# 1AC

### Plan

#### The United States federal judiciary should rule that the President of the United States lacks the authority to detain individuals indefinitely.

### Terror 1AC

**Indefinite detention increases terrorism—multiple warrants**

Scheinin 12 (January 11, Martin, professor of international law and former UN Special Rapporteur on human rights and counter-terrorism from 2005 to 2011, “Should Human Rights Take a Back Seat in Wartime?” <http://www.realclearworld.com/articles/2012/01/11/national_defense_authorization_act_scheinin_interview-full.html>)

The National Defense Authorization Act (NDAA), signed by President Barack Obama December 31, 2011, codifies into law the post-9/11 practice of indefinite detention without charge of terrorist suspects. Martin Scheinin, professor of international law and former UN Special Rapporteur on human rights and counter-terrorism from 2005 to 2011, offered his thoughts on the new law and its potential implications for the global counter-terrorism struggle. Casey L. Coombs: First, Mr. Scheinin, could you provide your general impressions of the NDAA’s indefinite detention provisions vis-à-vis international legal standards governing civil liberties? Martin Scheinin: The NDAA builds upon the well-established rule in international humanitarian law (law of armed conflict) that during an international armed conflict combatants, i.e. soldiers of one of the states involved in the war, can be detained as prisoners of war until the end of hostilities. When there is an international armed conflict and when someone is a combatant, then such detention does not amount to arbitrary detention that would violate international human rights law. The NDAA extends the possibility - even presumption - of indefinite detention to terrorism, far beyond genuine situations of international or even non-international armed conflict. And it extends indefinite detention to persons who are not combatants, or analogously situated persons in a non-international armed conflict. For instance, persons who are held to have provided substantial support to terrorism would be subject to indefinite detention. This approach has no support in the laws of war and will unavoidably result in what human rights law considers arbitrary detention and hence a violation of international treaties legally binding upon the United States, such as the International Covenant on Civil and Political Rights. CLC: As a world leader and active promoter of universal human rights, the practice of indefinite detention without charge would seem to clash with U.S. ideals. Could you comment on this contradiction? MS: One of the main lessons learned in the international fight against terrorism is that counter-terrorism professionals have gradually come to learn and admit that human rights violations are not an acceptable shortcut in an effective fight against terrorism. Such measures tend to backfire in multiple ways. They result in legal problems by hampering prosecution, trial and punishment. The use of torture is a clear example here. They also tend to alienate the communities with which authorities should be working in order to detect and prevent terrorism. And they add to causes of terrorism, both by perpetuating "root causes" that involve the alienation of communities and by providing "triggering causes" through which bitter individuals make the morally inexcusable decision to turn to methods of terrorism. The NDAA is just one more step in the wrong direction, by aggravating the counterproductive effects of human rights violating measures put in place in the name of countering terrorism. CLC: Does the NDAA afford the U.S. a practical advantage in the fight against terrorism? Or might the law undermine its global credibility? MS: It is hard to see any practical advantage gained through the NDAA. It is just another form of what I call symbolic legislation, enacted because the legislators want to be seen as being "tough" or as "doing something." The law is written as just affirming existing powers and practices and hence not providing any meaningful new tools in the combat of terrorism. By constraining the choices by the executive, it nevertheless hampers effective counter-terrorism work, including criminal investigation and prosecution, as well as international counter-terrorism cooperation, markedly in the issue of closing the Guantanamo Bay detention facility. Hence, it carries the risk of distancing the United States from its closest allies and the international community generally. And of course these kinds of legal provisions are always open for bad faith copying by repressive governments that will use them for their own political purposes.

**Indefinite detention is the key internal link to recruitment and causes a resource trade off which shatters the ability to fight terrorism**

**Powell 8** (Catherine, Georgetown Law Visiting Professor for the 2012-13 academic year and teaches international law, constitutional law, and constitutional rights in comparative perspective. She has recently served in government on Secretary of State Hillary Clinton’s Policy Planning Staff and on the White House National Security Staff, where she was Director for Human Rights. “Scholars’ Statement of Principles for the New President on U.S. Detention Policy: An Agenda for Change\*” <http://www.law.yale.edu/documents/pdf/Alumni_Affairs/Scholars_Statement.pdf>)

Across the political spectrum, there is a growing consensus that the existing system of long term detention of terrorism suspects without trial through the network of facilities in Guantanamo and elsewhere is an unsustainable liability for the United States that must be changed. The current policies undermine the rule of law and our national security. The last seven years have seen a dangerous erosion of the rule of law in the United States through a disingenuous interpretation of the laws of war, the denial of ordinary legal process, the violation of the most basic rights, and the use of unreliable evidence (including secret and coerced evidence). The current detention policies also point to the inherent fallibility of “preventive” determinations that are based on assessment of future dangerousness (as opposed to past criminal conduct). Empirical studies demonstrate that “preventive” detention determinations that rely on assessment of future dangerousness generate unacceptably high levels of false positives (i.e., detention of innocent people).1 Indeed, while the Bush Administration once claimed the Guantanamo detainees were “the worst of the worst,” following minimal judicial intervention, it subsequently released more than 300 of them, as of the end of 2006.2 Because it is viewed as unprincipled, unreliable, and illegitimate, the existing detention system undermines our national security. Because the current system threatens our national security, we strongly oppose any effort to extend the status quo by establishing either (1) a comprehensive system of long-term “preventive” detention without trial for suspected terrorists, or (2) a specialized national security court to make “preventive” detention determinations and ultimately to try terrorism suspects.3 Despite dressed up procedures, these proposals would make some of the most notorious aspects of the current failed system permanent. To the extent such systems were established within the territorial United States as opposed to on Guantanamo or elsewhere, they would essentially bring the failed Guantanamo system home. Perhaps most fundamental is the fact that the supporters of these proposals typically fail to make clear who should be detained, much less how such individuals, once designated, can prove they are no longer a threat. Without a reasonably precise definition, not only is arbitrary and indefinite detention possible, it is nearly inevitable. Moreover, many of the proponents of a renewed “preventive” detention regime explicitly underscore the primacy of interrogation with respect to detainees’ otherwise-recognized rights. A detention system that permits ongoing interrogation inevitably treats individuals as means to an end, regardless of the danger they individually pose, thereby creating perverse incentives to prolonged, incommunicado, arbitrary (and indefinite) detention, minimized procedural protections, and coercive interrogation. Such **arrangements instill resentment and provide propaganda for recruitment of future terrorists, undermine our relationships with our allies, and embolden terrorists as “combatants” in a “war on terror”** (rather than delegitimizing them as criminals in the ordinary criminal justice system).4 Moreover, the current system of long term (and, essentially, **indefinite) detention diverts resources and attention away from other, more effective means of combating terrorism.** Reflecting what has now become a broad consensus around the need to use the full range of instruments of state power to combat terrorism, the bi-partisan 9/11 Commission pointed out that “long-term success [in efforts to pursue al Qaeda] demands the use of all elements of national power: diplomacy, intelligence, covert action, law enforcement, economic policy, foreign aid, public diplomacy, and homeland defense.”5 Thus, in addition to revamping the existing detention program to bring it within the rule of law, the incoming President should work with Congress to utilize this broad array of tools to vigorously prosecute terrorism.

**Al Qaeda is still a major threat—predictions of decline are premature and false**

Sinai 13 (Joshua, JINSA Fellow, Washington, DC-based consultant on national security studies, focusing primarily on terrorism, counterterrorism, and homeland security, 3-11-13, “Al Qaeda Threat to U.S. Not Diminished, Data Indicates” The Jewish Institute for National Security Affairs) http://www.jinsa.org/fellowship-program/joshua-sinai/al-qaeda-threat-us-not-diminished-data-indicates#.UbaiWvmsiSo

Conventional wisdom holds that the threat to America posed by al Qaeda and its affiliates is greatly diminished compared to 9/11. Today, it is claimed, al Qaeda is less well organized, with many of its top leaders eliminated, and is so broken into geographically disparate franchises that it is unable to recruit, train, and deploy a specialized cell to carry out a comparable catastrophic attack against America. The fact that no al Qaeda terrorist attacks have been carried out in America over the last two years, while some 20 individuals have plotted to carry out attacks but were arrested and convicted during the pre-incident phases, is seen as evidence that this terrorist threat is decreasing domestically. Therefore, according to this thesis, security authorities should prepare for more numerous and frequently occurring but low casualty attacks mounted by less well-trained and capable homegrown operatives, particularly by what are termed "lone wolves." When a more complete compilation of all the components involved in terrorism are taken into account, however, the magnitude of the threat becomes much clearer and includes a higher likelihood of attempts to carry out catastrophic attacks as well as evidence that al Qaeda continues to recruit and prepare terrorist operatives in the United States. Downplaying the terrorist threat posed by al Qaeda and its affiliates also has significant political implications due in part to the more than $70 billion that is spent annually on America's domestic counterterrorism programs (with larger amounts expended for overseas operations), all of which need to be continuously justified as cost effective by Administration planners and Congressional appropriators. Such purported decline in al Qaeda attacks domestically, however, is now being seized upon by those who favor reduced government funding for counterterrorism programs, including weakening the USA PATRIOT Act, to support their position that a reduced threat requires reduced funding and resources. When the trajectory of attacks by al Qaeda and its associates over the years are carefully studied, however, certain patterns recur. Specifically, every time the threat is underplayed, it is invariably followed by a major attack. In the months leading up to the November 2012 elections, the media was filled with pronouncements that al Qaeda's threat had greatly diminished as a result of the elimination of its leadership and the reduced operational role over attacks by what is termed "al Qaeda Central" in Pakistan's tribal areas. While accurate on one level, this did not stop al Qaeda and its affiliates from continuing to launch major terrorist attacks, including that by its Libyan affiliate against the U.S. consulate in Benghazi on September 11, 2012, which led to severe political repercussions for the Administration for its unpreparedness to anticipate such an attack. This was followed by the launching of the devastating cross-border attack against the natural gas facility in eastern Algeria in mid-January by another al Qaeda affiliate in Mali. Thirty-six foreign workers were murdered in that attack, which, again, was unanticipated.Moreover, the fact that a catastrophic attack against America comparable to 9/11 has not occurred over the past 11 years should not suggest that a future one is not being planned. In summer 2006, al Qaeda-linked operatives in London plotted to detonate liquid explosives on board 10 transatlantic airliners flying from the UK to America and Canada. In September 2009, Najibullah Zazi and his associates were arrested for plotting to conduct a suicide bombing attack against the New York City subway system. On Christmas Day, 2009, Umar Farouk Abdulmutallab failed to detonate plastic explosives while on board an airliner heading to Detroit. Anwar al Awlaki, a former American extremist cleric, reportedly masterminded Abdulmutallab's operation. Awlaki was killed in a drone attack in Yemen on September 30, 2011. The killings of al Awlaki and Samir Khan, another American extremist who had made his way to Yemen in 2009, could well trigger a catastrophic attack by al Qaeda to avenge their deaths.The recent capture of Osama Bin Laden's son-in-law, Sulaiman abu Ghaith, and the decision to try him in New York City, is also likely to trigger a major revenge attack against America. Finally, organizing catastrophic terrorist attacks requires extensive planning, funding and preparation. A terrorist group that feels itself strong will take its time to carefully plan a few but devastating attacks, while a group that regards itself as weak may feel compelled to carry out frequent, but low-casualty attacks to demonstrate its continued relevancy. Some incident databases, such asa recent compilation of data about American al Qaeda terrorists by the UK-based Henry Jackson Society, only account for completed attacks and convictions of those arrested. If such counting is expanded to include other factors, however, then the overall threat becomes much more severe. Other factors, therefore, should include the potential consequences ofthe thwarted attacks had they not been prevented, the number of radicalized Americans who travel overseas to join al Qaeda-affiliated insurgencies, and the extent of radicalized activity by al Qaeda's American sympathizers in jihadi website forums and chatrooms. A more complete accounting of the threat will now reveal that the supportive extremist infrastructure for al Qaeda in America is actually not diminishing and that the purported "lone wolf" actors have actual ties to al Qaeda operatives overseas. We should not, therefore, also be misled into complacencyif catastrophic attacks by al Qaeda do not occur for lengthy periods. Nor so by the comforting but false sense of security that comes with believing that "lone wolf" attacks in the United States are not a product of al Qaeda recruitment and support. It is also possible, nevertheless, that al Qaeda's terrorist planners are considering both types of attacks, infrequent catastrophic and frequent low casualty. This may explain why al Qaeda's propaganda organs are calling on its radicalized followers in the West to take matters into their own hands and embark on any sort of attacks that may be feasible at the moment, but with further surprise attacks of a catastrophic nature still ahead.

