections could be compromised by allowing qualified immunity.** **Further, even if the defendant cannot utilize qualified immunity, he will be able to defeat the suit at trial if the factfinder determines that he acted in good faith reliance on a court order or other authorization. This means that the defendant will not be left without protection**.

#### Second - only Congressional action can set a standard on qualified immunity that enables the courts to act – the plan is key.

Kathleen Lockard, 2001

“Qualified Immunity as a Defense to Federal Wiretap Act Claims” The University of Chicago Law Review, Vol. 68, No. 4, pg 1371-1377.

**Qualified immunity is a federal common law defense that may be precluded by statute**.6' Federal common law is lawmaking power exercised by courts and Congress may always expressly trump any such provision through statutory enactments."' When statute in the same field as a common law provision but remains silent on its continued existence, **courts must decide whether the common law coexists with the statute. Courts have not been entirely consistent when preempting prior federal common law principles.**69 The Supreme Court sometimes has found that if congressional action on an issue is "comprehensive" and "occupies the field" there is no room for the prior common law principle.70 This type of statutory preemption is sometimes called "field preemption."71 This standard recognizes that if a statute contains specific rules, applying the prior common law principles could result in 72 rewriting those rules. Thus the common law standard is precluded. This preclusion standard recognizes that the creation of federal common law is extraordinary.73 When Congress addresses an area previously governed by federal common law, the need for lawmaking by federal courts disappears.74 Other Supreme Court decisions find preclusion only if the statute specifically addresses the question addressed by the common law75 This type of statutory preemption is known as "obstacle preemption."76 If Congress "speaks directly" to the question addressed by the com- mon law, and with contrary purpose, the statute precludes the common law principle.77 This standard reflects the understanding that wellestablished common law principles should be retained unless contrary to the purpose of the statute.78 Obstacle preemption analysis is complicated by its reliance on congressional intent." But assuming that a court can ascertain co gressional intent and determine that the federal common law conflicts with that purpose, obstacle preemption allows a court to make the law clearer and more consistent."O When considering whether a statute precludes the application of qualified immunity, courts have sometimes implied an even higher standard. Because some immunities were "so well established" at the time the statute was enacted, statutes will generally not be presumed to preclude them.8' **Unless Congress clearly indicates the intention to preclude qualified immunity, the defense normally** remains available **to official defendants.**82 This type of preemption is normally called express preemption.8' Generally, Congress must expressly disallow qualified immunity in order for courts to find preclusion**; "occupying the field" is normally insufficient.**84 **The heightened standard in qualified immunity cases reflects an assumption by courts that Congress's intent is best understood as allowing qualified immunity to remain available**. Thus, courts normally allow qualified immunity unless expressly preempted. In determining if a federal common law provision survives a federal statute, whether the court applies a field, obstacle, or express preemption standard, Congress's purpose remains the guiding principle. The court's "role is to interpret the intent of Congress in enacting the [statute], not to make a freewheeling policy choice. that a statute precludes a federal common law principle, it does so based on the understanding that Congress desires this outcome. The intent of Congress remains paramount, even when deciding if qualified immunity is available under a statute.

#### Court precedent is that qualified immunity can be used as a defense against the FWA – it includes both statutory and constitutional claims.

Paul Michael Brown, 2010

“Personal Liability Tort Litigation Against Federal Employees” The United States Attorneys’ Bulletin, November 2010, Vol. 58, No. 6 https://www.justice.gov/sites/default/files/usao/legacy/2010/12/06/usab5806.pdf

The Supreme Court has long recognized that qualified immunity is available to counter not only constitutional claims but also statutory claims. See Harlow, 457 U.S. 800, 818 ("We therefore hold that government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.") (emphasis added). The courts of appeals are in accord. See, e.g., Tapley v. Collins, 211 F.3d 1210, 1214-15 (11th Cir. 2000) (holding qualified immunity is available against statutory claim unless Congress intended to abrogate the defense of qualified immunity to claims under that act); Berry v. Funk, 146 F.3d 1003, 1014 (D.C. Cir.1998) (holding that qualified immunity may be raised as a defense to a plaintiff's statutory claims under the Federal Wiretap Act).

## Add-Ons

### K – Social + Governmental [20s]

#### Governmentality can act alongside a social praxis that produces domains of change while accounting for complexities of personal experience without being reductionist.

Boris Nikolov, 2008

“CARE OF THE POOR AND ECCLEIASTICAL GOVERNMENT: AN ETHNOGRAPHY OF THE SOCIAL SERVICES OF THE COPTIC ORTHODOX CHURCH IN CAIRO, EGYPT.” John Hopkins University.

As **the social domain emerges and carves out its own place, it reconfigures the other domains of action creating hybrid forms or entirely new configurations.** Deleuze stresses that **the social "sector" doesn't merge with the juridical, economic, public and private ones, but produces new divisions and relationships to form a space for a new type of interventions** - the interventions of government (Deleuze 1979, p. x) or in other words, **the space for government through care which cannot be reduced to any other social domain. It is especially important to note that the emergence of the social as described in Donzelot's genealogy, has a dynamic of its own which consists in the transformation of the existing, relatively settled domains of action into domains with "social aspects" that could not exist before. The social is "floating", it cannot be reduced to other configurations, it destabilizes them, challenges them by creating new lines of separation,** in other words, **the social is reproduced in the constant engagement with other domains**, or, as Deleuze puts it, "older apparatuses" **which are reconfigured to create new conditions of living** and lines of division (Deleuze 1979, p. xi). The importance of Deleuze's observation is **1) that the social creates new possibilities for action, and 2) that these possibilities/conditions exist at the intersections between different domains. The transformation of existing domains is also a transformation of the understanding and practice of care. Seen as internal to political economy, and therefore not belonging to any other field such as politics, poverty cannot be an object of government because it is not conceptualized with the purpose of intervening to bridge the gap between the economy and something else. Dealing with poverty in that sense doesn't require the creation of a new social space where economic and political rationalities can coexist and articulate one another. To be made governable, poverty has to be conceptualized as both internal and external to the economy, as part of a social, rather than natural, space that doesn't overlap fully with the economy and has therefore a degree of autonomy.**

### Policy – Probability [15s]

#### Prioritize high probability impacts – miniscule probabilities are statistically irrelevant to practice policy.

Nicholas Rescher, 1983

Rescher is a University of Pittsburgh Philosophy Professor. “Risk: A Philosophical Introduction to the Theory of Risk Evaluation and Management”, <http://books.google.com/books/about/Risk.html?id=5fVOAAAAMAAJ>

On this issue there is a systemic disagreement between probabilists working on theory-oriented issues in mathematics or natural science and decision theorists who work on practical decision-oriented issues relating to human affairs. The former takes the line that small number are small numbers and must be taken into account as such—that is, the small quantities they actually are. The latter tend to take the view that small probabilities represent extremely remote prospect and can be written off. (De minimis non curat lex, as the old precept has it: in human affairs there is no need to bother with trifles.) When something is about as probable as a thousand fair dice when tossed a thousand times coming up all sixes, then, so it is held, we can pretty well forget about it as a worthy of concern. As a matter of practical policy, we operate with probabilities on the principle that when x ≤ E, then x = 0. We take the line that in our human dealings in real-life situations a sufficiently remote possibility can—for all sensible purposes—be viewed as being of probability zero. Accordingly, such remote possibilities can simply be dismissed, and the outcomes with which they are associated can accordingly be set aside. And in “the real world” people do in fact seem to be prepared to treat certain probabilities as effectively zero, taking certain sufficiently improbable eventualities as no long representing real possibilities. Here an extremely improbable event is seen as something we can simply write off as being outside the range of appropriate concern, something we can dismiss for all practical purposes. As one writer on insurance puts it: [P]eople…refuse to worry about losses whose probability is below some threshold. Probabilities below the threshold are treated as though they were zero. No doubt, remote-possibility events having such a minute possibility can happen in some sense of the term, but this “can” functions somewhat figuratively—it is no longer seen as something that presents a realistic prospect.