**Terrorism goes nuclear---high risk of theft and attacks escalate**

**Dvorkin 12** (Vladimir Z., Major General (retired), doctor of technical sciences, professor, and senior fellow at the Center for International Security of the Institute of World Economy and International Relations of the Russian Academy of Sciences. The Center participates in the working group of the U.S.-Russia Initiative to Prevent Nuclear Terrorism, 9/21/12, "What Can Destroy Strategic Stability: Nuclear Terrorism is a Real Threat," belfercenter.ksg.harvard.edu/publication/22333/what\_can\_destroy\_strategic\_stability.html)

Hundreds of scientific papers and reports have been published on nuclear terrorism. International conferences have been held on this threat with participation of Russian organizations, including IMEMO and the Institute of U.S. and Canadian Studies. Recommendations on how to combat the threat have been issued by the International Luxembourg Forum on Preventing Nuclear Catastrophe, Pugwash Conferences on Science and World Affairs, Russian-American Elbe Group, and other organizations. The UN General Assembly adopted the International Convention for the Suppression of Acts of Nuclear Terrorism in 2005 and cooperation among intelligence services of leading states in this sphere is developing.¶ At the same time, these efforts fall short for a number of reasons, partly because various acts of nuclear terrorism are possible. Dispersal of radioactive material by detonation of conventional explosives (“dirty bombs”) is a method that is most accessible for terrorists. With the wide spread of radioactive sources, raw materials for such attacks have become much more accessible than weapons-useable nuclear material or nuclear weapons. The use of “**dirty bombs**” will not cause many immediate casualties, but it will result into long-term radioactive contamination, contributing to the spread of **panic and socio-economic destabilization**.¶ Severe **consequences can be caused by sabotaging nuclear power plants, research reactors, and radioactive materials storage facilities. Large cities are especially vulnerable to such attacks. A large city may host dozens of research reactors with a nuclear power plant or a couple of spent nuclear fuel storage facilities and dozens of large radioactive materials storage facilities located nearby.** The past few years have seen significant efforts made to enhance organizational and physical aspects of security at facilities, especially at nuclear power plants. Efforts have also been made to improve security culture. But these efforts do not preclude the possibility that **well-trained terrorists may be able to penetrate nuclear facilities**.¶ Some estimates show that sabotage of a research reactor in a metropolis may expose hundreds of thousands to high doses of radiation. A formidable part of the city would become uninhabitable for a long time.¶ Of all the scenarios, it is building an improvised nuclear device by terrorists that poses the maximum risk. **There are no engineering problems that cannot be solved if terrorists decide to build a simple “gun-type” nuclear device.** Information on the design of such devices, as well as implosion-type devices, is available in the public domain. It is the acquisition of weapons-grade uranium that presents the sole serious obstacle. Despite numerous preventive measures taken, we cannot rule out the possibility that such materials can be bought on the black market. **Theft of weapons-grade uranium is also possible**. Research reactor fuel is considered to be particularly vulnerable to theft, as it is scattered at sites in dozens of countries. There are about 100 research reactors in the world that run on weapons-grade uranium fuel, according to the International Atomic Energy Agency (IAEA).¶ A terrorist “gun-type” uranium bomb can have a yield of least 10-15 kt, which is **comparable to the yield of the bomb dropped on Hiroshima**. The explosion of such a bomb in a modern metropolis can kill and wound hundreds of thousands and cause serious economic damage. There will also be long-term sociopsychological and political consequences.¶ The vast majority of states have introduced unprecedented security and surveillance measures at transportation and other large-scale public facilities after the terrorist attacks in the United States, Great Britain, Italy, and other countries. These measures have proved burdensome for the countries’ populations, but the public has accepted them as necessary. A nuclear terrorist attack will make the public accept further measures meant to enhance control even if these measures significantly restrict the democratic liberties they are accustomed to. Authoritarian states could be expected to adopt even more restrictive measures.¶ If a nuclear terrorist act occurs, nations will delegate tens of thousands of their secret services’ best personnel to investigate and attribute the attack. Radical Islamist groups are among those capable of such an act. We can imagine what would happen if they do so, given the anti-Muslim sentiments and resentment that conventional terrorist attacks by Islamists have generated in developed democratic countries. Mass deportation of the non-indigenous population and severe sanctions would follow such an attack in what will cause **violent protests in the Muslim world**. **Series of armed clashing terrorist attacks may follow**. The prediction that Samuel Huntington has made in his book “The Clash of Civilizations and the Remaking of World Order” may come true. Huntington’s book clearly demonstrates that it is not Islamic extremists that are the cause of the Western world’s problems. Rather there is a deep, intractable conflict that is rooted in the fault lines that run between Islam and Christianity. This is especially dangerous for Russia because these fault lines run across its territory. To sum it up, the political leadership of Russia has every reason to revise its list of factors that could undermine strategic stability.  BMD does not deserve to be even last on that list because its effectiveness in repelling massive missile strikes will be extremely low. BMD systems can prove useful only if deployed to defend against launches of individual ballistic missiles or groups of such missiles. Prioritization of other destabilizing factors—that could affect global and regional stability—merits a separate study or studies. But even without them I can conclude that nuclear terrorism should be placed on top of the list. **The threat of nuclear terrorism is real, and a successful nuclear terrorist attack would lead to a radical transformation of the global order**.  All of the threats on the revised list must become a subject of thorough studies by experts. States need to work hard to forge a common understanding of these threats and develop a strategy to combat them.

#### Extinction – tech and poor response mechanisms

Myhrvold 13 (Nathan, Phd in theoretical and mathematical physics from Princeton, and founded Intellectual Ventures after retiring as chief strategist and chief technology officer of Microsoft Corporation , July 2013, "Stratgic Terrorism: A Call to Action," The Lawfare Research Paper Series No.2, <http://www.lawfareblog.com/wp-content/uploads/2013/07/Strategic-Terrorism-Myhrvold-7-3-2013.pdf>)

Several powerful trends have aligned to profoundly change the way that the world works. Technology now allows stateless groups to organize, recruit, and fund themselves in an unprecedented fashion. That, coupled with the extreme difficulty of finding and punishing a stateless group, means that stateless groups are positioned to be lead players on the world stage. They may act on their own, or they may act as proxies for nation-states that wish to duck responsibility. Either way, stateless groups are forces to be reckoned with. At the same time, a different set of technology trends means that small numbers of people can obtain incredibly lethal power. Now, for the first time in human history, a small group can be as lethal as the largest superpower. Such a group could execute an attack that could kill millions of people. It is technically feasible for such a group to kill billions of people, to end modern civilization—perhaps even to drive the human race to extinction. Our defense establishment was shaped over decades to address what was, for a long time, the only strategic threat our nation faced: Soviet or Chinese missiles. More recently, it has started retooling to address tactical terror attacks like those launched on the morning of 9/11, but the reform process is incomplete and inconsistent. A real defense will require rebuilding our military and intelligence capabilities from the ground up. Yet, so far, strategic terrorism has received relatively little attention in defense agencies, and the efforts that have been launched to combat this existential threat seem fragmented. History suggests what will happen. The only thing that shakes America out of complacency is a direct threat from a determined adversary that confronts us with our shortcomings by repeatedly attacking us or hectoring us for decades.

**Venezuela 1AC**

**US efforts to push Judicial Reforms in Venezuela through the Inter-American Human Rights Commission are hampered by hypocritical indefinite detention policy**

**Bosworth 13** (James, Former Associate for Communications at The Inter-American Dialogue and Director of Research at The Rendon Group, Consultant at the Woodrow Wilson International Center for Scholars, “Protecting the IACHR, now make it stronger,” 3-25-13, <http://www.bloggingsbyboz.com/2013/03/protecting-iachr-now-make-it-stronger.html>)

Last Friday, the OAS voted to reform the Inter-American Commission on Human **Rights** (IACHR). Most importantly, the organization managed to **push back** against a set of cynical and **harmful proposals by** four countries - Bolivia, Ecuador, Nicaragua and **Venezuela** - that would have weakened the organization and reduced its funding sources. Those four countries ended up isolated from the other 30 voting members of the OAS who remained committed to strengthening the Inter-American human rights system. Sources: AQ, Pan-American Post, IPS, Ecuador wanted the system to be funded only by countries that have signed the San Jose Pact and wanted all the rapporteurs funded equally. This would have eliminated most of the funding for the IACHR coming from the US, Canada and Europe without guarantees of pledges to replace that money. It also would have weakened the Special Rapporteur on Freedom of Expression, a particularly thorn in the side for Ecuador's censorship-loving president. Of course, the ALBA criticisms aren't actually about funding. The ALBA countries tried to weaken the IACHR because they are annoyed that any independent outside organizations criticizes their abuses of human rights and free speech. So, good on the rest of the Americas including the US, Brazil and Mexico for working to stop those proposals from being implemented. All three of those countries have all recently faced **tough criticisms** from the IACHR, making it notable that they still defended the commission at this session. From the speech of Deputy Secretary Burns: This is why we actively respond to the Commission even as it raises challenging issues for us – from the death penalty and the human rights of migrants and incarcerated children, to **the status of detainees** at Guantanamo Bay. And this is why we continue to collaborate with the Commission – including its recent on-site visit to immigrant detention facilities in the United States. We do this not because we always see eye to eye with the Commission. We do it because we are secure in our **commitment to democratic principles** and in our conviction that we are accountable to our citizens for the protection of their human rights. We do it because we believe that no government should place itself beyond international scrutiny when it comes to the protection of basic human rights and civil liberties. Strong words that I absolutely agree with. However.... On 12 March the US formally answered questions to the IACHR about the detainees held at Guantanamo Bay. At that time, the US lawyer did not provide any timeline for closing the detention center and refused to admit anyone is being held in "indefinite detention," though the fact they are held without trial and without a potential release date seems to be the definition of that term. Though the US defended the conditions of the prison, as far as I can tell, no representative from the IACHR has been allowed to visit. On the issue of immigrant detentions, here is the IACHR in July 2009 based on its visits to detention centers (longer report released in 2011): Finally, the Rapporteurship was distressed at the use of solitary confinement to ostensibly provide personal protection for vulnerable immigrant detainees, including homosexuals, transgender detainees, detainees with mental illnesses, and other minority populations. The use of solitary confinement as a solution to safeguard threatened populations effectively punishes the victims. The Rapporteurship urges the U.S. Government to establish alternatives to protect vulnerable populations in detention and to provide the mentally-ill with appropriate treatment in a proper environment. Here is the NYT yesterday: On any given day, about 300 immigrants are held in solitary confinement at the 50 largest detention facilities that make up the sprawling patchwork of holding centers nationwide overseen by Immigration and Customs Enforcement officials, according to new federal data. Nearly half are isolated for 15 days or more, the point at which psychiatric experts say they are at risk for severe mental harm, with about 35 detainees kept for more than 75 days. Four years after the IACHR visited the immigrant detention facilities and spoke out against the practice of solitary confinement, the article in the NYT from 2013 reads just like the IACHR report from 2009. Nothing has been done to respond to those criticisms. The US gets credit for fighting back against the ALBA countries' push to silence the IACHR. The commission provides a needed voice for the hemisphere's human rights. Over the past month, with the purpose of protecting and strengthening human rights in the hemisphere, I've heard US officials praise Brazil, Mexico and Uruguay for listening and acting on the recommendations of the IACHR. The sad truth is that the US praised those other countries because the US hasn't acted on many of the important criticisms that it has received from the IACHR. It's part of the **credibility gap** that the US faces in this hemisphere. Last week, the Obama administration played a vital role in protecting human rights in the hemisphere by leading the effort at the OAS to maintain a strong IACHR. We need to remember that nothing the US says diplomatically at the OAS will be as powerful as the US ability to **lead by example**. If the US really wants stronger human rights protections in this hemisphere, that effort starts at home. The issues raised by Deputy Secretary Burns in his OAS speech - **Guantanamo and immigrant detention conditions - would be great places to start.**

#### Specifically true for a lack US Judicial Independence – sends a signal of appropriate balancing

**Yamamato 13** (Eric K., law professor at the University of Hawai'i William S. Richardson School of Law, BA University of Hawaiʻi at Mānoa 1975, JD UC Berkeley School of Law 1978, Race, Rights and Reparation: Law and the Japanese American Internment, 2013, p. 411-412)

For all these reasons, Justice Jackson’s warning still resonates loudly today. How will the judiciary prevent false **executive claims** of national security necessity from becoming a “**loaded weapon**” aimed at the essence of American democracy— the balance of national security and civil liberties? Rasul confirmed the salience of **judicial oversight** of executive national security policies. Yet the Rasul majority failed to articulate the appropriate level of judicial review of executive national security actions that curtail fundamental liberties. Deferential judicial review effectively affords the President a **blank check**. Unyielding scrutiny, however, may unduly constrain the executive. Ordinary judicial review doctrine embraces deferential review for most government actions, giving the President wide leeway to act in the best interest of the country. That doctrine also mandates heightened scrutiny where government action restricts fundamental liberties. It is still an open question whether the national security setting alters this paradigm of judicial review. Varying approaches persist. Some judges and scholars, including former Chief Justice William Rehnquist, argued that the judiciary should play a muted role in reviewing military necessity restrictions of civil liberties during military conflict: An entirely separate and important philosophical question is whether occasional presidential excesses and judicial restraint in wartime are desirable or undesirable. . . . [T]here is every reason to believe that the historic trend against the least justified of the curtailments of civil liberty in wartime will continue in the future. It is neither desirable nor remotely likely that civil liberty will occupy as favored a position in wartime as it does in peacetime. But it is both desirable and likely that more **careful attention** will **be paid by the courts** to the basis for the government’s claims of necessity as a basis for curtailing civil liberty. The laws will thus not be silent in time of war, but they will speak with a somewhat different voice.1210 By adopting this posture of sharply limited judicial review or almost total judicial deference to executive actions, courts would have a straightforward task. They would simply align with the executive whenever it invokes national security, even when fundamental liberties are significantly restricted. For others, the highly deferential approach conflicts with constitutional mandates. The judiciary’s purpose is to serve as a constitutional check on the two political branches of government, particularly where fundamental liberties are at stake.1211 Without close **judicial scrutiny,** no governmental body exists to assure executive and legislative accountability under law. The consequences of this were seen in the wartime internment cases. A watchful care approach would call for the judiciary to apply a heightened standard of review to executive restrictions of fundamental liberties even during times of war or national security crises, accounting for the government’s security concerns in the court’s analysis of the government’s asserted compelling interest.1212 During the Civil War, the U.S. Supreme Court barred President Lincoln from suspending the writ of habeas corpus if the civilian courts were open and functioning. The Court ruled that the safeguards of liberty [should receive the] watchful care of those [e]ntrusted with the guardianship of the Constitution and laws [namely, the judiciary].1213 This heightened scrutiny, or watchful care, approach calls for careful judicial assessment of the government’s proffered security justification for the restrictions. Under this approach, [e]xcept as to actions under civilly-declared martial law . . . a heightened standard of review [should] be applied to evaluate government restrictions of constitutionally-protected liberties ostensibly justified by military necessity or national security. At the same time, the watchful care approach affords the government needed protection for sensitive information or policies. In particular, a **heightened standard of review** confirms the appropriate **competency of federal courts** to adjudicate disputes at the intersection of civil liberties and national security. It **announces a confidence that courts possess** existing tools for ensuring strict confidentiality where warranted. Secrecy has its proper place. But the internment illustrates that the executive branch historically has invoked confidentiality to evade accountability.1214 How will American courts respond today and in the future? Some predict that “blind acceptance by the courts of the government’s insistence on the need for secrecy . . . [will] impermissibly compromise the **independence of the judiciary** and open the door to possible abuse.”1215 Yet, in hearing habeas corpus challenges after Rasul and Boumediene, the federal courts have more consistently scrutinized the government’s justification for indefinite detention, upholding 16 detentions and invalidating 37 others.1216 In his final pronouncement, Fred Korematsu urged that through public and judicial vigilance “the internment can remain a lighthouse that helps . . . navigate the rocky shores triangulated by freedom, equality, and security.”121

#### Venezuelan denunciation of the Convention on Human Rights means that the OAS’s Inter-American Commission remains the best hope of promoting judicial independence in Venezuela

Biron 13 (Carey L. Biron, Inter Press Service, “Venezuelan Pullout from Rights Pact Called “Deeply Concerning,” <http://www.ipsnews.net/2013/09/venezuelan-pullout-from-rights-pact-called-deeply-concerning/>)