### Solvency – Institutional Reform Good

#### Detailed discussions of governmental policy regarding crime is crucial to democratic change – it holds policy-makers accountable, informs citizens, and enables reforms to have influence in institutional settings.

Vanessa Barker, 2009

Barker is an Assistant Professor of Criminology at Florida State University. “The Politics of Imprisonment How the Democratic Process Shapes the Way America Punishes Offenders,”pp 182-188

This study has some important and potentially unpopular policy implications. First, I think the public needs to be more not less involved in crime control policy. Second, I think it is a mistake for penal policy makers to retreat behind bureaucratic insulation or expert commissions. The public is not stupid, cultural dupes, nor a uniform source of vengeance and irrationality. That relationship is dependent on specific historical conditions and political configurations, none of which are universal across the American states. Given the opportunity for deliberative discussion, ordinary people can support more rational and pragmatic responses to crime. Given the opportunity to interact with one another, debate a range of policy proposals, learn from experts, and hold state lawmakers and policy makers accountable, citizens can make informed decisions about crime control policy. Deliberative forums can promote compromise. Consider, for example, that Jason Barabas has shown how deliberative forums can alter a person's deeply held views even on such sensitive policy issues as Social Security.4 David Green found that citizens' participation led to more “liberalizing” views on crime and punishment and decreased their demands for vengeance and custodial sanctions.5 Likewise, Gerry Johnstone has argued that public participation can (p.182) expose more people to the negative effects of penal sanctioning and expand their views of the public interest.6 Moreover, public support is necessary for state legitimacy. Public support is especially critical in policy areas fraught with emotional and moral dilemmas. Crime and punishment raise unresolved moral questions about pain, suffering, the value of human life, the limits of freedom, justice, and the principles of safety and security in highly complex democracies that value personal liberty. How these problems are temporarily resolved depends on the nature and character of collective agency. This means that attempts to block public access to crime control policy can backfire, creating legitimacy problems for the state. Purely technocratic responses to crime, generated by bureaucratic insulation, may provoke more populist and punitive responses. The public may feel that their concerns, insecurities, and anxieties about their own safety and security are either taken for granted or deemed irrelevant by policy makers. When people feel excluded, they may withdraw their trust and confidence in government, intensifying their moral outrage and redirecting it against more vulnerable and less integrated social groups. This is what happened in California. By contrast, in Washington, state officials consistently incorporated citizen input into policy making. Washington created its Sentencing Commission through a high‐profile and highly public process and included citizen representatives on the commission itself. The findings of this study are limited. It would be useful to be clear about their generalizability. The small number of cases raises doubts about whether we can extend the findings to other times and places. It is entirely possible the findings may only account for the penal regime variation in California, Washington, and New York and may not explain the full range of penal sanctioning in the United States. There is good reason, however, to think that the findings may be applicable to other cases. First, these three cases are certainly not the same thing as three observations. Comparing the policy‐making process spatially and temporally in cases that represent common patterns rather than extreme cases substantially increases the number of observations and improves analytical leverage. Because the findings are grounded in empirical detail, prior research, and comparative methodology, the core theoretical framework developed here may provide some insight into other contexts within the United States and beyond. To be sure, more research is necessary to (p.183) assess these claims, but the point here is to highlight implications for future thinking about penal sanctioning. The selected cases represent major democratic traditions in the United States: populism, pragmatism, and deliberative democracy. The arguments developed here have relevance for other American states steeped in those traditions. Texas and many other western states grew up with populist politics and retributive penal policies; Pennsylvania and Illinois may provide further examples of pragmatic politics and its associated managerial penal regime; whereas Maine and Vermont may provide examples of deliberative democracy with its associated less coercive penal sanctioning. Minnesota may represent the corporatist type (illustrated in Table 6.1) with a high degree of civic engagement, high social trust, and relatively high degree of centralization and associated low imprisonment rates. States that fall along the top tier in Table 6.1 with higher rates of civic engagement tend to have less coercive penal regimes; state that fall along the bottom dimensions with lower rates of civic engagement, more social polarization, or more elite dominated politics tend to have more coercive penal regimes. To get a preliminary look at how this study might help explain differences across the fifty states, we can graph the relationship between the democratic process and penal regimes. Figure 6.1 maps the relationship between social capital (as a composite measure of social trust and civic engagement taken from Putnam) and imprisonment rates across the nation. Of course, this is only a crude illustration and reduction of a much more complicated process, but the figure provides a visual reference point to an intriguing finding. In states with a high degree of social capital, like Vermont and Minnesota, we tend to see lower rates of imprisonment. In states with low degrees of social capital, like Alabama, Texas, and Louisiana, we tend to see higher imprisonment rates. More research is needed to assess the degree to which this is a significant relationship across the states given varying degrees of crime, economic inequality, and ethnic diversity. I suspect that this relationship will be important because social trust underpins more general social processes of inclusion and exclusion. From this configuration, I suggest a further argument about the general upward trend in American punishment. Despite the important differences we continue to see across the states, the United States as a whole has increased its reliance on imprisonment. If we extend the findings from the case studies, (p.184) it may be dedemocratization, the retrenchment of American democracy, that partially accounts for high rates of imprisonment in the United States. Americans by and large have retreated into the private sphere, becoming detached from a sense of mutual obligation and civic responsibility, instead experiencing social isolation and social polarization. They have weakened the emotional and political support necessary to sustain inclusive public policies, policies that are responsive to public welfare and not just private interest. Concomitantly, they have failed to restrain the repressive powers of the state, especially as they have been directed at the most vulnerable social groups—the poor and racial and ethnic minorities. Of course, more research is needed to confirm this claim. It is nevertheless a provocative claim worth exploring in further detail. What about the South? Some readers may argue that the South has high imprisonment rates because southern states continue to maintain racial hierarchies and rely on the criminal law to repress African Americans. The racial dynamics in the cases were much more complicated and perhaps more insidious than a strict racial social control perspective allows. This book does (p.185) not dispute the importance of race, but it tries to connect racial dynamics to the democratic process. To fully account for penal regime variation in the South, this study suggests that we trace out the effects of black incorporation and black exclusion. In the aftermath of the civil rights movement, some southern states did incorporate African Americans politically and economically, whereas others continued to resist with force. Where we see higher rates of civic engagement, white and black, we might see greater social trust across diverse social groups, increasing norms of mutual obligation and reciprocity, forces that undermine punitiveness and may support more lenient penal regimes. Southern states as a whole tend to have lower rates of civic engagement and social capital, but where we see variation, we may see variation in imprisonment rates. On a related point, we would want to further investigate the extent to which racial diversity can generate or limit social trust, especially across social groups. This study also suggests that the structure of political power plays an important role in shaping penal outcomes. It suggests that we take a look at how modes of governance facilitate the provision of public welfare or private self‐interest. In the southern states, I expect that some are more or less centralized and more or less open to public participation. Unlike the western states, the southern states, except Florida, do not allow for the initiative or direct democracy measures. But neither are the southern states especially centralized like their northeastern counterparts. At the same time, many southern states have historical roots in more feudal‐like political orders in which a group of power elites (landowners, planters) dominate governing, using public office for private gains rather than the general welfare. In these types of underdemocratized polities, state officials are more likely to reaffirm their political authority and legitimacy through the criminal law and penal sanctioning. Here penal sanctioning is visible, forceful, and a brutal reminder of unequal power relations. It is also one of the few policy mechanisms available to states that fail to invest in public goods and public welfare. According to this perspective, it is not all that surprising that many of these underdemocratized southern states have relatively high imprisonment rates. Most American criminological research has been focused on the United States. However, since the terrorist attacks of September 11, 2001, many researchers have been forced to take a look at crime control, policing, and other security (p.186) concerns beyond the U.S. border. Those tragic and bloody events may spark some much‐needed comparative criminology, opening up the field to global trends, international justice, and nation‐specific particularities of criminal justice. This book may provide some groundwork for future comparative research, despite its focus on American states. European governance is being transformed in real time. Governments there are facing increased immigration and ethnic diversity, rising crime, economic restructuring, and changing political borders. These post‐cold war developments have raised questions about the nature and character of national sovereignty and citizenship. They have raised questions about group membership and social classification, pushing nation‐states into a rapid process of social incorporation and exclusion. An understanding of the criminal law and penal sanctioning will be key to explaining the remaking of European nation‐states. Take the case of Sweden, for example. This is a country with one of the highest levels of social trust, intensive civic engagement, a corporatist or power‐sharing political structure. This is also a country with a historically lenient approach to crime and punishment. Yet it also has a long history of social engineers, a moralizing civil society, and strict prohibitions against alcohol. Sweden now has one of the largest foreign‐born populations in Europe. Swedish criminologists have tied the country's zero‐tolerance approach to drugs to fear of outsiders, especially those coming from former Soviet satellites and the Balkans.7 Given the country's historically generous social welfare state and inclusive notions of citizenship, it is an interesting and pressing empirical question as to how or to what degree Swedes will mobilize the criminal law and penal sanctioning to resolve new questions of social order. Sweden is not alone in this dilemma. France and Germany, among many others, have experienced rapidly changing social orders, particularly the confluence of crime and immigration. France recently watched its suburbs burned by second‐ and third‐generation North African immigrants frustrated by their social exclusion and conflicts over policing. France provides an interesting counterpoint to Sweden because it has a highly centralized government but weak civil society, weak ties between civil society and the state, and relatively low social trust. So far, France has responded to these changing social conditions with much more stringent police regulation and state coercion. Germany may provide another contrasting case; it has a decentralized government, much more local input, and mid‐level social trust, but it has created exclusionary conditions (p.187) of citizenship, especially for its Turkish “guest workers” and other immigrant groups. Its period of imprisonment liberalization may be under threat. Given these historical conditions, some democracies more than others will come to rely on the criminal law and penal sanctioning to reestablish social order, redefining group membership and collective identity through coercive means. These responses most likely will be filtered and made meaningful through culturally distinct legal traditions, political institutions, and forms of collective agency as well as by global trends. By focusing on the diversity of democratic processes across Europe, researchers may be better able to explain cross‐national penal regime variation.8 By focusing on the nature of collective agency and the intensity of social trust, researchers may gain some insight into the way criminal law and penal sanctioning bring societies together and tear them apart. A comparative focus on other Western democracies may also illustrate that there is nothing inevitable about democratization and punitiveness. This book has pointed to the long‐term institutional and cultural differences in American democracy as the explanation for the long‐term differences in American penal sanctioning. This kind of argument raises some troubling questions about the nature and possibility of change. If current patterns of punishment are inextricably tied to past policies, how can we change them? Can California become more like Washington or New York? Or vice versa? Can the United States as a whole reverse its prison boom? The response is both yes and no. From a pessimistic view, penal reformers, social activists, and state officials cannot just shake off past policies, cultural legacies, or entrenched political structures because these are overriding causal forces that continue to shape penal sanctioning today. It is difficult to undo enduring political traditions and years of harsh punishment. Even under the best conditions, reformers cannot focus exclusively on revising the criminal law, lessening or abolishing penal sanctions, because they also need to consider broader social support. In policy areas such as crime and punishment—areas that generate moral and emotional struggles about life and death, justice, and group membership—public engagement and public support are necessary to develop and sustain legitimate public (p.188) policies. Prison populations are dependent on both immediate events like legislative reform and long‐term processes like cultural values and democratic institutions. Both aspects are hard to change but necessary for meaningful reform. To reverse the U.S. case, we would need to see serious legislative activity coupled with significant increases in social trust across diverse social groups and sustained efforts at social integration, including efforts to reincorporate the most marginalized people, like ex‐offenders, the poor, the undereducated, and racial and ethnic minorities. On the more optimistic side, reformers can take advantage of this particular political moment, which offers a rare opportunity for change. State governments are indeed faced with tough budget choices, and many have been forced to rethink their approaches to crime control. Many state officials are coming to realize that imprisonment has tended to generate more social problems than its resolves, creating a revolving door of social exclusion that brings with it tremendous economic and social costs. Plus, crime rates are down. Reformers can try to leverage the institutional and cultural tools available at this moment and in particular places to bring about change. By being cognizant of how institutional environments frame policy debates and policy problems, reformers can better develop proposals that resonate rather than repel state officials and the public. Taking examples from the case studies, in New York reforms that highlight crime and punishment as a public health issue with pragmatic solutions may be more effective than mobilizing moral outrage. In California, reformers could channel populist fervor against the prison itself as a failed institution and graphic reminder of the excesses of state power. In Washington, reforms that come from below may be more effective than reforms from above. In other words, reformers can use the institutional environment to change existing policies. Moreover, the history of American social movements tells us that sustained collective action that is strategic and morally pressing has successfully brought about radical social change in American public life, as it could be with American penal sanctioning.