WASHINGTON, Sep 10 2013 (IPS) - The Inter-American Commission on Human Rights (IACHR) says it is “deeply concerned” over the Venezuelan government’s decision to withdraw from the American Convention on Human Rights, a move that went into effect Tuesday. The Venezuelan government has denounced the four-decade-old convention, which currently covers 23 of the 35 members of the Organisation of American States (OAS), as a tool of U.S. meddling in Latin America. But rights groups warn the move will eliminate a court-of-last-resort option for Venezuelans who feel they are unable to receive a fair judicial response within their own country – an option that remains guaranteed in the Venezuelan constitution. “This comes at the expense of the protection of rights of the people of Venezuela, who are stripped of a mechanism to protect their human rights,” the IACHR, based here in Washington, stated Tuesday. “The Inter-American Commission calls on Venezuela to reconsider this decision … [and] regrets that, despite repeated calls by the Commission and by other international bodies for Venezuela to reconsider its decision to denounce the Convention, the State of Venezuela has not reversed that decision.” The American Convention on Human Rights sets out how OAS countries must guarantee citizens’ human rights. It also empowers the IACHR and the Inter-American Court of Human Rights, based in Costa Rica, to monitor and rule on rights-related complaints that have not been dealt with through domestic judicial channels. Venezuela is the third country to formally denounce the American Convention on Human Rights and withdraw from the Inter-American Court’s jurisdiction. Trinidad & Tobago made a similar decision in 1998 after the court criticised that country’s use of the death penalty, while Peru tried to do the same the following year. “It is very unfortunate that the Venezuelan government has decided to go through with this action,” Francisco Quintana, programme director for the Andean, North America and Caribbean region at the Centre for Justice and International Law (CEJIL), a Washington-based advocacy group, told IPS. “Yet if the government thought it was going to get away from this international supervision completely, that’s not right – at least with regard to any human rights violations that occurred before Sep. 10.” Indeed, given that Venezuela remains a member of the OAS, the IACHR will maintain jurisdiction to monitor the country’s human rights situation. Further, as Quintana notes, the Inter-American Court will be able to continue hearing cases of alleged rights violations from during the period that Venezuela was party to the convention, from 1977 until Tuesday. Yet critics worry about the potential impact not only on Venezuelans who have suffered abuses but also on the strength of the overall Inter-American structure, one of the world’s oldest pan-regional rights systems. The United Nations warned Tuesday the move could “have a very negative impact on human rights in [Venezuela] and beyond”. ‘Grave backlash’ Tuesday’s withdrawal follows through on one of the last policy decisions made by former president Hugo Chavez, who in July 2012 stepped up complaints that the Inter-American Court was interfering in domestic affairs. Chavez had earlier accused the OAS of supporting a coup against his government. But the final motivation to withdraw appears to have been a ruling by the Inter-American Court in favour of Raul Diaz Pena, a Venezuelan who was found to have been mistreated in prison after being convicted of placing bombs near Caracas embassies. “The Venezuelan government was against the external supervision of human rights issues from an international organ – over the past decade, the Inter-American Court lodged many cases against Venezuela, and the Chavez administration began to view these as political attacks,” CEJIL’s Quintana says. “While the court established that there were clear violations of human rights, many didn’t even take place under Chavez. Some had to do with judicial independence, others with excessive force by the police – a wide range of cases, which offered no reason for the government to become frustrated with the system as a whole. After all, these rights were explicitly protected by the system and the convention.” On Monday, CEJIL and more than 50 other organisations from 14 countries throughout the region derided the Venezuelan move and lamented its broader implications. “Venezuela’s denunciation of the American Convention represents a grave backlash for the protection of human rights in the region,” the groups warned. “Additionally, this denunciation is preceded in recent years by the non-compliance of most of the sentences and measures of protection issued by the Inter-American Court.” Also on Monday, Venezuela’s president, Nicolas Maduro, reiterated Chavez’s charge that the Inter-American system was a U.S. pawn. “[T]he U.S. is not part of the human rights system, does not acknowledge the court’s jurisdiction or the commission, but … the commission headquarters is in Washington,” President Maduro said at a news conference, according to media reports. “Almost all participants and bureaucracy that are part of the IACHR are captured by the interests of the State Department of the United States.” Indeed, the United States, itself a member of the OAS, has signed but never ratified the American Convention on Human Rights, part of a longstanding suspicion of international legal instruments. Yet rights groups are suggesting that Maduro’s criticism underlines an incongruous policy stance. “The Venezuelan government’s attitude is highly contradictory,” Guadalupe Marengo, deputy director of the Americas programme at Amnesty International, a watchdog group, said Tuesday. “On the one hand it is promoting universal ratification of the American Convention on Human Rights and urging other countries to ratify this instrument while, on the other, it is withdrawing from it and denying its inhabitants access to the protection of one of its bodies.”

**Now is the key time – Maduro is consolidating power in Venezuela – a signal of an independent judiciary is crucial to a smooth, democratic transition**

**The Economist 13** (“Latin America’s Venezuela problem: Ostrich diplomacy, Venezuela’s neighbours studiously ignore the crisis unfolding next door,” 6-8-13, <http://www.economist.com/news/americas/21579067-venezuelas-neighbours-studiously-ignore-crisis-unfolding-next-door-ostrich-diplomacy/>)

FOR Latin American presidents of all political persuasions, a knock on the door from Henrique Capriles is a far from welcome sound these days. Not that the leader of Venezuela’s opposition is a particularly boring or obnoxious guest, despite the strenuous efforts of President Nicolás Maduro to portray him as a “murderous fascist”. It’s just that having Mr Capriles round for a cup of tea can get you into all sorts of trouble, as Colombia’s Juan Manuel Santos found out to his cost. On May 29th a shirtsleeved Mr Santos held a private meeting of about an hour with Mr Capriles, which provoked a barrage of invective from the Venezuelan government. The Colombian president had “put a bomb under” relations between the two countries, said Diosdado Cabello, the speaker of Venezuela’s National Assembly. Venezuela would have to “review” its support for Colombia’s peace talks with the leftist FARC guerrillas, added Elías Jaua, the foreign minister. To top things off, Mr Maduro said certain Colombian institutions “at the highest level” were plotting with the Venezuelan opposition to inject him with a poison that would lead to a slow death. Mr Santos said this was “crazy”. His foreign minister declined to engage in microphone diplomacy. Colombia and Venezuela, whose governments are poles apart ideologically, have enjoyed a friendship of convenience in recent years after a very rocky decade. The reason for all the huffing and puffing is that Mr Capriles, who came within an ace of winning a snap presidential election on April 14th, has challenged the result in the **supreme court** and is seeking to persuade the region’s governments of his case. Mr Maduro is the chosen successor of Hugo Chávez, who died of cancer in March, five months after being re-elected. He heads a weak administration beset by political and economic problems and desperate to hang on to the international support that Chávez built up over more than a decade of oil diplomacy. With the Chávez charisma gone, the new president’s **legitimacy in doubt** and the money running out, bluster is one of the few resources not in short supply. This week was to have been Peru’s turn to receive a visit from Mr Capriles. But such was the panic in Ollanta Humala’s government at having to decide whether to receive him that the trip was postponed. Peru currently chairs the South American Union (Unasur), one of several regional bodies failing to deal with the Venezuelan crisis. Unasur held an emergency meeting on the eve of Mr Maduro’s inauguration to insist on an audit of the election result. But although the opposition says the partial audit now under way is insufficient, Unasur has failed to pursue the case. Peru’s foreign minister stood down—officially for health reasons—shortly after he had the effrontery to say publicly that a fresh Unasur summit on the subject was being mooted. Most Latin American and Caribbean governments are either ideologically close to the chavista regime, dependent on its oil-fuelled largesse, or simply disinclined to incur its wrath. The Organisation of American States (OAS), whose annual assembly began on June 4th in Guatemala, is bound by treaty to monitor its members’ democratic credentials. But the OAS’s Democratic Charter, launched in 2001, has so far been used only to protect presidents (including Chávez) and to bludgeon puny countries such as Honduras and Paraguay. Brazil, which has the muscle to take on a country the size of Venezuela, seems more concerned with protecting its businesses, which are making billions from trade with its northern neighbour. Ahead of the OAS meeting its secretary-general, José Miguel Insulza, said the “atmosphere” was not conducive to a discussion of the Venezuelan crisis—a diplomatic way of saying no one was prepared to pick up the hot potato. Mr Insulza himself has in the past admitted that Venezuela is in breach of the **Democratic Charter**. Among other things, it requires an **independent judiciary** and guarantees recourse to the inter-American human-rights system. Venezuela has announced that it will abandon the system later this year. The ostrich approach may not work for ever. For one thing, the Venezuelan **opposition’s campaign** across the region is putting presidents under pressure from their parliaments and civic groups to **support democracy**. Second, Venezuela’s **political fragility** and Mr Maduro’s weakness threaten instability which the region may be unable to ignore. Shutting the door in Mr Capriles’ face could prove a short-sighted policy, as well as a shameful one.

#### Venezuelan Stability stops Russian Arctic development and jumpstarts the US Economy

**Weafer 13** (Chris Weafer is chief strategist at Sberbank Investment Research, BBC Monitoring Former Soviet Union – Political, “No business as usual for Russia in Venezuela – paper,” 3-12-13, Supplied by BBC Worldwide Monitoring)

Despite assurances from government officials in Caracas that it will be business as usual after the death of Venezuelan President Hugo Chavez last week, his passing will almost certainly lead to the start of political and social changes in that country. The only question is the **time frame**. Chavez's death and the emergence of a new presidential administration will surely have a significant impact on the global oil industry and price of oil, although perhaps on an even longer timeline. According to the BP Energy Review, Venezuela sits on the world's largest exploitable reserves of oil. Chavez's policies have led not only to no significant exploitation of those reserves but have actually directly led to a cut in the country's average daily oil output by one-third in the 14 years he served as president. In 1999, the country produced an average of 3.5 million barrels per day, while the current average output has dropped to 2.5 million barrels. With the right investments, the country may easily support average daily oil output of 5 million barrels and probably higher, according to industry estimates. There can be little doubt that as of last week, Venezuela has become the **most important target location** for foreign oil majors, especially **US companies**. Russian oil majors still have a small advantage, and senior executives from state-owned Rosneft and Gazprom will be eager to ensure good relations with the next administration. But they must know that there is now a limited window to convert promised cooperation with the Venezuelan state-owned oil company, PDVSA, into actual projects. Oil executives from Houston will soon be descending on Venezuela with lucrative alternatives, and **PDVSA**, in dire need of capital investment, **will** surely **be listening to** their **offers**. For Russia, that means three risks. First, Gazprom and Rosneft will have more competition for joint-venture deals in that country. Second, Venezuela is an **easier alternative** to the hostile and unpredictable **Russian Arctic** for US oil companies, which may make it harder for Moscow to attract joint-venture deals. Finally, the prospect of more oil coming out of Venezuela adds to the growth projections for shale oil as a significant longer-term threat to the price of oil, and therefore, to the Russian economy. None of this will be lost on the Kremlin. It means that there will have to be greater urgency to convert promised deals into real projects in Venezuela. At the same time, the Kremlin will want to conclude more joint ventures to **exploit the Arctic**. It also means that the clock counting down to lower oil revenues is now ticking, increasing the need for more urgent progress in economic reforms. The Venezuelan constitution mandates that a new election must take place within 30 days. As it stands today, the current vice president, Nicolas Maduro, is expected to be elected to replace Chavez. Maduro said he intends to stick with the economic and political policies and ideologies of his former boss, but since Maduro is no Chavez, this will be virtually impossible to achieve. Chavez was a hugely charismatic, larger-than-life leader who managed to maintain unity of purpose among the many vested interests in the country. At the same time, he stayed popular with the people even as the economy slid further into trouble. With oil averaging over 110 dollars per barrel last year, the Venezuelan state budget ran a deficit of close to 20 per cent of gross domestic product. Now that Chavez is gone, the soon-to-be-elected president Maduro will come under **increasing pressure** to take actions to start improving the economy. No different from President Vladimir Putin's situation when he took over an ailing economy in Russia in 2000, **the only place** that the new Venezuelan president can get revenue is from **the oil sector**. But after Chavez practically destroyed PDVSA when he fired 20,000 skilled engineers and other workers in 2002, PDVSA will need a huge boost to capital spending and joint-venture partnerships. Although politically risky, Maduro may have no other choice than to ask ExxonMobil and Chevron, two of the US majors that had their local projects nationalized by Chavez, to come back. Venezuela is certainly an attractive option for the world's big oil majors. Recoverable reserves are now put at just under 300 billion barrels, compared to about 265 billion in Saudi Arabia and less than 100 billion in Russia. Most of Venezuelan oil is heavy and more expensive to refine, but it lies only a few hundred meters below the Orinoco Belt. That makes it a lot more attractive than, for example, speculatively drilling in the hostile Russian Arctic while dodging icebergs. The Orinoco Belt is an extremely important natural environment, and the inevitable objections from domestic, regional and international environmentalists will slow any development. But as has happened in similar situations elsewhere, the quest for the prize will almost certainly prevail. Venezuela needs the money. Venezuela has also very likely moved to near the top of the US government's list of geopolitical priorities. The US is set on a course to become **energy independent**, and the International Energy Agency calculates this may take two to three decades based on current trends and with optimistic assumptions for US shale oil production. Such assumptions have always been speculative when it comes to the oil industry. But a more achievable target for the US is to become **regionally oil independent** -that is, to only source its oil requirements domestically and from Canada, Mexico and now perhaps from **Venezuela**. That would allow the US to become completely independent of Middle East oil within 10 years or so. A change in Venezuela's political and economic priorities would also weaken the Cuban economy since Chavez supplied Cuba with almost free oil. That would hasten the inevitable regime change there as well, an extra bonus for Washington. But while such an outcome would be **very favourable for the US economy**, it would **accelerate the game change** already started in the global oil industry with the rapid growth in **shale oil volumes**. No matter how you work the assumptions, the world is heading for a lot more oil supply over the balance of this decade. New major oil production will come from North America, Iraq and the Caspian Sea, where Kazakhstan's giant Kashagan field starts to produce from this year, almost certainly from Venezuela if a new administration takes concrete steps to increase foreign investment and production in the oil sector. This may be the real reason Russian officials shed a few tears at Chavez's funeral on Friday.

#### Econ decline causes war

**Royal 10** (Jedediah, Director of Cooperative Threat Reduction – U.S. Department of Defense, “Economic Integration, Economic Signaling and the Problem of Economic Crises”, Economics of War and Peace: Economic, Legal and Political Perspectives, Ed. Goldsmith and Brauer, p. 213-215)

Less intuitive is how periods of economic decline may increase the likelihood of external conflict. Political science literature has contributed a moderate degree of attention to the impact of economic decline and the security and defence behaviour of interdependent states. Research in this vein has been considered at systemic, dyadic and national levels. Several notable contributions follow. First, on the systemic level, Pollins (2008) advances Modelski and Thompson's (1996) work on leadership cycle theory, finding that rhythms in the global economy are associated with the rise and fall of a pre-eminent power and the often bloody transition from one pre-eminent leader to the next. As such, exogenous shocks such as economic crises could usher in a redistribution of relative power (see also Gilpin. 1981) that leads to uncertainty about power balances, increasing the risk of miscalculation (Feaver, 1995). Alternatively, even a relatively certain redistribution of power could lead to a permissive environment for conflict as a rising power may seek to challenge a declining power (Werner. 1999). Separately, Pollins (1996) also shows that global economic cycles combined with parallel leadership cycles impact the likelihood of conflict among major, medium and small powers, although he suggests that the causes and connections between global economic conditions and security conditions remain unknown. Second, on a dyadic level, Copeland's (1996, 2000) theory of trade expectations suggests that 'future expectation of trade' is a significant variable in understanding economic conditions and security behaviour of states. He argues that interdependent states are likely to gain pacific benefits from trade so long as they have an optimistic view of future trade relations. However, if the expectations of future trade decline, particularly for difficult to replace items such as energy resources, the likelihood for conflict increases**,** as states will be inclined to use force to gain access to those resources. Crises could potentially be the trigger for decreased trade expectations either on its own or because it triggers protectionist moves by interdependent states.4 Third, others have considered the link between economic decline and external armed conflict at a national level. Blomberg and Hess (2002) find a strong correlation between internal conflict and external conflict, particularlyduring periods of economic downturn. They write: The linkages between internal and external conflict and prosperity are strong and mutually reinforcing. Economic conflict tends to spawn internal conflict, which in turn returns the favour. Moreover, the presence of a recession tends to amplify the extent to which international and external conflicts self-reinforce each other. (Blomberg & Hess, 2002. p. 89) Economic decline has also been linked with an increase in the likelihood of terrorism (Blomberg, Hess, & Weerapana, 2004), which has the capacity to spill across borders and lead to external tensions. Furthermore, crises generally reduce the popularity of a sitting government. "Diversionary theory" suggests that, when facing unpopularity arising from economic decline, sitting governments have increased incentives to fabricate externalmilitary conflicts to create a 'rally around the flag' effect. Wang (1996), DeRouen (1995). and Blomberg, Hess, and Thacker (2006) find supporting evidence showing that economic decline and use of force are at least indirectly correlated. Gelpi (1997), Miller (1999), and Kisangani and Pickering (2009) suggest that the tendency towards diversionary tactics are greater for democratic states than autocratic states, due to the fact that democratic leaders are generally more susceptible to being removed from office due to lack of domestic support. DeRouen (2000) has provided evidence showing that periods of weak economic performance in the United States, and thus weak Presidential popularity, are statistically linked to an increase in theuse of force. In summary, recent economic scholarship positively correlates economic integration with an increase in the frequency of economic crises, whereas political science scholarship links economic decline with external conflictat systemic, dyadic and national levels.5 This implied connection between integration, crises and armed conflict has not featured prominently in the economic-security debate and deserves more attention.

**Russian energy development in the Arctic causes escalating military competition**

**Talmadge 12** (Eric – AP, Huffington Post, “Arctic Climate Change Opening Region To New Military Activity’, 4/16, http://www.huffingtonpost.com/2012/04/16/arctic-climate-change-military-activity\_n\_1427565.html)

To the world's military leaders, the debate over climate change is long over. **They are preparing for a new kind of Cold War in the Arctic**, anticipating that rising temperatures there will open up a treasure trove of resources, long-dreamed-of sea lanes and **a slew of potential conflicts**. By Arctic standards, **the region is already buzzing with military activity**, and experts believe that **will increase significantly** in the years ahead. Last month, Norway wrapped up one of the largest Arctic maneuvers ever — Exercise Cold Response — with 16,300 troops from 14 countries training on the ice for everything from high intensity warfare to terror threats. Attesting to the harsh conditions, five Norwegian troops were killed when their C-130 Hercules aircraft crashed near the summit of Kebnekaise, Sweden's highest mountain. The U.S., Canada and Denmark held major exercises two months ago, and in an unprecedented move, the military chiefs of the eight main Arctic powers — Canada, the U.S., Russia, Iceland, Denmark, Sweden, Norway and Finland — gathered at a Canadian military base last week to specifically discuss regional security issues. None of this means a shooting war is likely at the North Pole any time soon. But as the number of workers and ships increases in the High North to exploit oil and gas reserves, **so will the need for policing, border patrols and** — if push comes to shove — **military muscle to enforce rival claims**. The U.S. Geological Survey estimates that 13 percent of the world's undiscovered oil and **30 percent of its untapped natural gas is in the Arctic**. Shipping lanes could be regularly open across the Arctic by 2030 as rising temperatures continue to melt the sea ice, according to a National Research Council analysis commissioned by the U.S. Navy last year. What countries should do about climate change remains a heated political debate. But that has not stopped north-looking militaries from moving ahead with strategies that assume current trends will continue. Russia, Canada and the United States have the biggest stakes in the Arctic. With its military budget stretched thin by Iraq, Afghanistan and more pressing issues elsewhere, the United States has been something of a reluctant northern power, though its nuclear-powered submarine fleet, which can navigate for months underwater and below the ice cap, remains second to none. Russia — one-third of which lies within the Arctic Circle — **has been the most aggressive in establishing itself as the emerging region's superpower**. Rob Huebert, an associate political science professor at the University of Calgary in Canada, said Russia has recovered enough from its economic troubles of the 1990s to significantly rebuild its Arctic military capabilities, which were a key to the overall Cold War strategy of the Soviet Union, and has increased its bomber patrols and submarine activity. He said that has in turn led other Arctic countries — Norway, Denmark and Canada — to resume regional military exercises that they had abandoned or cut back on after the Soviet collapse. Even non-Arctic nations such as France have expressed interest in deploying their militaries to the Arctic. "We have an entire ocean region that had previously been closed to the world now opening up," Huebert said. "There are numerous factors now coming together that are mutually reinforcing themselves, causing a buildup of military capabilities in the region. **This is only going to increase as time goes on**." Noting that the Arctic is warming twice as fast as the rest of the globe, the U.S. Navy in 2009 announced a beefed-up Arctic Roadmap by its own task force on climate change that called for a three-stage strategy to increase readiness, build cooperative relations with Arctic nations and identify areas of potential conflict. "**We want to maintain our edge up there**," said Cmdr. Ian Johnson, the captain of the USS Connecticut, which is one of the U.S. Navy's most Arctic-capable nuclear submarines and was deployed to the North Pole last year. "Our interest in **the Arctic** has never really waned. It **remains very important**." **But the U.S. remains ill-equipped for large-scale Arctic missions**, according to a simulation conducted by the U.S. Naval War College. A summary released last month found the Navy is "inadequately prepared to conduct sustained maritime operations in the Arctic" because it **lacks ships** able to operate in or near Arctic ice, **support facilities and adequate communications**. "The findings indicate the Navy is entering a new realm in the Arctic," said Walter Berbrick, a War College professor who participated in the simulation. "Instead of other nations relying on the U.S. Navy for capabilities and resources, sustained operations in the Arctic region will require the Navy to rely on other nations for capabilities and resources." He added that although the U.S. nuclear submarine fleet is a major asset, the Navy has severe gaps elsewhere — **it doesn't have any icebreakers**, for example. The only one in operation belongs to the Coast Guard. **The U.S. is currently mulling whether to add more icebreakers**.

**De-escalation is key to prevent Arctic conflicts from going nuclear – draws in major powers**

**Wallace and Staples 10** (Michael Wallace and Steven Staples. \*Professor Emeritus at the University of British Columbia and President of the Rideau Institute in Ottawa “Ridding the Arctic of Nuclear Weapons: A Task Long Overdue,”http://www.arcticsecurity.org/docs/arctic-nuclear-report-web.pdf)

The fact is, the Arctic is becoming a zone of increased military competition. Russian President Medvedev has announced the creation of a special military force to defend Arctic claims. Last year Russian General Vladimir Shamanov declared that Russian troops would step up training for Arctic combat, and that Russia’s submarine fleet would increase its “operational radius.” 55 Recently, two Russian attack submarines were spotted off the U.S. east coast for the first time in 15 years. 56 In January 2009, on the eve of Obama’s inauguration, President Bush issued a National Security Presidential Directive on Arctic Regional Policy. It affirmed as a priority the preservation of U.S. military vessel and aircraft mobility and transit throughout the Arctic, including the Northwest Passage, **and foresaw greater capabilities to protect U.S. borders in the Arctic**. 57 The Bush administration’s disastrous eight years in office, particularly its decision to withdraw from the ABM treaty and deploy missile defence interceptors and a radar station in Eastern Europe, have greatly contributed to the instability we are seeing today, even though the Obama administration has scaled back the planned deployments. The Arctic has figured in this renewed interest in Cold War weapons systems, particularly the upgrading of the Thule Ballistic Missile Early Warning System radar in Northern Greenland for ballistic missile defence. The Canadian government, as well, has put forward new military capabilities to protect Canadian sovereignty claims in the Arctic, including proposed ice-capable ships, a northern military training base and a deep-water port. Earlier this year Denmark released an all-party defence position paper that suggests the country should create a dedicated Arctic military contingent that draws on army, navy and air force assets with shipbased helicopters able to drop troops anywhere. 58 Danish fighter planes would be tasked to patrol Greenlandic airspace. Last year Norway chose to buy 48 Lockheed Martin F-35 fighter jets, partly because of their suitability for Arctic patrols. In March, that country held a major Arctic military practice involving 7,000 soldiers from 13 countries in which a fictional country called Northland seized offshore oil rigs. 59 The manoeuvres prompted a protest from Russia – which objected again in June after Sweden held its largest northern military exercise since the end of the Second World War. About 12,000 troops, 50 aircraft and several warships were involved. 609 Ridding the Arctic of Nuclear Weapons: A Task Long Overdue Jayantha Dhanapala, President of Pugwash and former UN under-secretary for disarmament affairs, summarized the situation bluntly: “From those in the international peace and security sector, **deep concerns are being expressed over the fact that two nuclear weapon states** – the United States and the Russian Federation, which **together own 95 per cent of the nuclear weapons in the world** **– converge on the Arctic and have competing claims**. These claims, together **with those of other allied NATO countries** – Canada, Denmark, Iceland, and Norway – could, **if unresolved**, **lead to conflict escalating into the threat or use of nuclear weapons**.” 61 Many will no doubt argue that this is excessively alarmist, but **no circumstance in which nuclear powers find themselves in military confrontation can be taken lightly**. The current geo-political threat level is nebulous and low – for now, according to Rob Huebert of the University of Calgary, “[the] issue is the uncertainty as Arctic states and non-Arctic states begin to recognize the geo-political/economic significance of the Arctic because of climate change.” 62

**Extinction – it’s categorically different from all other impacts**

**Bostrom 2** (Nick, PhD Philosophy – Oxford University, “Existential Risks: Analyzing Human Extinction Scenarios”, Journal of Evolution and Technology, Vol. 9, March, http://www.nickbostrom.com/existential/risks.html)

The unique challenge of existential risks Risks in this sixth category are a recent phenomenon. This is part of the reason why **it is useful to distinguish them from other risks**. We have not evolved mechanisms, either biologically or culturally, for managing such risks. Our intuitions and coping strategies have been shaped by our long experience with risks such as dangerous animals, hostile individuals or tribes, poisonous foods, automobile accidents, Chernobyl, Bhopal, volcano eruptions, earthquakes, draughts, World War I, World War II, epidemics of influenza, smallpox, black plague, and AIDS. These types of disasters have occurred many times and our cultural attitudes towards risk have been shaped by trial-and-error in managing such hazards. But tragic as such events are to the people immediately affected, in the big picture of things – from the perspective of humankind as a **whole – even the worst of these catastrophes are** **mere ripples** **on the surface of the great sea of life**. They haven’t significantly affected the total amount of human suffering or happiness **or determined the long-term fate of our species**. With the exception of a species-destroying comet or asteroid impact (an extremely rare occurrence), there were probably no significant existential risks in human history until the mid-twentieth century, and certainly none that it was within our power to do something about. The first manmade existential risk was the inaugural detonation of an atomic bomb. At the time, there was some concern that the explosion might start a runaway chain-reaction by “igniting” the atmosphere. Although we now know that such an outcome was physically impossible, it qualifies as an existential risk that was present at the time. For there to be a risk, given the knowledge and understanding available, it suffices that there is some subjective probability of an adverse outcome, even if it later turns out that objectively there was no chance of something bad happening. If we don’t know whether something is objectively risky or not, then it is risky in the subjective sense. The subjective sense is of course what we must base our decisions on.[[2]](http://www.nickbostrom.com/existential/risks.html#_ftn2) At any given time we must use our best current subjective estimate of what the objective risk factors are.[[3]](http://www.nickbostrom.com/existential/risks.html#_ftn3) **A much greater existential risk** **emerged with the build-up of nuclear arsenals in the US and** the **USSR**. **An all-out nuclear war was a possibility with both a substantial probability and with consequences that might** have been persistent enough to **qualify as global and terminal**. There was a real worry among those best acquainted with the information available at the time that a nuclear Armageddon would occur and that it **might annihilate our species** or permanently destroy human civilization.[[4]](http://www.nickbostrom.com/existential/risks.html#_ftn4)  Russia and the US retain large nuclear arsenals that could be used in a future confrontation, either accidentally or deliberately. There is also a risk that other states may one day build up large nuclear arsenals. Note however that **a smaller nuclear exchange**, between India and Pakistan for instance, **is not an existential risk, since it would not destroy** or thwart **humankind’s potential permanently**. Such a war might however be a local terminal risk for the cities most likely to be targeted. Unfortunately, we shall see that nuclear Armageddon and comet or asteroid strikes are mere preludes to the existential risks that we will encounter in the 21st century.