# Frontlines

## 1AR

### Framework Overview [30s]

#### [Omitted]

### Impact Overview [20s]

#### [Omitted]

### Solvency [15s]

#### [Omitted]

## Case Turns

### Must Win Cases

#### [Omitted]

### Can’t Afford

#### [Omitted]

## K - General

### Framing – Specificity [10s]

#### [Omitted]

### Case O/W [10s]

#### [Omitted]

### Weigh Case/Fiat Good [15s]

#### [Omitted]

### Theoretical - Perm DoBo

#### [Omitted]

### State Inevitable [15s]

#### The state is inevitable – structure will always fill in – it’s a question of how we engage it.

John Mearsheimer, R. Wendell Harrison Distinguished Service Professor of political science at the University of Chicago and co-director of the Program on International Security Policy, The Tragedy of Great Power Politics, 2001, p. 366

Another reason to doubt these claims about the state’s impending demise is that there is no plausible alternative on the horizon. If the state disappears, presumably some new political entity would have to take its place, but it seems that nobody has identified that replacement. Even if the state disappeared, however, that would not necessarily mean the end of the security competition and war. After all, Thucydides and Machiavelli wrote long before the birth of the state system. Realism merely requires anarchy; it does not matter what kind of political units make up the system. They could be states, city-states, cults, empires, tribes, gangs, feudal principalities, or whatever. Rhetoric aside, we are not moving toward a hierarchic international system, which would effectively mean some kind of world government. In fact, anarchy looks like it will be with us for a long time. Finally, there is good reason to think that the state has a bright future. Nationalism is probably the most powerful political ideology in the world, and it glorifies the state.10 Indeed, it is apparent that a large number of nations around the world want their own state, or rather nation-state, and they seem to have little interest in any alternative political arrangement. Consider, for example, how badly the Palestinians want their own state, and before 1948, how desperately the Jews wanted their own state. Now that the Jews have Israel it is unthinkable that they would give it up. If the Palestinians get their own state, they will surely go to great lengths to ensure its survival.

### Cession [20s]

#### Maintaining hope in political praxis is crucial – structures of power will continue even if you refuse to engage them – tuning our discussions towards policy is empowering and bolsters activism.

Coverstone 5 Alan Coverstone (masters in communication from Wake Forest, longtime debate coach) “Acting on Activism: Realizing the Vision of Debate with Pro-social Impact” Paper presented at the National Communication Association Annual Conference November 17th 2005 JW 11/18/15

An important concern emerges when Mitchell describes reflexive fiat as a contest strategy capable of “eschewing the power to directly control external actors” (1998b, p. 20). Describing debates about what our government should do as attempts to control outside actors is debilitating and disempowering. Control of the US government is exactly what an active, participatory citizenry is supposed to be all about. After all, if democracy means anything, it means that citizens not only have the right, they also bear the obligation to discuss and debate what the government should be doing. Absent that discussion and debate, much of the motivation for personal political activism is also lost. Those who have co-opted Mitchell’s argument for individual advocacy often quickly respond that nothing we do in a debate round can actually change government policy, and unfortunately, an entire generation of debaters has now swallowed this assertion as an article of faith. The best most will muster is, “Of course not, but you don’t either!” The assertion that nothing we do in debate has any impact on government policy is one that carries the potential to undermine Mitchell’s entire project. If there is nothing we can do in a debate round to change government policy, then we are left with precious little in the way of pro-social options for addressing problems we face. At best, we can pursue some Pilot-like hand washing that can purify us as individuals through quixotic activism but offer little to society as a whole. It is very important to note that Mitchell (1998b) tries carefully to limit and bound his notion of reflexive fiat by maintaining that because it “views fiat as a concrete course of action, it is bounded by the limits of pragmatism” (p. 20). Pursued properly, the debates that Mitchell would like to see are those in which the relative efficacy of concrete political strategies for pro-social change is debated. In a few noteworthy examples, this approach has been employed successfully, and I must say that I have thoroughly enjoyed judging and coaching those debates. The students in my program have learned to stretch their understanding of their role in the political process because of the experience. Therefore, those who say I am opposed to Mitchell’s goals here should take care at such a blanket assertion. However, contest debate teaches students to combine personal experience with the language of political power. Powerful personal narratives unconnected to political power are regularly co-opted by those who do learn the language of power. One need look no further than the annual state of the Union Address where personal story after personal story is used to support the political agenda of those in power. The so-called role-playing that public policy contest debates encourage promotes active learning of the vocabulary and levers of power in America. Imagining the ability to use our own arguments to influence government action is one of the great virtues of academic debate. Gerald Graff (2003) analyzed the decline of argumentation in academic discourse and found a source of student antipathy to public argument in an interesting place. I’m up against…their aversion to the role of public spokesperson that formal writing presupposes. It’s as if such students can’t imagine any rewards for being a public actor or even imagining themselves in such a role. This lack of interest in the public sphere may in turn reflect a loss of confidence in the possibility that the arguments we make in public will have an effect on the world. Today’s students’ lack of faith in the power of persuasion reflects the waning of the ideal of civic participation that led educators for centuries to place rhetorical and argumentative training at the center of the school and college curriculum. (Graff, 2003, p. 57) The power to imagine public advocacy that actually makes a difference is one of the great virtues of the traditional notion of fiat that critics deride as mere simulation. Simulation of success in the public realm is far more empowering to students than completely abandoning all notions of personal power in the face of governmental hegemony by teaching students that “nothing they can do in a contest debate can ever make any difference in public policy.” Contest debating is well suited to rewarding public activism if it stops accepting as an article of faith that personal agency is somehow undermined by the so-called role playing in debate. Debate is role-playing whether we imagine government action or imagine individual action. Imagining myself starting a socialist revolution in America is no less of a fantasy than imagining myself making a difference on Capitol Hill. Furthermore, both fantasies influenced my personal and political development virtually ensuring a life of active, pro-social, political participation. Neither fantasy reduced the likelihood that I would spend my life trying to make the difference I imagined. One fantasy actually does make a greater difference: the one that speaks the language of political power. The other fantasy disables action by making one a laughingstock to those who wield the language of power. Fantasy motivates and role-playing trains through visualization. Until we can imagine it, we cannot really do it. Role-playing without question teaches students to be comfortable with the language of power, and that language paves the way for genuine and effective political activism. Debates over the relative efficacy of political strategies for pro-social change must confront governmental power at some point. There is a fallacy in arguing that movements represent a better political strategy than voting and person-to-person advocacy. Sure, a full-scale movement would be better than the limited voice I have as a participating citizen going from door to door in a campaign, but so would full-scale government action. Unfortunately, the gap between my individual decision to pursue movement politics and the emergence of a full-scale movement is at least as great as the gap between my vote and democratic change. They both represent utopian fiat. Invocation of Mitchell to support utopian movement fiat is simply not supported by his work, and too often, such invocation discourages the concrete actions he argues for in favor of the personal rejectionism that under girds the political cynicism that is a fundamental cause of voter and participatory abstention in America today.

### Heuristic

#### Governmentality is a productive heuristic that is not an end in itself – it’s effective for contingent struggles– their romanticization of rebellion is a dangerous oversimplification of complex systems of power.

**Zanotti ’14** Dr. Laura Zanotti is an Associate Professor of Political Science at Virginia Tech. Her research and teaching include critical political theory as well as international organizations, UN peacekeeping, democratization and the role of NGOs in post-conflict governance.“Governmentality, Ontology, Methodology: Re-thinking Political Agency in the Global World” – Alternatives: Global, Local, Political – vol 38(4):p. 288-304,. A little unclear if this is late 2013 or early 2014 – The Stated “Version of Record” is Feb 20, 2014, but was originally published online on December 30th, 2013. Obtained via Sage Database.

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 government**al **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 **government**al **rationalities and at the same time exceed and** **transform them**. **This approach questions oversimplifications of** the **complex**ities 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. **Government**ality **as a heuristic** focuses on performing complex diagnostics of events. It **invites** historically situated explorations and **careful differentiations rather than overarching demonization**s **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 ethic**s **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

### Militarism - Pragmatics Key

#### Radical rejection fails - plans are the most pragmatic check on militarism

Andrew Bacevich 13, Professor of History and International Relations at Boston University and Ph.D. in American Diplomatic History from Princeton University, The New American Militarism, p. 205-210