### Solvency

#### Prefer specificity—simulation about war powers legal discussions is uniquely empowering – can prevent abuse

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

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

#### **The president won’t circumvent**

Bradley and Morrison 13

[Curtis, William Van Alstyne Professor of Law, Duke Law School. and Trevor, Liviu Librescu Professor of Law, Columbia Law School, Presidential Power, Historical Practice, And Legal Constraint, 2013 Directors of The Columbia Law Review Association, Inc. Columbia Law Review May, 2013, L/N]

Insisting on a sharp distinction between the law governing presidential authority that is subject to judicial review and the law that is not also takes for granted a phenomenon that merits attention - that Presidents follow judicial decisions. n118 That assumption is generally accurate in the United States today. To take one relatively recent example, despite disagreeing with the Supreme Court's determination in Hamdan v. Rumsfeld that Common Article 3 of the Geneva Conventions applies to the war on terror, the Bush Administration quickly accepted it. n119 But the reason why Presidents abide by court decisions has a connection to the broader issue [\*1131] of the constraining effect of law. An executive obligation to comply with judicial decisions is itself part of the practice-based constitutional law of the United States, so presidential compliance with this obligation may demonstrate that such law can in fact constrain the President. This is true, as we explain further in Part III, even if the effect on presidential behavior is motivated by concerns about external political perceptions rather than an internal sense of fidelity to law (or judicial review). n120

#### External checks are effective

Aziz Z. Huq 12, Assistant Professor of Law, University of Chicago Law School, "Binding the Executive (by Law or by Politics)", May 25, www.law.uchicago.edu/files/file/400-ah-binding.pdf

Paulson ’ s genuflection and Obama ’ s reticence, I will contend here, are symptomatic of our political system ’ s operation rather than being aberration al . It is generally the case that even in the heart of crisis, and even on matters where executive competence is supposedly at an acme , legislators employ formal institutional powers not only to delay executive initiatives but also affirmatively to end presidential policies. 20 Numerous examples from recent events illustrate the point. Congressional adversaries of Obama, for instance, cut off his policy of emptying Guantánamo Bay via appropriations riders. 21 Deficit hawks spent 2011 resisting the President’s solutions to federal debt, while the President declined to short - circuit negotiations with unilateral action. 22 Even in military matters, a growing body of empirical research suggests Congress often successfully influences the course of overseas engagements to a greater degree than legal scholars have discerned or acknowledged. 23¶ That work suggests that the failure of absolute congressional control over military matters cannot be taken as evidence of “the inability of law to constrain the executive ” in more subtle ways (p 5). The conventional narrative of executive dominance , in other words, is at best incomplete and demands supplementing .¶ This Review uses The Executive Unbound as a platform to explore how the boundaries of discretionary executive action are established. As the controversial national security policies of the Bush administration recede in time, the issue of executive power becomes ripe for reconsideration. Arguments for or against binding the executive are starting to lose their partisan coloration. There is more room to investigate the dynamics of executive power in a purely positive fashion without the impinging taint of ideological coloration.¶ Notwithstanding this emerging space for analys i s, t here is still surprising inattention to evidence of whether the executive is constrained and to the positive question of how constraint works. The Executive Unbound is a significant advance because it takes seriously this second “ mechanism question. ” Future studies of the executive branch will ignore its i mportant and trenchant analysis at their peril. 24 Following PV ’ s lead, I focus on the descriptive , positive question of how the executive is constrained . I do speak briefly and in concluding to normative matters . B ut f irst and foremost, my arguments should be understood as positive and not normative in nature unless otherwise noted.¶ Articulating and answering the question “ W hat binds the executive ?” , The Executive Unbound draws a sharp line between legal and political constraints on discretion — a distinction between laws and institutions on the one hand, and the incentives created by political competition on the other hand . While legal constraints usually fail, it argues, political constraints can prevail. PV thus postulate what I call a “strong law/ politics dichotomy. ” My central claim in this Review is that this strong law/politics dichotomy cannot withstand scrutiny. While doctrinal scholars exaggerate law ’s autonomy, I contend, the realists PV underestimate the extent to which legal rules and institutions play a pivotal role in the production of executive constraint. Further, the political mechanisms they identify as substitutes for legal checks cannot alone do the work of regulating executive discretion. Diverging from both legalist and realist positions, I suggest that law and politics do not operate as substitutes in the regulation of executive authority. 25 They instead work as interlocking complements. An account of the borders of executive discretion must focus on the interaction of partisan and electoral forces on the one hand and legal rules. It must specify the conditions under which the interaction of political actors’ exertions and legal rules will prove effective in limiting such discretion.

# 2AC

## Terror

## Venezuela

## Solvency

## Off

### Indef Detention Contextual Definitions

#### We meet – the plan prohibits indefinite detention

#### Indefinite detention is without trial until the end of hostilities based on the NDAA and AUMF---resolves their T arg

Greenwald 11 [Glenn Greenwald, former Constitutional and civil rights litigator, Dec 16 2011, “Three myths about the detention bill,” http://www.salon.com/2011/12/16/three\_myths\_about\_the\_detention\_bill/]

Section 1021 of the NDAA governs, as its title says, “Authority of the Armed Forces to Detain Covered Persons Pursuant to the AUMF.” The first provision — section (a) — explicitly “affirms that the authority of the President” under the AUMF ”includes the authority for the Armed Forces of the United States to detain covered persons.” The next section, (b), defines “covered persons” — i.e., those who can be detained by the U.S. military — as “a person who was a part of or substantially supported al-Qaeda, the Taliban, or associated forces that are engaged in hostilities against the United States or its coalition partners.” With regard to those “covered individuals,” this is the power vested in the President by the next section, (c):¶ (c) Disposition under law of war.—The disposition of a person under the law of war as described in subsection (a) may include the following:¶ (1) Detention under the law of war without trial until the end of hostilities authorized by the Authorization for Use of Military Force.¶ It simply cannot be any clearer within the confines of the English language that this bill codifies the power of indefinite detention. It expressly empowers the President — with regard to anyone accused of the acts in section (b) – to detain them “without trial until the end of the hostilities.” That is the very definition of “indefinite detention,” and the statute could not be clearer that it vests this power. Anyone claiming this bill does not codify indefinite detention should be forced to explain how they can claim that in light of this crystal clear provision.

#### A restriction on war powers authority limits Presidential discretion

Jules Lobel 8, Professor of Law at the University of Pittsburgh  Law School, President of the Center for Constitutional Rights, represented members of Congress challenging assertions of Executive power to unilaterally initiate warfare, “Conflicts Between the Commander in Chief and Congress: Concurrent Power  over the Conduct of War,” Ohio State Law Journal, Vol 69, p 391, 2008, http://moritzlaw.osu.edu/students/groups/oslj/files/2012/04/69.3.lobel\_.pdf

So too, the congressional power to declare or authorize war has been long held to permit Congress to authorize and wage a limited war—“limited in place, in objects, and in time.” 63 When Congress places such restrictions on the President’s authority to wage war, it limits the President’s discretion to conduct battlefield operations. For example, Congress authorized President George H. W. Bush to attack Iraq in response to Iraq’s 1990 invasion of Kuwait, but it confined the President’s authority to the use of U.S. armed forces pursuant to U.N. Security Council resolutions directed to force Iraqi troops to leave Kuwait. That restriction would not have permitted the President to march into Baghdad after the Iraqi army had been decisively ejected from Kuwait, a limitation recognized by President Bush himself.64

#### Neg overlimits – if indefinite detention isn’t a war power neither is ¾ of the topic

AND

#### Precision and grammar go aff – only our interpretation sets a clear brightline for topicality

#### We’re better for neg ground – they can argue that not prohibiting means no solvency

#### Competing interpretations is bad – causes a race to the bottom and trades off with substantive debate about the topic – reasonability is best and good is good enough.

AND

#### Gut check – oversight is an easy adjustment even if they had prepped for prohibition – it’s the most predictable mechanism – if we don’t make it impossible to be neg we shouldn’t lose on T

### Oklahoma 2AC

#### 1 – Case outweighs

#### A – terrorists are gaining strength and attacks are coming now – this is the evans evidence and status quo technology means these attacks would be disastrous – that’s Dvorkin – alt doesn’t solve because isn’t doesn’t do away with this technology

#### B – is that Venezuelan stability is key to the US economy – our scenarios are real – we’re key to prevent future declines which is an independent reason taking action is good – that’s Royal

#### C – Is Russia-US war over the arctic – these conflicts are *inevitable* in the status quo – it’s not an issue of threat construction but one of fighting over the same land areas – their k doesn’t disprove the thesis of these arguments – extinction is categorically different from all other impacts and should be evaluated as such – that’s Bostrum

#### D. Extinction outweighs

Bok 88

(Sissela, Professor of Philosophy at Brandeis, Applied Ethics and Ethical Theory, Rosenthal and Shehadi, Ed.)

The same argument can be made for Kant’s other formulations of the Categorical Imperative: “So act as to use humanity, both in your own person and in the person of every other, always at the same time as an end, never simply as a means”; and “So act as if you were always through your actions a law-making member in a universal Kingdom of Ends.” No one with a concern for humanity could consistently will to risk eliminating humanity in the person of himself and every other or to risk the death of all members in a universal Kingdom of Ends for the sake of justice. To risk their collective death for the sake of following one’s conscience would be, as Rawls said, “irrational, crazy.” And to say that one did not intend such a catastrophe, but that one merely failed to stop other persons from bringing it about would be beside the point when the end of the world was at stake. For although it is true that we cannot be held responsible for most of the wrongs that others commit, the Latin maxim presents a case where we would have to take such responsibility seriously – perhaps to the point of deceiving, bribing, even killing an innocent person, in order that the world not perish. To avoid self-contradiction, the Categorical Imperative would, therefore, have to rule against the Latin maxim on account of its cavalier attitude toward the survival of mankind. But the ruling would then produce a rift in the application of the Categorical Imperative. Most often the Imperative would ask us to disregard all unintended but foreseeable consequences, such as the death of innocent persons, whenever concern for such consequences conflicts with concern for acting according to duty. But, in the extreme case, we might have to go against even the strictest moral duty precisely because of the consequences. Acknowledging such a rift would post a strong challenge to the unity and simplicity of Kant’s moral theory.

#### No extinction – tech and calculation have existed forever – and the world is getting better

#### Extinction outweighs – pre-requisite to Being

**Zimmerman 93** (Michael E., Professor of Philosophy – University of Tulane, Contesting Earth’s Future: Radical Ecology and Postmodernity, p. 119-120)

Heidegger asserted that human self assertion, combined with the eclipse of being, threatens the relation between being and human Dasein. Loss of this relation would be even more dangerous than a nuclear war that might “bring about the complete annihilation of humanity and the destruction of the earth.” This controversial claim is comparable to the Christian teaching that it is better to forfeit the world than to lose one’s soul by losing ones relation to God. Heidegger apparently thought along these lines: it is possible that after a nuclear war, life might once again emerge, but it is far less likely that there will ever again occur in an ontological clearing through which life could manifest itself. Further, since modernity’s one dimensional disclosure to entities virtually denies that any “being” at all, the loss of humanity’s openness for being is already occurring. Modernity’s background mood is horror in the face of nihilism, which is consistent with the aim of providing material happiness for everyone by reducing nature into pure energy. The unleashing of vast quantities of energy in a nuclear war would be equivalent to modernity’s slow destruction of nature: unbounded destruction would equal limitless consumption. If humanity avoided a nuclear war only to survive as contended clever animals, Heidegger believed we would exist in a state of ontological damnation: hell on earth, masquerading as material paradise. Deep ecologists might agree that a world of material human comfort purchased at the price of everything wild would not be a world worth living in, for in killing wild nature, people would be as good as dead. **But most** of them **could not agree that the loss of humanity’s relation to being would be worse than nuclear omnicide**, for it is wrong to suppose that the lives of millions of extinct and unknown species are somehow lessened because they were never “disclosed” by humanity.

#### Indefinite detention negates the legal identity of human beings – reduces them to bare life, replicates the logic of Nazi extermination camps

Schatz and Horst 7 (Christopher and Noah, Assistant Federal Public Defender in the Federal Public Defender’s Office for the District of Oregon + a Law Clerk in the Federal Public Defender’s Office for the District of Oregon, "WILL JUSTICE DELAYED BE JUSTICE DENIED? CRISIS JURISPRUDENCE, THE GUANTÁNAMO DETAINEES, AND THE IMPERILED ROLE OF HABEAS CORPUS IN CURBING ABUSIVE GOVERNMENT DETENTION," http://law.lclark.edu/live/files/9557-lcb113art1schatzpdf)

Beginning in 2002, as a result of military and intelligence activities ¶ conducted in Afghanistan and elsewhere against the perpetrators of the ¶ September 11 attack and their supporters, American military personnel began ¶ to take custody of individuals, both on and off the battlefield, who were ¶ subsequently classified as enemy combatants. Many of these detainees were ¶ soon transported out of the military’s theater of operation to a hastily ¶ constructed detention facility located at the Guantánamo Bay Naval Base in ¶ Cuba.4¶ Jettisoning jus in bello principles of international humanitarian law ¶ governing the treatment of people captured during an armed conflict, the Bush ¶ Administration declared that the war on terror required a “new paradigm,” and ¶ that individuals detained at Guantánamo Bay and other so called “black sites” ¶ were “unlawful combatants” who would not be treated as prisoners of war ¶ under the Third Geneva Convention.5¶ Nor, in the Bush Administration’s view, ¶ did the detainees qualify for the minimum humanitarian requirements ¶ established by Common Article Three of the Geneva Conventions.6¶ Furthermore, in addition to concocting legal rationalizations for legitimating ¶ torture on a scale and to a degree never before countenanced by United States¶ government policy,7¶ Justice Department lawyers also theorized that habeas ¶ corpus would not be available to the Guantánamo Bay detainees because they ¶ are aliens held outside of the sovereign territory of the United States.8¶ As Commander in Chief, the Bush Administration continues to assert that ¶ the President has a constitutionally based entitlement to wield total power over ¶ the Guantánamo Bay detainees—a use of sovereign power for which the ¶ President is not accountable to any other governing body or agency, domestic ¶ or international. If the Bush Administration’s position prevails, the detainees ¶ will be barred from claiming a right to relief under any body of law. In effect, ¶ the detainees will be reduced to an ontological state of human being that has ¶ not been present in the West since the Nazi extermination camps of the ¶ holocaust—they will have been rendered completely devoid of legal identity. ¶ Like the occupants of the Nazi concentration camps, although biologically ¶ alive, the Guantánamo Bay detainees will be legally dead.9¶ 9¶ Concerning the normalization of the state of exception that the Nazi concentration ¶ camps represented, Giorgio Agamben writes: ¶ Whoever entered the camp moved in a zone of indistinction between outside and inside, ¶ exception and rule, licit and illicit, in which the very concepts of subjective right and ¶ juridical protection no longer made any sense. What is more, if the person entering the ¶ camp was a Jew, he had already been deprived of his rights as a citizen by the ¶ Nuremberg laws and was subsequently completely denationalized at the time of the ¶ Final Solution. Insofar as its inhabitants were stripped of every political status and ¶ wholly reduced to bare life, the camp was also the most absolute biopolitical space ever ¶ to have been realized, in which power confronts nothing but pure life, without any ¶ mediation. ¶ GIORGIO AGAMBEN, HOMO SACER 170–71 (Daniel Heller-Roazen trans., Stanford Univ. ¶ Press 1998). The space of the concentration camp is one in which the juridico-political ¶ identity of a certain group of people is reduced solely to that of being “the Other.” The ¶ Guantánamo Bay facility where the detainees are held cannot be characterized as either a ¶ penal or a detention facility, because in those custodial environments the inmates retain some ¶ modicum of rights. The only nomination for that facility which accurately describes the ¶ political-legal status of the Guantánamo Bay detainees is that of “concentration camp.”