There is, wrote H. L. Mencken, “always a well-known solution to every human problem—neat, plausible, and wrong.”1 Mencken’s aphorism applies in spades to the subject of this account. To imagine that there exists a simple antidote to the “military metaphysic” to which the people and government of the United States have fallen prey is to misconstrue the problem. As the foregoing chapters make plain, the origins of America’s present-day infatuation with military power are anything but simple. American militarism is not the invention of a cabal nursing fantasies of global empire and manipulating an unsuspecting people frightened by the events of 9/11. Further, it is counterproductive to think in these terms— to assign culpability to a particular president or administration and to imagine that throwing the bums out will put things right. Yet neither does the present-day status of the United States as sole superpower reveal an essential truth, whether positive or negative, about the American project. Enthusiasts (mostly on the right) who interpret America’s possession of unrivaled and unprecedented armed might as proof that the United States enjoys the mandate of heaven are deluded. But so too are those (mostly on the left) who see in the far-flung doings of today’s U.S. military establishment substantiation of Major General Smedley Butler’s old chestnut that “war is just a racket” and the American soldier “a gangster for capitalism” sent abroad to do the bidding of Big Business or Big Oil.2 Neither the will of God nor the venality of Wall Street suffices to explain how the United States managed to become stuck in World War IV. Rather, the new American militarism is a little like pollution—the perhaps unintended, but foreseeable by-product of prior choices and decisions made without taking fully into account the full range of costs likely to be incurred. In making the industrial revolution, the captains of American enterprise did not consciously set out to foul the environment, but as they harnessed the waters, crisscrossed the nation with rails, and built their mills and refineries, negative consequences ensued. Lakes and rivers became choked with refuse, the soil contaminated, and the air in American cities filthy. By the time that the industrial age approached its zenith in the middle of the twentieth century, most Americans had come to take this for granted; a degraded environment seemed the price you had to pay in exchange for material abundance and by extension for freedom and opportunity. Americans might not like pollution, but there seemed to be no choice except to put up with it. To appreciate that this was, in fact, not the case, Americans needed a different consciousness. This is where the environmental movement, beginning more or less in the 1960s, made its essential contribution. Environmentalists enabled Americans to see the natural world and their relationship to that world in a different light. They argued that the obvious deterioration in the environment was unacceptable and not at all inevitable. Alternatives did exist. Different policies and practices could stanch and even reverse the damage. Purists in that movement insisted upon the primacy of environmental needs, everywhere and in all cases. Theirs was (and is) a principled position deserving to be heard. To act on their recommendations, however, would likely mean shutting down the economy, an impractical and politically infeasible course of action. Pragmatists advanced a different argument. They suggested that it was possible to negotiate a compromise between economic needs and environmental imperatives. This compromise might oblige Americans to curtail certain bad habits, but it did not require changing the fundamentals of how they lived their lives. Americans could keep their cars and continue their love affair with consumption; but at the same time they could also have cleaner air and cleaner water. Implementing this compromise has produced an outcome that environmental radicals (and on the other side, believers in laissez-faire capitalism) today find unsatisfactory. In practice, it turns out, once begun negotiations never end. Bargaining is continuous, contentious, and deeply politicized. Participants in the process seldom come away with everything they want. Settling for half a loaf when you covet the whole is inevitably frustrating. But the results are self-evident. Environmental conditions in the United States today are palpably better than they were a half century ago. Pollution has not been vanquished, but it has become more manageable. Furthermore, the nation has achieved those improvements without imposing on citizens undue burdens and without preventing its entrepreneurs from innovating, creating, and turning a profit. Restoring a semblance of balance and good sense to the way that Americans think about military power will require a similarly pragmatic approach. Undoing all of the negative effects that result from having been seduced by war may lie beyond reach, but Americans can at least make them more manageable and thereby salvage their democracy. In explaining the origins of the new American militarism, this account has not sought to assign or to impute blame. None of the protagonists in this story sat down after Vietnam and consciously plotted to propagate perverse attitudes toward military power any more than Andrew Carnegie or John D. Rockefeller plotted to despoil the nineteenth-century American landscape. The clamor after Vietnam to rebuild the American arsenal and to restore American self-confidence, the celebration of soldierly values, the search for ways to make force more usable: all of these came about because groups of Americans thought that they glimpsed in the realm of military affairs the solution to vexing problems. The soldiers who sought to rehabilitate their profession, the intellectuals who feared that America might share the fate of Weimar, the strategists wrestling with the implications of nuclear weapons, the conservative Christians appalled by the apparent collapse of traditional morality: none of these acted out of motives that were inherently dishonorable. To the extent that we may find fault with the results of their efforts, that fault is more appropriately attributable to human fallibility than to malicious intent. And yet in the end it is not motive that matters but outcome. Several decades after Vietnam, in the aftermath of a century filled to overflowing with evidence pointing to the limited utility of armed force and the dangers inherent in relying excessively on military power, the American people have persuaded themselves that their best prospect for safety and salvation lies with the sword. Told that despite all of their past martial exertions, treasure expended, and lives sacrificed, the world they inhabit is today more dangerous than ever and that they must redouble those exertions, they dutifully assent. Much as dumping raw sewage into American lakes and streams was once deemed unremarkable, so today “global power projection”—a phrase whose sharp edges we have worn down through casual use, but which implies military activism without apparent limit—has become standard practice, a normal condition, one to which no plausible alternatives seem to exist. All of this Americans have come to take for granted: it’s who we are and what we do. Such a definition of normalcy cries out for a close and critical reexamination. Surely, the surprises, disappointments, painful losses, and woeful, even shameful failures of the Iraq War make clear the need to rethink the fundamentals of U.S. military policy. Yet a meaningful reexamination will require first a change of consciousness, seeing war and America’s relationship to war in a fundamentally different way. Of course, dissenting views already exist. A rich tradition of American pacifism abhors the resort to violence as always and in every case wrong. Advocates of disarmament argue that by their very existence weapons are an incitement to violence. In the former camp, there can never be a justification for war. In the latter camp, the shortest road to peace begins with the beating of swords into ploughshares. These are principled views that deserve a hearing, more so today than ever. By discomfiting the majority, advocates of such views serve the common good. But to make full-fledged pacifism or comprehensive disarmament the basis for policy in an intrinsically disordered world would be to open the United States to grave danger. The critique proposed here—offering not a panacea but the prospect of causing present-day militaristic tendencies to abate—rests on ten fundamental principles. First, heed the intentions of the Founders, thereby restoring the basic precepts that animated the creation of the United States and are specified in the Constitution that the Framers drafted in 1787 and presented for consideration to the several states. Although politicians make a pretense of revering that document, when it comes to military policy they have long since fallen into the habit of treating it like a dead letter. This is unfortunate. Drafted by men who appreciated the need for military power while also maintaining a healthy respect for the dangers that it posed, the Constitution in our own day remains an essential point of reference. Nothing in that compact, as originally ratified or as subsequently amended, commits or even encourages the United States to employ military power to save the rest of humankind or remake the world in its own image nor even hints at any such purpose or obligation. To the contrary, the Preamble of the Constitution expressly situates military power at the center of the brief litany of purpose enumerating the collective aspirations of “we the people.” It was “to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity” that they acted in promulgating what remains the fundamental law of the land. Whether considering George H. W. Bush’s 1992 incursion into Somalia, Bill Clinton’s 1999 war for Kosovo, or George W. Bush’s 2003 crusade to overthrow Saddam Hussein, the growing U.S. predilection for military intervention in recent years has so mangled the concept of common defense as to make it all but unrecognizable. The beginning of wisdom—and a major first step in repealing the new American militarism—lies in making the foundational statement of intent contained in the Preamble once again the basis of actual policy. Only if citizens remind themselves and remind those exercising political authority why this nation exists will it be possible to restore the proper relationship between military power and that purpose, which centers not on global dominance but on enabling Americans to enjoy the blessings of liberty. Such a restoration is long overdue. For over a century, since the closing of the frontier, but with renewed insistence following the end of the Cold War, American statesmen have labored under the misconception that securing the well-being of the United States requires expanding its reach and influence abroad. From the invasion of Cuba in 1898 to the invasion of Iraq in 2003, policymakers have acted as if having an ever larger perimeter to defend will make us safer or taking on burdens and obligations at ever greater distances from our shores will further enhance our freedoms.3 In fact, apart from the singular exception of World War II, something like the opposite has been the case. The remedy to this violation of the spirit of the Constitution lies in the Constitution itself and in the need to revitalize the concept of separation of powers. Here is the second principle with the potential to reduce the hazards by the new American militarism. In all but a very few cases, the impetus for expanding America’s security perimeter has come from the executive branch. In practice, presidents in consultation with a small circle of advisers decide on the use of force; the legislative branch then either meekly bows to the wishes of the executive or provides the sort of broad authorization (such as the Tonkin Gulf Resolution of 1964) that amounts in effect to an abrogation of direct responsibility. The result, especially in evidence since the end of World War II, has been to eviscerate Article I, Section 8, Clause 11 of the Constitution, which in the plainest of language confers on the Congress the power “To declare War.” The problem is not that the presidency has become too strong. Rather, the problem is that the Congress has failed—indeed, failed egregiously—to fulfill its constitutional responsibility for deciding when and if the United States should undertake military interventions abroad. Hiding behind an ostensible obligation to “support our commander-in-chief” or to “support the troops,” the Congress has time and again shirked its duty. An essential step toward curbing the new American militarism is to redress this imbalance in war powers and to call upon the Congress to reclaim its constitutionally mandated prerogatives. Indeed, legislators should insist upon a strict constructionist definition of war such that any use of force other than in direct and immediate defense of the United States should require prior congressional approval. The Cold War is history. The United States no longer stands eyeball-toeyeball with a hostile superpower. Ensuring our survival today does not require, if it ever did, granting to a single individual the authority to unleash the American military arsenal however the perception of threats, calculations of interest, or flights of whimsy might seem to dictate. Indeed, given all that we have learned about the frailties, foibles, and strange obsessions besetting those who have occupied the Oval Office in recent decades—John Kennedy’s chronic drug abuse, Richard Nixon’s paranoia, and Ronald Reagan’s well-documented conviction that Armageddon was drawing near, to cite three examples—it is simply absurd that elevation to the presidency should include the grant of such authority.4 The decision to use armed force is freighted with implications, seen and unseen, that affect the nation’s destiny. Our history has shown this time and again. Such decisions should require collective approval in advance by the people’s elected representatives, as the Framers intended. Granted, one may examine the recent past—for instance, the vaguely worded October 2002 joint resolution authorizing the use of force against Iraq—and despair of those representatives actually stirring themselves to meet their responsibilities.5 But the errors and misapprehensions, if not outright deceptions, that informed the Bush administration’s case for that war—and the heavy price that Americans subsequently paid as a result— show why Cold War–era deference to the will of the commander-in-chief is no longer acceptable. If serving members of Congress cannot grasp that point, citizens should replace them by electing people able to do so.

## CP – Generics

### Case O/W – Can’t Solve [15s]

#### [Omitted]

## Campaign Zero CP

### Perm [15s]

#### Permutation: Do both.

#### It’s the best option – civil suits in combination with Campaign Zero is key to accountability and bolsters solvency.

Sam Wright, 2015

“Want to Fight Police Misconduct? Reform Qualified Immunity”, Above the Law, http://abovethelaw.com/2015/11/want-to-fight-police-misconduct-reform-qualified-immunity/

**In order to truly hold police accountable for bad acts, civilians must be able to bring, and win, civil rights suits themselves** — not rely on the Department of Justice, or special prosecutors, or civilian review boards to hold officers accountable. And in order to both bring and win civil rights suits, civilians need a level playing field in court. Right now, they don’t have one. Instead, **police officers have** recourse to the **broad protections of** the judicially established doctrine of **qualified immunity**. Under this doctrine**, state actors are protected from suit even if they’ve violated the law** by, say, using excessive force, or performing an unwarranted body cavity search — as long as their violation was not one of “clearly established law of which a reasonable officer would be aware.” In other words, if there’s not already a case where a court has held that an officer’s identical or near-identical conduct rose to the level of a constitutional violation, there’s a good chance that even an obviously malfeasant officer will avoid liability — will avoid accountability. **To bring about true accountability** and change police behavior, **this needs to change.** **And** change **should begin with** **an act of** Congress rolling back qualified immunity**.** Removing the “clearly established” element of qualified immunity would be a good start — after all, shouldn’t it be enough to deviate from a basic standard of care, to engage in conduct that a reasonable officer would know is illegal, without having to show that that conduct’s illegality has already been clearly established in the courts? That’s just a start. There are plenty of other reforms that could open up civil rights lawsuits and help ensure police accountability for bad conduct. Two posts ([one](http://balkin.blogspot.com/2015/10/whats-missing-in-police-reform-debate.html), [two](http://balkin.blogspot.com/2015/10/whats-missing-in-police-reform-debate_20.html)) at Balkinization by City University of New York professor Lynda Dodd provide a good overview. **Campaign Zero should consider adding civil rights litigation reform to its platform, our policymakers should consider making civil rights litigation more robust, and, if we want to see justice done, we should push to make it happen.**

## Insurance CP

### Permutation - Do Both

#### Permutation: Do both --- the mechanism of implementation is not mutually exclusive with the plan – we can limit qualified immunity while at the same time requiring insurance plans. It solves the net-benefits *[insert why]*.

#### 

## Cameras CP

### No Accountability

#### Body cams don’t hold officers accountable – tampering, intentional forgetting, and no internal punishment.

Robert Balko, 02/05/16

“A new report shows the limits of police body cameras” https://www.washingtonpost.com/news/the-watch/wp/2016/02/05/a-new-report-shows-the-limits-of-police-body-cameras/?utm\_term=.b845839776b2

The most important issue here is accountability. That’s the whole point of body cameras. And here, things get really murky. [DNA Info recently reported](https://www.dnainfo.com/chicago/20160127/archer-heights/whats-behind-no-sound-syndrome-on-chicago-police-dashcams) that as many as 80 percent of Chicago PD dashboard cameras were lacking audio, a problem police officials blamed on “officer error” and “intentional destruction.” The L.A. Times [reported a similar story](http://www.latimes.com/local/la-me-lapd-tamper-20140408-story.html#ixzz2yPEshY00) about L.A.P.D. cameras last year. [In a recent post here at The Watch](https://www.washingtonpost.com/news/the-watch/wp/2016/01/29/80-percent-of-chicago-pd-dash-cam-videos-are-missing-audio-due-to-officer-error-or-intentional-destruction/), I pointed to a number of similar incidents around the country. If police are permitted to “forget” to turn on their cameras at critical moments, destroy their cameras, or otherwise sabotage efforts at transparency, what happens? The Brennan Center found that [. . . it isn’t clear.](https://www.brennancenter.org/analysis/police-body-camera-policies-accountability) Ten of the 24 police agencies in the study don’t have explicit policies requiring officers to explain why they didn’t record an encounter when they were required to do so. 19 have no language about discipline for failing to record. Only a few even explicitly state that failing to record when required is an actionable offense. Of those, Tampa’s policy uses the strongest language. From the Brennan Center’s summary: Failure to record, store recordings, or misuse of the system “may result in disciplinary action.” In addition, “[i]ntentionally turning off the system in anticipation of a use of force incident or other confrontational citizen contact is absolutely forbidden, and will result in discipline up to and including termination.”

### Implementation = Awful

#### Implementation is awful – loopholes, privacy concerns, internal review boards are biased.

Robert Balko, 02/05/16

“A new report shows the limits of police body cameras” https://www.washingtonpost.com/news/the-watch/wp/2016/02/05/a-new-report-shows-the-limits-of-police-body-cameras/?utm\_term=.b845839776b2

So what did the Brennan Center find? Rachel Levinson-Waldman, one of the authors, says she was surprised by the inattention to privacy. “Several cities have policies prohibiting things like recording in locker rooms, bathrooms, or doctor’s offices — places where there’s concern about privacy of the body,” she says. “But **there’s little concern for recordings made in people’s homes**.” Only four cities prohibit officers from recording in a private home without the owner’s permission during a consent search. Another 14 cities don’t address the home at all, four explicitly allow police to record in a private home without consent, and **no city prohibits recording in a home altogether**.