#### Valuing nature for human benefit is essential to the survival of all species—only humans have to cognitive ability to make moral decisions to preserve their environment

Younkins 4 (Professor of Business Administration, Wheeling Jesuit (Edward, The Flawed Doctrine of Nature's Intrinsic Value, Quebecois Libre 147, http://www.quebecoislibre.org/04/041015-17.htm, gender modified, AG)

Environmentalists erroneously assign human values and concern to an amoral material sphere. When environmentalists talk about the nonhuman natural world, they commonly attribute human values to it, which, of course, are completely irrelevant to the nonhuman realm. For example, “nature” is incapable of being concerned with the possible extinction of any particular ephemeral species. Over 99 percent of all species of life that have ever existed on earth have been estimated to be extinct with the great majority of these perishing because of nonhuman factors. Nature cannot care about “biodiversity.” Humans happen to value biodiversity because it reflects the state of the natural world in which they currently live. Without humans, the beauty and spectacle of nature would not exist – such ideas can only exist in the mind of a rational valuer. These environmentalists fail to realize that value means having value to some valuer. To be a value some aspect of nature must be a value to some human being. People have the capacity to assign and to create value with respect to nonhuman existents. Nature, in the form of natural resources, does not exist independently of man. Men, choosing to act on their ideas, transform nature for human purposes. All resources are [hu]man-made. It is the application of human valuation to natural substances that makes them resources. Resources thus can be viewed as a function of human knowledge and action. By using their rationality and ingenuity, [humans] men affect nature, thereby enabling them to achieve progress. Mankind’s survival and flourishing depend upon the study of nature that includes all things, even man himself. Human beings are the highest level of nature in the known universe. Men are a distinct natural phenomenon as are fish, birds, rocks, etc. Their proper place in the hierarchical order of nature needs to be recognized. Unlike plants and animals, human beings have a conceptual faculty, free will, and a moral nature. Because morality involves the ability to choose, it follows that moral worth is related to human choice and action and that the agents of moral worth can also be said to have moral value. By rationally using his conceptual faculty, man can create values as judged by the standard of enhancing human life. The highest priority must be assigned to actions that enhance the lives of individual human beings. It is therefore morally fitting to make use of nature. Man’s environment includes all of his surroundings. When he creatively arranges his external material conditions, he is improving his environment to make it more useful to himself. Neither fixed nor finite, resources are, in essence, a product of the human mind through the application of science and technology. Our resources have been expanding over time as a result of our ever-increasing knowledge. Unlike plants and animals, human beings do much more than simply respond to environmental stimuli. Humans are free from nature’s determinism and thus are capable of choosing. Whereas plants and animals survive by adapting to nature, [humans] men sustain their lives by employing reason to adapt nature to them. People make valuations and judgments. Of all the created order, only the human person is capable of developing other resources, thereby enriching creation. The earth is a dynamic and developing system that we are not obliged to preserve forever as we have found it. Human inventiveness, a natural dimension of the world, has enabled us to do more with less. Those who proclaim the intrinsic value of nature view man as a destroyer of the intrinsically good. Because it is man’s rationality in the form of science and technology that permits him to transform nature, he is despised for his ability to reason that is portrayed as a corrupting influence. The power of reason offends radical environmentalists because it leads to abstract knowledge, science, technology, wealth, and capitalism. This antipathy for human achievements and aspirations involves the negation of human values and betrays an underlying nihilism of the environmental movement.

#### 4. Perm do both

#### 1. Framework- the role of the ballot is to weigh the plan against a competitive policy option

#### First- Fairness- they moot the entirety of the 1ac, makes it impossible to be affirmative

#### Second – Education- Policy education is good- it teaches future decisionmaking

(alt alone doesn’t solve – perm is best, because their argument is that says that focus on only normative means we never institute durable policies)

#### The framework for your ballot should be to endorse and evaluate incremental progressive institutional actions – just “rolling the dice” does nothing

McClean 1(David E., Society for the Advancement of American Philosophy, http://72.14.203.104/search?q=cache:WXaoUBni6uIJ:www.american-philosophy.org/archives/2001%2520Conference/Discussion%2520papers/david\_mcclean.htm+foucault+habermas+slapped+cud&hl=en&gl=us&ct=clnk&cd=1)

Yet for some reason, at least partially explicated in Richard Rorty's Achieving Our Country, a book that I think is long overdue, leftist critics continue to cite and refer to the eccentric and often a priori ruminations of people like those just mentioned, and a litany of others including Derrida, Deleuze, Lyotard, Jameson, and Lacan, who are to me hugely more irrelevant than Habermas in their narrative attempts to suggest policy prescriptions (when they actually do suggest them) aimed at curing the ills of homelessness, poverty, market greed, national belligerence and racism. I would like to suggest that it is time for American social critics who are enamored with this group, those who actually want to be relevant, to recognize that they have a disease, and a disease regarding which I myself must remember to stay faithful to my own twelve step program of recovery. The disease is the need for elaborate theoretical "remedies" wrapped in neological and multi-syllabic jargon. These elaborate theoretical remedies are more "interesting," to be sure, than the pragmatically settled questions about what shape democracy should take in various contexts, or whether private property should be protected by the state, or regarding our basic human nature (described, if not defined (heaven forbid!), in such statements as "We don't like to starve" and "We like to speak our minds without fear of death" and "We like to keep our children safe from poverty"). As Rorty puts it, "When one of today's academic leftists says that some topic has been 'inadequately theorized,' you can be pretty certain that he or she is going to drag in either philosophy of language, or Lacanian psychoanalysis, or some neo-Marxist version of economic determinism. . . . These futile attempts to philosophize one's way into political relevance are a symptom of what happens when a Left retreats from activism and adopts a spectatorial approach to the problems of its country. Disengagement from practice produces theoretical hallucinations"(italics mine).(1) Or as John Dewey put it in his The Need for a Recovery of Philosophy, "I believe that philosophy in America will be lost between chewing a historical cud long since reduced to woody fiber, or an apologetics for lost causes, . . . . or a scholastic, schematic formalism, unless it can somehow bring to consciousness America's own needs and its own implicit principle of successful action." Those who suffer or have suffered from this disease Rorty refers to as the Cultural Left, which left is juxtaposed to the Political Left that Rorty prefers and prefers for good reason. Another attribute of the Cultural Left is that its members fancy themselves pure culture critics who view the successes of America and the West, rather than some of the barbarous methods for achieving those successes, as mostly evil, and who view anything like national pride as equally evil even when that pride is tempered with the knowledge and admission of the nation's shortcomings. In other words, the Cultural Left, in this country, too often dismiss American society as beyond reform and redemption. And Rorty correctly argues that this is a disastrous conclusion, i.e. disastrous for the Cultural Left. I think it may also be disastrous for our social hopes, as I will explain. Leftist American culture critics might put their considerable talents to better use if they bury some of their cynicism about America's social and political prospects and help forge public and political possibilities in a spirit of determination to, indeed, achieve our country - the country of Jefferson and King; the country of John Dewey and Malcom X; the country of Franklin Roosevelt and Bayard Rustin, and of the later George Wallace and the later Barry Goldwater. To invoke the words of King, and with reference to the American society, the time is always ripe to seize the opportunity to help create the "beloved community," one woven with the thread of agape into a conceptually single yet diverse tapestry that shoots for nothing less than a true intra-American cosmopolitan ethos, one wherein both same sex unions and faith-based initiatives will be able to be part of the same social reality, one wherein business interests and the university are not seen as belonging to two separate galaxies but as part of the same answer to the threat of social and ethical nihilism. We who fancy ourselves philosophers would do well to create from within ourselves and from within our ranks a new kind of public intellectual who has both a hungry theoretical mind and who is yet capable of seeing the need to move past high theory to other important questions that are less bedazzling and "interesting" but more important to the prospect of our flourishing - questions such as "How is it possible to develop a citizenry that cherishes a certain hexis, one which prizes the character of the Samaritan on the road to Jericho almost more than any other?" or "How can we square the political dogma that undergirds the fantasy of a missile defense system with the need to treat America as but one member in a community of nations under a "law of peoples?" The new public philosopher might seek to understand labor law and military and trade theory and doctrine as much as theories of surplus value; the logic of international markets and trade agreements as much as critiques of commodification, and the politics of complexity as much as the politics of power (all of which can still be done from our arm chairs.) This means going down deep into the guts of our quotidian social institutions, into the grimy pragmatic details where intellectuals are loathe to dwell but where the officers and bureaucrats of those institutions take difficult and often unpleasant, imperfect decisions that affect other peoples' lives, and it means making honest attempts to truly understand how those institutions actually function in the actual world before howling for their overthrow commences. This might help keep us from being slapped down in debates by true policy pros who actually know what they are talking about but who lack awareness of the dogmatic assumptions from which they proceed, and who have not yet found a good reason to listen to jargon-riddled lectures from philosophers and culture critics with their snobbish disrespect for the so-called "managerial class."

#### Evaluate consequences

Isaac 2 (Jeffrey C., Professor of Political Science – Indiana-Bloomington, Director – Center for the Study of Democracy and Public Life, Ph.D. – Yale, Dissent Magazine, 49(2), “Ends, Means, and Politics”, Spring, Proquest)

As writers such as Niccolo Machiavelli, Max Weber, Reinhold Niebuhr, and Hannah Arendt have taught, an unyielding concern with moral goodness undercuts political responsibility. The concern may be morally laudable, reflecting a kind of personal integrity, but it suffers from three fatal flaws: (1) It fails to see that the purity of one’s intention does not ensure the achievement of what one intends. Abjuring violence or refusing to make common cause with morally compromised parties may seem like the right thing; but if such tactics entail impotence, then it is hard to view them as serving any moral good beyond the **clean conscience** of their supporters; (2) it fails to see that in a world of real violence and injustice, moral purity is not simply a form of powerlessness; it is often a form of complicity in injustice. This is why, from the standpoint of politics--as opposed to religion--pacifism is always a potentially immoral stand. In categorically repudiating violence, it refuses in principle to oppose certain violent injustices with any effect; and (3) it fails to see that politics is as much about **unintended consequences** as it is about intentions; it is the effects of action, rather than the motives of action, that is most significant. Just as the alignment with “good” may engender impotence, it is often the pursuit of “good” that generates evil. This is the lesson of communism in the twentieth century: it is not enough that one’s goals be sincere or idealistic; it is equally important, always, to ask about the effects of pursuing these goals and to judge these effects in pragmatic and historically contextualized ways. Moral absolutism inhibits this judgment. It alienates those who are not true believers. It promotes arrogance. And it undermines political effectiveness.

#### -- Nuclear policy must be judged consequentially

Callahan 73 (Daniel, Ph.D. and Senior Fellow – Harvard Medical School, The Tyranny of Survival, p. 59)

Motives and means are only two dimensions of moral reasoning. Consequences are the third, and many philosophers as well as practical politicians believe that the consequences are the most important criterion by which the morality of nuclear policies should be judged. When the potential consequences are so enormous, “otherwise honorable concerns with perfection, virtue, rights, and the doctrine of double effect simply give way.

#### -- Util is necessary when the alternative is to let everyone die

Kateb 92 (George, Professor of Politics – Princeton University, The Inner Ocean: Individualism and Democratic Culture, p. 12)

The main point, however, is that utilitarianism has a **necessary place** in any democratic country's normal political deliberations. But its advocates must know its place, which ordinarily is only to help to decide what the theory of rights leaves alone. *When may rights be overridden by government?* I have two sorts of cases in mind: overriding a particular right of some persons for the sake of preserving the same right of others, and overriding the same right of everyone for the sake of what I will clumsily call "civilization values." An advocate of rights could countenance, perhaps must countenance, the state's overriding of rights for these two reasons. The subject is painful and liable to dispute every step of the way. For the state to override is, sacrifice—a right of some so that others may keep it. the situation must be desperate. I have in mind, say, circumstances in which the choice is between sacrificing a right of some and letting a right of all be lost. The state (or some other agent) may kill some (or allow them to he killed), if the only alternative is letting every-one die. It is the right to life which most prominently figures in thinking about desperate situations. I cannot see any resolution but to heed the precept that "numbers count." Just as one may prefer saving one's own life to saving that of another when both cannot be saved, so a third parry—let us say, the state—can (perhaps must) choose to save the greater number of lives and at the cost of the lesser number, when there is otherwise no hope for either group. That choice does not mean that those to be sacrificed are immoral if they resist being sacrificed. It follows, of course, that if a third party is right to risk or sacrifice the lives of the lesser for the lives of the greater number when the lesser would otherwise live, the lesser are also not wrong if they resist being sacrificed.

#### Alt fails – general rejection of metaphysics ignores important context.

Perkin 93 (Theorizing the Culture Wars Dr. J. Russell Postmodern Culture http://muse.jhu.edu/journals/postmodern\_culture/v003/3.3r\_perkin.html) TBC 7/7/10

There are further problems with the narrative built into The End of Education. **Humanism is always and everywhere, for Spanos, panoptic, repressive**, characterized by "the metaphysics of the centered circle," which is repeatedly attacked by reference to the same overcited passage from Derrida's "Structure, Sign, and Play in the Discourse of the Human Sciences"--not coincidentally one of the places where Derrida allows himself to make large claims unqualified by their derivation from reading a particular text. **In order to make this assertion, Spanos must show that all apparent difference is in fact contained by the same old metaphysical discourse**. **Thus**, within the space of four pages, **in the context of making absolute claims about Western education** (or thought, or theory), **Spanos uses** the following **constructions**: "whatever its historically specific permutations," "despite the historically specific permutations," "Apparent historical dissimilarities," "Despite the historically specific ruptures." (12-15) Western thought, he repeats, has "always reaffirmed a nostalgic and recuperative circuitous educational journey back to the origin" (15). **This over-insistence suggests to me that Spanos is a poor reader of Derrida, for he is not attentive to difference at particular moments or within particular texts**. **He seems to believe that one can leap bodily out of the metaphysical tradition simply by compiling enough citations from Heidegger**, whereas his rather anticlimactic final chapter shows, as Derrida recognizes more explicitly, that **one cannot escape logocentrism simply by wishing to.**

#### Spanos does not sufficiently connect his genealogy to specific policy recommendations—the alternative fails to influence the real world.

Lewandowski, 94 - Associate Professor and Philosophy Program Coordinator at The University of Central Missouri – 1994 (Joseph D. Lewandowsi, *Philosophy and Social Criticism*, “Heidegger, literary theory and social criticism,” ed. David M. Rasmussen, P. 115-116)

The point to be made here is that Heidegger's politics are not the only (or necessarily the largest) obstacle to coupling him with critical theory. Hence much of Spanos's energetic defense of Heidegger against his 'humanist detractors' (particularly in his defiant concluding chapter, 'Heidegger, Nazism, and the "Repressive Hypothesis": The American Appropriation of the Question') is misdirected. For as McCarthy rightly points out, 'the basic issues separating critical theory from Heideggerean ontology were not raised post hoc in reaction to Heidegger's political misdeeds but were there from the start. Marcuse formulated them in all clarity during his time in Freiburg, when he was still inspired by the idea of a materialist analytic of Dasein' (p. 96, emphasis added). In other words, Heidegger succumbs quite readily to an immanent critique. Heidegger's aporias are not simply the result of his politics but father stem from the internal limits of his questioning of the 'being that lets beings be', truth as disclosure, and destruction of the metaphysical tradition, all of which divorce reflection from social practice and thus lack critical perspective. Spanos, however, thinks Foucault can provide an alternative materialist grounding for an emancipatory critical theory that would obviate the objections of someone such as Marcuse. But the turn to Foucault is no less problematic than the original turn to Heidegger. Genealogy is not critical in any real way. Nor can it tame or augment what Spanos calls Heidegger's 'overdetermination of the ontological site'. Foucault's analysis of power, despite its originality, is an ontology of power and not, as Spanos thinks, a 'concrete diagnosis' (p. 138) of power mechanism. Thus it dramatizes, on a different level, the same shortcomings of Heidegger's fundamental ontology. The 'affiliative relationship' (p. 138) that Spanos tries to develop between Heidegger and Foucault in order to avoid the problem Marcuse faced simply cannot work. Where Heidegger ontologizes Being, Foucault ontologizes power. The latter sees power as a strategic and intentional but subjectless mechanism that 'endows itself' and punches out 'docile bodies', whereas the former sees Being as that neutered term and no-thing that calls us. Foucault (like Spanos) never works out how genealogy is emancipatory, or how emancipation could be realized collectively by actual agents in the world. The 'undefined work of freedom' the later Foucault speaks of in 'What Is Enlightenment?' remained precisely that in his work.4 The genealogy of power is as much a hypostatization as is fundamental ontology: such hypostatizations tend to institute the impossibility of practical resistance or freedom. In short, I don't think the Heideggerian 'dialogue' with Foucault sufficiently tames or complements Heidegger, nor does it make his discourse (or Foucault's, for that matter) any more emancipatory or oppositional. Indeed, Foucault's reified theory of power seems to undermine the very notion of 'Opposition', since there is no subject (but rather a 'docile' body) to do the resisting (or, in his later work, a privatized self to be self-made within a regime of truth), nor an object to be resisted. As Said rightly points out in The World, the Text, and the Critic, 'Foucault more or less eliminates the central dialectic of opposed forces that still underlies modern society' (p. 221, emphasis added). Foucault's theory of power is shot through with false empirical analyses, yet Spanos seems to accept them as valid diagnoses. Spanos fails to see, to paraphrase Said's criticisms of Foucault's theory of power, that power is neither a spider's web without the spider, nor a smoothly functioning diagram (p. 22l).

#### Completely rejecting humanism is self-marginalizing and disables effective coalitional politics

Perkin 93 (J. Russell, Professor of English – St. Mary’s College, “Theorizing the Culture Wars”, 3(3), p. Muse)

My final criticism is that Spanos, by his attempt to put all humanists into the same category and to break totally with the tradition of humanism, **isolates himself** in a posture of **ultraleftist purity** that **cuts him off** from many potential political allies, especially when, as I will note in conclusion, his practical recommendations for the practical role of an adversarial intellectual seem similar to those of the liberal pluralists he attacks. He seems ill-informed about what goes on in the everyday work of the academy, for instance, in the field of composition studies. Spanos laments the "unwarranted neglect" (202) of the work of Paulo Freire, yet in reading composition and pedagogy journals over the last few years, I have noticed few thinkers who have been so consistently cited. Spanos refers several times to the fact that the discourse of the documents comprising The Pentagon Papers was linked to the kind of discourse that first-year composition courses produce (this was Richard Ohmann's argument); here again, however, Spanos is not up to date. For the last decade the field of composition studies has been the most vigorous site of the kind of oppositional practices The End of Education recommends. The academy, in short, is more diverse, more complex, more genuinely full of difference than Spanos allows, and it is precisely that difference that neoconservatives want to erase. By seeking to separate out only the pure (posthumanist) believers, Spanos seems to me to **ensure his self-marginalization**. For example, several times he includes pluralists like Wayne Booth and even Gerald Graff in lists of "humanists" that include William Bennett, Roger Kimball and Dinesh D'Souza. Of course, there is a polemical purpose to this, but it is one that is counterproductive. In fact, I would even question the validity of calling shoddy and often inaccurate journalists like Kimball and D'Souza with the title "humanist intellectuals." Henry Louis Gates's final chapter contains some cogent criticism of the kind of position which Spanos has taken. Gates argues that the "hard" left's opposition to liberalism is as mistaken as its opposition to conservatism, and refers to Cornel West's remarks about the field of critical legal studies, "If you don't build on liberalism, you build on air" (187). **Building on air seems** to me **precisely what Spanos is recommending**. Gates, on the other hand, criticizes "those **massively totalizing** theories that **marginalize practical political action** as a **jejune indulgence**" (192), and endorses a coalition of liberalism and the left.

#### Extinction results from this political vacuum

Boggs 97 (Carl, Professor of Political Science – National University, Theory & Society 26, December, p. 773-774)

The decline of the public sphere in late twentieth-century America poses a series of great dilemmas and challenges. Many ideological currents scrutinized here ^ localism, metaphysics, spontaneism, post- modernism, Deep Ecology – intersect with and reinforce each other. While these currents have deep origins in popular movements of the 1960s and 1970s, they remain very much alive in the 1990s. Despite their different outlooks and trajectories, they all share one thing in common: a depoliticized expression of struggles to combat and overcome alienation. The false sense of empowerment that comes with such mesmerizing impulses is accompanied by a loss of public engagement, an erosion of citizenship and a depleted capacity of individuals in large groups to work for social change. As this ideological quagmire worsens, urgent problems that are destroying the fabric of American society will go unsolved – perhaps even unrecognized – only to fester more ominously into the future. And such problems (ecological crisis, poverty, urban decay, spread of infectious diseases, technological displacement of workers) cannot be understood outside the larger social and global context of internationalized markets, finance, and communications. Paradoxically, the widespread retreat from politics, often inspired by localist sentiment, comes at a time when agendas that ignore or side- step these global realities will, more than ever, be **reduced to impotence**. In his commentary on the state of citizenship today, Wolin refers to the increasing sublimation and dilution of politics, as larger numbers of people turn away from public concerns toward private ones. By diluting the life of common involvements, we negate the very idea of politics as a source of public ideals and visions.74 In the meantime, **the fate of the world hangs in the balance**. The unyielding truth is that, even as the ethos of anti-politics becomes more compelling and even fashionable in the United States, it is the vagaries of political power that will **continue to decide** the fate of human societies. This last point demands further elaboration. The shrinkage of politics hardly means that corporate colonization will be less of a reality, that social hierarchies will somehow disappear, or that gigantic state and military structures will lose their hold over people's lives. Far from it: the space abdicated by a broad citizenry, well-informed and ready to participate at many levels, can in fact be **filled by authoritarian and reactionary elites** – an already familiar dynamic in many lesser- developed countries. The fragmentation and chaos of a Hobbesian world, not very far removed from the rampant individualism, social Darwinism, and civic violence that have been so much a part of the American landscape, could be the prelude to a powerful Leviathan designed to impose order in the face of disunity and atomized retreat. In this way **the eclipse of politics might set the stage for a reassertion of politics in more virulent guise** – or it might help further rationalize the existing power structure. In either case, the state would likely become what Hobbes anticipated: the embodiment of those universal, collective interests that had vanished from civil society.75

#### The denial of an ethical attachment to suffering debases the value to life---your alternative condemns the weak to endless suffering---this condemnation eliminates the very thing that makes us humyn

Hilton 4(Ronald, Professor emeritus at Stanford University and Fellow at Hoover, 5/15/04**,** http://wais.stanford.edu/General/general\_individualsniezsche.htm.)

Adriana Pena answers Christopher Jones on the subject of Nietzsche, to which we have devoted inordinate space. This is therefore the final posting on the subject: "He rails against vindictiveness. How about railing against those who harm others without provocation? Are they not a lot worse? Or does he advocate that bright, gifted people be allowed to do what they want, and the rest of us should grin and bear it because they are so gifted? As Orwell pointed out, that means that if Shakespeare came back to life, and he turned out to be a child molester, we should look the other way because he might write another "King Lear" I have read enough of Nietzsche to be disgusted. Yes, he rails against ressentiment, but not against harming people who just get in their way (as his hero, Cesare Borgia did). He rails against the "slave mentality" and praises de "master mentality", but the slaves would not have that mentality if they had not been enslaved by the "masters". His ideal is that the powerful should ride over the weak, and the weak should count themselves lucky if they survive the experience, and cheer the one who crushes them. He evidently finds it offensive that enslaved people should desire to be free or to better their condition, and he calls that a conspiracy against the noble mentality (noble, is the ancient term of someone who did not work for a living, but forced others to provide for him, letting them have enough of a pittance not to die...)". [continues] Adriana Pena says of Nietzsche "About the silly idea of going "Beyond Good and Evil", I may cite a line from a song "If nothing's wrong, then nothing is right". Whoever wishes to go beyond judgment must stop making judgments himself. If Nietzsche was really serious about going beyond Good and Evil, he would make no judgement of Christianity, to call it either good or evil, but just accept it as part of the natural order. I suspect that when people talk about going beyond good and evil, they only want to find an excuse to do as they please, but that they do not think through the implications. A moral, or ethical sense, a sense of right and wrong is one of the traits that separates us from animals. Chickens in the yard do not concern themselves about Right and Wrong, have no sense of sin, and do not bemoan their mistakes, being free of guilt. To pretend to surpass our ethical sense is not to go above men, but to regress to animals". RH: I agree completely. Nietzsche was part of the fin de siècle confusion which led to World War I. The fact that Nietzsche went insane tells us something.

#### Perm do the plan and then the alt – solves any reason ethics are bad but also solves our scenarios

#### Perm do the plan as a means to reject bad state action and do the alt – it’s consistent with their arguments that the state shouldn’t be allowed to just screw everything up

#### 2. K doesn’t come first

**Owens 2002** (David – professor of social and political philosophy at the University of Southampton, Re-orienting International Relations: On Pragmatism, Pluralism and Practical Reasoning, Millenium, p. 655-657)

Commenting on the ‘philosophical turn’ in IR, Wæver remarks that ‘[a] frenzy for words like “epistemology” and “ontology” often signals this philosophical turn’, although he goes on to comment that these terms are often used loosely.4 However, loosely deployed or not, it is clear that debates concerning ontology and epistemology play a central role in the contemporary IR theory wars. In one respect, this is unsurprising since it is a characteristic feature of the social sciences that periods of disciplinary disorientation involve recourse to reflection on the philosophical commitments of different theoretical approaches, and there is no doubt that such reflection can play a valuable role in making explicit the commitments that characterise (and help individuate) diverse theoretical positions. Yet, such a philosophical turn is not without its dangers and I will briefly mention three before turning to consider a confusion that has, I will suggest, helped to promote the IR theory wars by motivating this philosophical turn. The first danger with the philosophical turn is that it has an inbuilt tendency to prioritise issues of ontology and epistemology **over explanatory** and/or interpretive **power** as if the latter two were merely a **simple function** of the former. But while the explanatory and/or interpretive power of a theoretical account is not wholly independent of its ontological and/or epistemological commitments (otherwise criticism of these features would not be a criticism that had any value), **it is by no means clear that it is**, in contrast, wholly dependent **on these philosophical commitments**. Thus, for example, one need not be sympathetic to rational choice theory to recognise that it can provide powerful accounts of certain kinds of problems, such as the tragedy of the commons in which dilemmas of collective action are foregrounded. It may, of course, be the case that the advocates of rational choice theory cannot give a good account of why this type of theory is powerful in accounting for this class of problems (i.e., how it is that the relevant actors come to exhibit features in these circumstances that approximate the assumptions of rational choice theory) and, if this is the case, it is a philosophical weakness—but **this does not undermine** the point that, for a certain class of problems, rational choice theory may provide the best account available to us. In other words, while the critical judgement of theoretical accounts in terms of their ontological and/or epistemological sophistication is one kind of critical judgement, **it is not the only or even necessarily the** most important kind. The second danger run by the philosophical turn is that because prioritisation of ontology and epistemology promotes theory-construction from philosophical first principles, it cultivates a theory-driven rather than problem-driven approach to IR. Paraphrasing Ian Shapiro, the point can be put like this: since it is the case that there is always a plurality of possible true descriptions of a given action, event or phenomenon, the challenge is to decide which is the most apt in terms of getting a perspicuous grip on the action, event or phenomenon in question given the purposes of the inquiry; yet, from this standpoint, ‘theory-driven work is part of a reductionist program’ in that it ‘dictates always opting for the description that calls for the explanation that flows from the preferred model or theory’.5 The justification offered for this strategy rests on the mistaken belief that it is necessary for social science because general explanations are required to characterise the classes of phenomena studied in similar terms. However, as Shapiro points out, this is to misunderstand the enterprise of science since ‘whether there are general explanations for classes of phenomena is a **question for social-scientific inquiry**, not to be prejudged before conducting that inquiry’.6 Moreover, this strategy easily slips into the promotion of the pursuit of generality over that of empirical validity. The third danger is that the preceding two combine to encourage the formation of a particular image of disciplinary debate in IR—what might be called (only slightly tongue in cheek) ‘the Highlander view’—namely, an image of warring theoretical approaches with each, despite occasional temporary tactical alliances, dedicated to the strategic achievement of sovereignty over the disciplinary field. It encourages this view because the turn to, and prioritisation of, ontology and epistemology stimulates the idea that there can only be one **theoretical approach which gets things right**, namely, the theoretical approach that gets its ontology and epistemology right. This image feeds back into IR exacerbating the first and second dangers, and so a potentially vicious circle arises.

#### No link – they fundamentally misunderstand the aff – we’re not a construction of benign norms, we a movement away from seriously messed up actions the state takes now IE indefinitely detaining people

#### 11. Alt Can’t solve --Appeals for institutional restrain are a crucial supplement to political resistance to executive power.