But there are tradeoffs between privacy and accountability. Most police officers will tell you that domestic disputes are among the most contentious and potentially dangerous calls they make. There’s a strong argument for barring video of these incidents in order to protect the privacy of the victims. On the other hand, to prohibit video of those encounters would prohibit footage of a significant percentage of officer-involved shootings. That’s a problem both for determining accountability in those cases (and of course video can vindicate an officer just as easily as it can implicate) and for using real-world scenarios for, say, training in deescalation or conflict resolution. According to the Brennan Center, several police agencies leave to the officer’s discretion on whether or not to record when responding to a domestic dispute. That seems like a bad policy. But it also isn’t clear what the ideal policy would be. San Diego explicitly requires recording them, in order to document a victim’s injuries.

The same tension is at play when recording protests. Given the long history in this country of law enforcement officials identifying, tracking, and otherwise spying on political protesters, there are some understandable First Amendment concerns with providing police agencies with reels of footage of the faces of protesters. On the other hand, protests too are often the scene of violent clashes with police, and better footage of those encounters could helpful for determining who was at fault and for training purposes in the future. The privacy issues here seem less pressing than in domestic abuse cases, given that protesters have already chosen to demonstrate in public. But they aren’t without merit, either.

Another issue is [who gets access to the footage.](https://www.brennancenter.org/analysis/police-body-camera-policies-retention-and-release) This is a important detail. As a journalist, I’d love to see all the footage made available to the public, at least in some way. Police leaders say that’s impractical, although it appears that Seattle has found a way to put the videos online while anonymizing the faces of people who appear in them. There are also questions about how long the videos should be stored. For practical reasons, indefinite storage of all body camera footage isn’t feasible. And here too, there are privacy concerns. Civil liberties groups like the ACLU would prefer video be stored for a shorter period of time to prevent misuse. But we often don’t learn about problem police officers until they’ve accumulated incidents for a number of years. So again, accountability interests come into some conflict with privacy interests.

The Brennan Center found that eight of the 25 police departments destroy after 180 days videos that aren’t evidence in an active case or aren’t likely to be part of complaint. Seven kept those videos for up to two years. Another 10 don’t have an explicit policy. If full-on public access isn’t possible, the ideal policy would be to authorize an agency independent of the police department to have complete access, such as a civilian review board. But here too, the effectiveness of that policy rests on how independent the review board is, how the review board is populated, and whether it has teeth.

One of the more interesting debates to crop up with this issue is whether or not police officers should be permitted to view body camera footage before issuing statements about use of force incidents. I don’t think they should, particularly if non-police suspects aren’t given the same opportunity. If cameras are to be a tool for transparency and accountability, rogue cops could concoct stories to fit the video. Prohibiting officers from viewing the video first of course means granting some leniency for small discrepancies and inaccuracies. The goal here is to prevent incidents were police have fabricated and collaborated to cover up bad behavior. According to the Brennan Center, 15 of the police departments surveyed allow officers to view body camera footage before writing their reports or giving a statement. Five allow police to view the video after they submit an initial report, or allow viewing only after permission from an investigator or prosecutor.

## Ban CP

### Limit – Definition [10s]

#### Permutation: do the counterplan – it’s not distinct from the affirmative.

#### Limit refers to a restriction of bounds – that doesn’t exclude banning as the resolution doesn’t specify a particular threshold – we can set the limit at 100%.

Merriam-Webster, 2016

“Limit” http://www.merriam-webster.com/dictionary/limit

Full Definition of **limit**

transitive verb

1:  to assign certain [limits](http://www.merriam-webster.com/dictionary/limits) to :  [prescribe](http://www.merriam-webster.com/dictionary/prescribe) <reserved the right to limit use of the land>

2a :  **to restrict the bounds or limits of** <the specialist can no longer limit himself to his specialty>b :  **to curtail or reduce in quantity or extent** <we must limit the power of aggressors>

## Non-Lethal CP

### Tech =/ Solve [10s]

#### Technology is only as good as the policies backing it – non-lethals are abused and don’t solve.

Radley Balko, 2014

“Five myths about America’s police” Washington Post, Opinion. https://www.washingtonpost.com/opinions/five-myths-about-americas-police/2014/12/05/35b1af44-7bcd-11e4-9a27-6fdbc612bff8\_story.html?utm\_term=.8c06f1963cc8

New technology and new weapons are only as good as the policies guiding their use. Tasers were initially touted as a substitute for lethal force, a way for cops to subdue violent suspects without killing them. Over time, however, they have become a compliance tool — used to quell dissent, move nonviolent protesters and punish people for talking back. A 2011 National Institute of Justice [study](https://www.ncjrs.gov/pdffiles1/nij/232215.pdf) found that cops use their Tasers too often and in inappropriate circumstances. While there is no national data on Taser use, a 2012 Chicago Tribune [report](http://articles.chicagotribune.com/2012-01-01/news/ct-met-taser-use-increases-20120101_1_tasers-electroshock-weapons-doubts-surface)found that Taser use by suburban police doubled between 2008 and 2011. A 2011 New York Civil Liberties Union [study](http://www.nyclu.org/news/nyclu-analysis-finds-misuse-of-tasers-police-across-ny-state) found that nearly 60 percent of police Taser incidents in that state did not meet expert-recommended criteria for using the weapon. It’s also worth noting that Amnesty International has documented more than 500 cases in which a suspect died after being shocked with a Taser.

## Court Clog

### Non-Unique [15s]

#### Disad is non-unique – courts are obscenely clogged now – aff doesn’t trigger the impact.

People For the American Way, 2015

People For the American Way is dedicated to making the promise of America real for every American: Equality. Freedom of speech. Freedom of religion. The right to seek justice in a court of law. “Obstruction by the Numbers” in “Overloaded Courts, Not Enough Judges: The Impact on Real People”

Throughout most of President Obama’s term, a serious vacancy crisis has been damaging the federal court system, although the situation improved significantly in 2014 as the Senate processed more nominations. Still, about 10% of lower federal courts are now or will soon be vacant. • **Circuit courts: 11 vacancies** (10 current, 1 future) • **District courts: 68 vacancies** (52 current, 16 future) Judicial emergencies are putting a substantial strain on the judiciary. • **“Judicial emergency” is a formal administrative term used by the Administrative Office of the U.S. Courts**. o **Circuit Court** ♣ **any vacancy in a court of appeals where adjusted filings per panel are in excess of 700; ♣ any vacancy in existence more than 18 months where adjusted filings are between 500 to 700 per panel. o District Court ♣ any vacancy where weighted filings are in excess of 600 per judgeship; ♣ any vacancy in existence more than 18 months where weighted filings are between 430 to 600 per judgeship**; ♣ any court with more than one authorized judgeship and only one active judge. • Across the country, judges in their 80s and 90s who want to retire are staying on the bench to mitigate the caseload for other judges in their districts. • **Nearly half of current vacancies are judicial emergencies** (31 in all) Even if every vacancy were to be filled tomorrow, there would still not be enough judges to ensure every American’s opportunity to have their day in court: Judges are so overwhelmed that the Judicial Conference of the United States recommended in March of 2015 that Congress create five new circuit court seats and 68 new district court seats (as well as make permanent nine district court seats that are now temporary). So filling vacancies is a priority. The Senate is not living up to its responsibility to quickly consider and hold votes on circuit and district court nominees. Only in 2014 – a year of striking success on judicial nominations – was the obstruction overcome. But the process has been reversed in 2015.

### Doesn’t Turn Solvency

#### Aff solvency isn’t entirely predicated on civil suits – limiting QI sets institutional precedents and changes social norms – those happen regardless of the court process.

### Link D – Won’t Overburden

#### Plan specifically dodges frivolous litigation – “good faith” defense checks back, lack of incentive due to detail, deterrence via education.

Kathleen Lockard, 2001

“Qualified Immunity as a Defense to Federal Wiretap Act Claims” The University of Chicago Law Review, Vol. 68, No. 4, pg 1398-1400. [Gender]

The narrow nature of the FWA and its detailed standards provide much less opportunity for abuse by potential plaintiffs. **If a citizen desired to harass** the government **through frivolous suits, it is** highly unlikely **that he [they] would use the FWA**. Importantly, he would have had to be wiretapped. Suits under the FWA, a narrow and detailed statute, provide less opportunity for interference with legitimate government operations. Many of the policy reasons that have resulted in the expansion of qualified immunity simply do not apply to the FWA. Because the purpose of the FWA statute is inconsistent with qualified immunity, courts should preempt it using obstacle preemption analysis. When a statute's purpose is contrary to a common law standard, there is no presumption that that standard should apply.222 The distinctions between the two statutes discussed above, namely the FWA's narrow focus, detail, and purpose to deter unauthorized wiretaps, suggest that qualified immunity in its current incarnation is inconsistent with the rationale of the FWA. Qualified immunity is intended to strike a balance between vindicating individual rights and the public interest in allowing officials to focus on their duties without the harassment of frivolous suits.223 While Congress did not include any interpretive guidance as to why it included the good faith defense in the statute, its inclusion, combined with the comprehensive, uniform standards set out in the law, provides some structural inference. Since the FWA includes its own defense, the statute as enacted reflects Congress's judgment about the proper balance between those competing interests in the wiretap context. Allowing qualified immunity under the FWA merely tips the scale in favor of FWA defendants. Courts should not upset the internal equilibrium of the FWA. Unauthorized wiretapping is not a substantive area in which courts should be quick to tip the balance in favor of defendants. Uncertainty in the boundaries of allowable legal surveillance led to abuses under the FWA's original national security exception, which was repealed for 224 that reason. Officials should exercise this surveillance power with care. If defendants face a larger risk of undergoing discovery and trial, they are more likely to be careful in obtaining authorizations for wiretapping. Without qualified immunity, officials would have greater incentives to educate themselves about the law.225 Government surveillance of citizens is not an area in which officials should be stretching the boundaries of the law. Congress recognized this in the original FWA: "To safeguard the privacy of innocent persons, the interception of wire or oral communications ... should be allowed only when authorized by a court of competent jurisdiction and should remain under the control and supervision of the authorizing court."226 In accordance with congressional purpose, courts should not read the liberal defense of qualified immunity into the FWA. Furthermore, disallowing qualified immunity under the FWA does not leave government officials without protection. The statute provides the good faith defense, which officials would be free to assert even absent qualified immunity. As discussed above, they would likely be forced to undergo more rigorous discovery and possibly trial in the absence of a qualified immunity defense. However, if a defendant satisfied the good faith defense under Section 2520(d), there would be no liability. Therefore the police chief in Blake who recorded the conversations of his employees would not be able to win summary judgment, but, if the court found he [they] acted in good faith reliance on statutory (or other) authorization, he [they] would not face liability.227 The police chief in Tapley who intercepted a cordless phone conversation and shared his tape with other city employees could also assert the good faith defense. 22 The defendants in Berry could also have asserted the good faith defense, but apparently chose not to do so.22 Thus, these defendants would not automatically lose their cases absent qualified immunity.

## T – General

### Standard – Flexibility

#### Affirmative flexibility – qualified immunity is a tiny topic which includes only a select few affirmatives, in depth innovative affirmatives are crucial to stay competitive. Their interp means the aff loses every round to generic counterplans – abolish, reform, bodycams, insurance – which solve the aff and gets outweighed by the court-clog disad.

### Reasonability – Spec

#### [Omitted]

### Framing – Structural

#### [Omitted]

### Standard – Ground

#### [Omitted]

## T – Limit (Can’t Ban)

### General [25s]

#### Bidirectional interpretations are bad – they can interpret limit as needing to be partial or a full ban:

#### Topic Education – every debate devolves into T which severs in depth substantive debates – those are key to portable skills which outweigh as they are the only thing that leaves the round.

#### Strategy – there’s always another interpretation we can’t meet which makes every aff untopical - that puts the neg one step ahead in every debate because there’s always a preclusive game over issue with T.

#### Ban is theoretically better for the negative – we can’t spike disadvantages, case turns, or counterplans by saying QI still exists.

#### They have massive amounts of ground – they only lose the ban counterplan which is unfair as it steals the entire affirmative – they still get court clog, case turns, topic kritiks, and counterplans. That outweighs – ground controls the internal link to their ability to engage which resolves their offense.

### We Meet [5s]

#### We Meet ---

#### We don’t ban qualified immunity – we preclude it. It is still a defense in other instances besides the Federal Wiretapping Act – that’s a limit because it doesn’t completely foreclose it from existing.

## T – Limit (Ban)

### CI – Restriction

#### Limit as a verb refers to a restriction of action – not an absolute removal.

Oxford Advanced American Dictionary, 2016

“limit verb” http://www.oxfordlearnersdictionaries.com/us/definition/american\_english/limit\_2

**limit**

**verb**

/ˈlɪmət/

Verb Forms

limit something (to something) **to stop something from increasing beyond a particular amount** or level

synonym [restrict](http://www.oxfordlearnersdictionaries.com/us/definition/american_english/restrict)

measures to limit carbon dioxide emissions from cars

The amount of money you have to spend will limit your choice.

limit yourself/somebody (to something) **to restrict** or reduce **the amount of something** that you or someone can have or use

Families are limited to four free tickets each.

I've limited myself to 1 ,000 calories a day to try and lose weight.

#### Prefer it ---

#### Precision – our interp specifically defines limit in the context of a verb – that’s crucial for evaluating legal questions of action. Context matters and specificity to the res question is necessary to clearly demarcate ground.

#### Topic literature – no one says we should get entirely rid of qualified immunity – that’d justify suing police officers for tripping a suspect – only our interp allows reasonable affs and is consistant with the topic lit which controls prep.

## OSpec – Instances/Method

### CI

#### CI: Debaters may specify a particular instance/method in/by which qualified immunity is limited.

#### Topic Education – specification enables in depth debates about the mechanisms of the topic, they make debates generic and stale which doesn’t get to the core of the controversy. Depth outweighs – it gives portable skills which influence policy and enable us to be advocates.

#### Ground – almost no authors unconditionally defend qualified immunity, most topic literature indicates specific instances or methods – they exclude unique court cases, groups, and mechanism which is most advocates. That makes the topic tiny – affs would always lose to counterplans which solve the case – specificity is crucial for affs to stay competitive.

#### Topic Literature – we have an explicit advocate for the plan which proves it’s within the bounds of the topic. That controls the internal link to predictability and ground which proves they have the capacity to engage the affirmative and resolves the abuse.

## Ptx

### Intrinsic

#### Disadvantages must be intrinsic to the plan --- politics disads aren’t because they’re about the process of passing the plan rather than the outcome or desirability.

#### Predictability

### Fiat

#### Durable fiat resolves the links – we get the immediate passage of the plan which sidesteps the political process.

Fiat solves the link - fiat solves controversy questions of implementation (which means the link for ptx is gg)

### Courts

#### Trump owns the courts

<http://www.politico.com/magazine/story/2016/11/donald-trump-wins-supreme-court-214449>

#### Dems filibuster

<http://www.washingtontimes.com/news/2016/nov/16/chuck-schumer-dems-new-senate-leader-open-filibust/>

### WT Unpopular

#### Plans good – wiretapping is massively unpopular.

http://www.pewresearch.org/fact-tank/2015/05/29/what-americans-think-about-nsa-surveillance-national-security-and-privacy/