David COLE Law @ Georgetown ’12 “The Politics of the Rule of Law: The Role of Civil Society in the Surprising Resilience of Human Rights in the Decade after 9/11” http://www.law.uchicago.edu/files/files/Cole%201.12.12.pdf p. 51-53

As I have shown above, **while political forces played a significant role in checking** President **Bush**, what was significant was the particular substantive content of that politics; **it was not just any political pressure**, **but pressure to maintain** fidelity to **the rule of law**. **Politics standing alone is as likely to fuel as to deter executive abuse; consider the lynch mob, the Nazi Party** in Germany, or **xenophobia** more generally. **What we need if we are to check abuses of executive power is a politics that champions the rule of law.** Unlike the politics Posner and Vermeule imagine, **this** type of **politics cannot be segregated neatly from the law**. On the contrary, **it will often coalesce around a distinctly legal challenge, objecting to departures from distinctly legal norms**, heard in a court case, as we saw with Guantanamo. **Congress’s actions make clear that had Guantanamo been left to the political process, there would have been few if any advances**. **The litigation generated and concentrated political pressure on claims for a restoration of the values of legality,** and, as discussed above, **that pressure then played a critical role in the litigation’s outcome, which in turn affected the political pressure for reform. T**here is, to be sure, something paradoxical about this assessment. The rule of law, the separation of powers, and human rights are designed to discipline and constrain politics, out of a concern that pure majoritarian politics, focused on the short term, is likely to discount the long-term values of these principles. Yet without a critical mass of political support for these legal principles, they are unlikely to be effective checks on abuse, for many of the reasons Posner andVermeule identify. **The answer, however, is not to abandon the rule of law for politics, but to develop and nurture a political culture that values the rule of law itself.** **Civil society organizations devoted to such values**, **such as Human Rights Watch, the Center for Constitutional Rights, and the American Civil Liberties Union, play a central role in facilitating, informing, and generating that politics**. Indeed, **they have no alternative.** Unlike governmental institutions, civil society groups have no formal authority to impose the limits of law themselves. Their recourse to the law’s limits is necessarily indirect: they can file lawsuits seeking judicial enforcement, lobby Congress for statutory reform or other legislative responses, or seek to influence the executive branch. **But they necessarily and simultaneously pursue these goals through political avenues – by appealing to the public for support, educating the public, exposing abuses, and engaging in public advocacy around rule-of-law values**. Unlike ordinary politics, which tends to focus on the preferences of the moment, **the politics of the rule of law is committed to a set of long-term principles.** **Civil society organizations are uniquely situated to bring these long-term interests to bear on the public debate.** Much like a constitution itself, civil society groups are institutionally designed to emphasize and reinforce our long-term interests. When the ordinary political process is consumed by the heat of a crisis, organizations like the ACLU, Human Rights First, and the Center for Constitutional Rights, designed to protect the rule of law, are therefore especially important. While Congress and the courts were at best compromised and at worst complicit in the abuses of the post-9/11 period, civil society performed admirably. The Center for Constitutional Rights brought the first lawsuit seeking habeas review at Guantanamo, and went on to coordinate a nationwide network of volunteer attorneys who represented Guantanamo habeas petitioners. The ACLU filed important lawsuits challenging secrecy and government excesses, and succeeded in disclosing many details about the government’s illegal interrogation program. Both the ACLU and CCR filed lawsuits and engaged in public advocacy on behalf of torture and rendition victims, and challenging warrantless wiretapping. Human Rights Watch and Human Rights First wrote important reports on detention, torture, and Guantanamo, and Human Rights First organized former military generals and admirals to speak out in defense of humanitarian law and human rights. These efforts are but a small subset of the broader activities of civil society, at home and abroad, that helped to bring to public attention the Bush administration’s most questionable initiatives, and to portray the initiatives as contrary to the rule of law. At their best, civil society organizations help forge a politics of the rule of law, in which **there is a symbiotic relationship between politics and law**: **the appeal to law informs a particular politics, and that politics reinforces the law’s appeal, in a mutually reinforcing relation**. **Posner and Vermeule understand the importance of politics as a checking force in the modern world, but fail to see the critical qualification that the politics must be organized around a commitment to fundamental principles of liberty, equality, due process, and the separation of powers** – in short, the rule of law. Margulies and Metcalf recognize that politics as much as law determines the reality of rights protections, but fail to identify the unique role that civil society organizations play in that process**. It is not that the “rule of politics” has replaced the “rule of law,” but that, properly understood, a politics of law is a critical supplement to the rule of law.** We cannot survive as a constitutional democracy true to our principles without both. And our survival turns, not only on a vibrant constitution, but on a vibrant civil society dedicated to reinforcing and defending constitutional values.

#### Spanos' rejection of Humanism destroys any political project and/ or allies and allows the right to take over

Perkin 1993 [J. Russell, Professor of English at Saint Mary's University, Theorizing the Culture Wars, Postmodern Culture PMC 3.3, http://muse.jhu.edu/journals/postmodern\_culture/v003/3.3r\_perkin.html]

My final criticism is that Spanos. by his attempt to put all humanists into the same category and to break totally with the tradition of humanism, isolates himself in a posture of ultra leftist purity that cuts him off from many potential political allies, especially when, as I will note in conclusion. His practical recommendations for the practical role of an adversarial intellectual seem similar to those of the liberal pluralists he attacks. He seems ill-informed about what goes on in the everyday work of the academy, for instance, in the field of composition studies. Spanos laments the "unwarranted neglect" (202) of the work of Paulo Freire, yet in reading composition and pedagogy journals over the last few years, I have noticed few thinkers who have been so consistently cited. Spanos refers several times to the fact that the discourse of the documents comprising The Pentagon Papers was linked to the kind of discourse that first-year composition courses produce (this was Richard Ohmann's argument): here again, however, Spanos is not up to date. For the last decade the field of composition studies has been the most vigorous site of the kind of oppositional practices The End of Education recommends. The academy, in short, is more diverse. more complex, more genuinely full of difference than Spanos allows, and it is precisely that difference that neoconservatives want to erase. By seeking to seperate out only the pure (posthumanist) believers, Spanos seems to me to ensure his self-marginalization. For example, several times he includes pluralists like Wayne Booth and even Gerald Graff in lists of "humanists" that include William Bennett, Roger Kimball and Dinesh D'Souza. Of course. there is a polemical purpose to this, but it is one that is counterproductive. In fact, I would even question the validity of calling shoddy and often inaccurate journalists like Kimball and D'Souza with the title "humanist intellectuals." Henry Louis Gates's final chapter contains some cogent criticism of the kind of position, which Spanos has taken. Gates argues that the "hard" left's opposition to liberalism is as mistaken as its opposition to conservatism, and refers to Cornel West's remarks about the field of critical legal studies, "If you don't build on liberalism, you build on air" (I 87). Building on air seems -- to me precisely what Spanos is recommending. Gates, on the other hand, criticizes "those rnassively totalizing theories that marginalize practical political action as a jejune indulgence" (192), and endorses a coalition of liberalism and the left.

#### Spanos’s theory has no historical backing and his incoherence prevents the realization of any alternative.

Bryant 97 [John, Professor of English at Hofstra. “Review: Democracy, Being, and the Art of Becoming America” College English, Vol. 59, No. 6. (Oct., 1997), pp. 705-711]

As bracing as Spanos's subversive thesis is, and despite his attempts to rectify the New Americanist approach with a finer grounding in philosophy, its credibility is undermined by the book's wooden historicism and authoritarian style. Generally speaking, Spanos's "thematizing" of Ahab and Ishmael amounts to reductions supported more by assertion and endless reiteration than by textual demonstration. The result is a pronouncement, rather than an analysis, that never penetrates to the way Melville's words work to bring readers into his ontological dilemma. Spanos's historicism is similarly lacking. He reduces the development of American culture to a sequence of tableaux vivants with helpful intervening placards: The Puritans Hand Over the Mantle of American Identity to Andrew Jackson. He speaks of Lewis's American Adam and Bercovitch's American Jeremiad as if they were facts, or pieces of legislation fully endorsed by the populace, rather than cultural theses proposed by modern critics to extend, not end, debate on who we are and why. Spanos is most effective in discussing the more immediate aspects of Vietnam, but he never makes more distant eras come equally to life. His repeated reference to the "Salem Witch Burnings"-they were hanged-would be a dismissable gaffe if it did not suggest that the author is not sufficiently engaged in historical reality to deal with it except as a set of abstractions. Spanos's use of Heidegger is necessarily problematic. In purely metaphysical terms the philosopher's Nietzschean notion of the "will to power" is an intelligible means of comprehending Being's temporal differentiations: very transcendental. But then, Heidegger was no Emerson; he joined the Nazi party, took his Jewish mentor Husserl's job, sent a few colleagues racing to the border, but paradoxically conducted an affair with Hannah Arendt. Surely, Heidegger's nazism does not invalidate the notion of errancy that so effectively explains Ishmael. However, in a study such as this, in which politics is said to derail ontological interpretation, we naturally expect a full disclosure of an ontology's political potential. In Spanos's view, the liberal reaction to Stalin "blinded" Americanists to the true ontological value of Moby-Dick and led us into political disaster. Interestingly enough, the optician who crafted the lenses by which we might read Moby-Dick ontologically, with Ishmael as errant hero, was himself blind to that errancy; Heidegger somehow missed his own point and became the authoritarian his philosophy would deny. This fact alone suggests the need for a deeper ontological inquiry into the determinants in Melville's fiction (personality? sex? philosophy?) that cause individuals to mistake Heideggerian fluidity and become an Ahab, or a Heidegger. To be fair, Spanos has written on Heidegger's nazism elsewhere, but his obscure and parenthetical allusions to the issue in this book fail to take this matter to its fullest ontological extent. Spanos's style is a curious self-negation of his principal ideas. It would be too easy to dismiss Spanos for his Heideggerian jargon and Derridean patois. I, for one, enjoy healthy licks of jargon; I love a patois: they encourage a certain critical economy. But Spanos uses language as a weapon to polarize readers. He consigns past critics to tidy, benighted "post-humanist" camps and virtually ignores more recent explorers of Melville's complex marginalizing rhetoric (including Barbara Johnson, Nina Bayrn, Lawrence Buell, Michael Rogin, Carolyn Porter, John Samson, and myself). This needless drawing of "boundaries" is precisely the opposite of what Spanos (editor of bounhq 2, which seeks to break-and break again-critical boundaries) takes to be "errant" Ishmael's supreme achievement. Spanos uses language to claim hegemony over readers even as he tries to disclose Melville's counterhegemonic strategies. His sentences wage war against comprehension: it is not simply that abstract subjects perform abstract acts upon abstract objects in his sentences, but that these consmctions are nested within larger equivalent abstractions-clause within clause--each interrupted by dashes into the contrapositive, each larded with oxymorons and paradoxes. And when such a sentence achieves a period, Spanos begins again with "In other words. ..." But his other words bring no relief. (Spanos's excessive use of mammoth, sometimes two-page block quotes would be offensive if not for the fact that they provide an occasional Tahiti of literary excellence amidst the ocean of his prose.) One might think this mimicry of Heidegger's famously dense style is a postmodern strategy to induce in readers an apt ontological crisis commensurate with Ishmael's condition, In fact, it simply erects a wall of language that circumscribes an academic domain alien to his ontological project. This book is the second in a projected trilogy. Let's hope Spanos finds a more effective voice.

#### -- Perm – do the alt – any theory objection links to the K

#### 5. True constraints are possible – court rulings are binding – past decisions prove

#### 6. External checks are effective [In the 1AC]

Aziz Z. Huq 12, Assistant Professor of Law, University of Chicago Law School, "Binding the Executive (by Law or by Politics)", May 25, www.law.uchicago.edu/files/file/400-ah-binding.pdf

Paulson ’ s genuflection and Obama ’ s reticence, I will contend here, are symptomatic of our political system ’ s operation rather than being aberration al . It is generally the case that even in the heart of crisis, and even on matters where executive competence is supposedly at an acme , legislators employ formal institutional powers not only to delay executive initiatives but also affirmatively to end presidential policies. 20 Numerous examples from recent events illustrate the point. Congressional adversaries of Obama, for instance, cut off his policy of emptying Guantánamo Bay via appropriations riders. 21 Deficit hawks spent 2011 resisting the President’s solutions to federal debt, while the President declined to short - circuit negotiations with unilateral action. 22 Even in military matters, a growing body of empirical research suggests Congress often successfully influences the course of overseas engagements to a greater degree than legal scholars have discerned or acknowledged. 23¶ That work suggests that the failure of absolute congressional control over military matters cannot be taken as evidence of “the inability of law to constrain the executive

\*\*1AC Marked\*\* ” in more subtle ways (p 5). The conventional narrative of executive dominance , in other words, is at best incomplete and demands supplementing .¶ This Review uses The Executive Unbound as a platform to explore how the boundaries of discretionary executive action are established. As the controversial national security policies of the Bush administration recede in time, the issue of executive power becomes ripe for reconsideration. Arguments for or against binding the executive are starting to lose their partisan coloration. There is more room to investigate the dynamics of executive power in a purely positive fashion without the impinging taint of ideological coloration.¶ Notwithstanding this emerging space for analys i s, t here is still surprising inattention to evidence of whether the executive is constrained and to the positive question of how constraint works. The Executive Unbound is a significant advance because it takes seriously this second “ mechanism question. ” Future studies of the executive branch will ignore its i mportant and trenchant analysis at their peril. 24 Following PV ’ s lead, I focus on the descriptive , positive question of how the executive is constrained . I do speak briefly and in concluding to normative matters . B ut f irst and foremost, my arguments should be understood as positive and not normative in nature unless otherwise noted.¶ Articulating and answering the question “ W hat binds the executive ?” , The Executive Unbound draws a sharp line between legal and political constraints on discretion — a distinction between laws and institutions on the one hand, and the incentives created by political competition on the other hand . While legal constraints usually fail, it argues, political constraints can prevail. PV thus postulate what I call a “strong law/ politics dichotomy. ” My central claim in this Review is that this strong law/politics dichotomy cannot withstand scrutiny. While doctrinal scholars exaggerate law ’s autonomy, I contend, the realists PV underestimate the extent to which legal rules and institutions play a pivotal role in the production of executive constraint. Further, the political mechanisms they identify as substitutes for legal checks cannot alone do the work of regulating executive discretion. Diverging from both legalist and realist positions, I suggest that law and politics do not operate as substitutes in the regulation of executive authority. 25 They instead work as interlocking complements. An account of the borders of executive discretion must focus on the interaction of partisan and electoral forces on the one hand and legal rules. It must specify the conditions under which the interaction of political actors’ exertions and legal rules will prove effective in limiting such discretion.

#### **7.** Even if they aren’t – the president will go along with them anyway – takes out the impact [1AC]

Bradley and Morrison 13

[Curtis, William Van Alstyne Professor of Law, Duke Law School. and Trevor, Liviu Librescu Professor of Law, Columbia Law School, Presidential Power, Historical Practice, And Legal Constraint, 2013 Directors of The Columbia Law Review Association, Inc. Columbia Law Review May, 2013, L/N]

Insisting on a sharp distinction between the law governing presidential authority that is subject to judicial review and the law that is not also takes for granted a phenomenon that merits attention - that Presidents follow judicial decisions. n118 That assumption is generally accurate in the United States today. To take one relatively recent example, despite disagreeing with the Supreme Court's determination in Hamdan v. Rumsfeld that Common Article 3 of the Geneva Conventions applies to the war on terror, the Bush Administration quickly accepted it. n119 But the reason why Presidents abide by court decisions has a connection to the broader issue [\*1131] of the constraining effect of law. An executive obligation to comply with judicial decisions is itself part of the practice-based constitutional law of the United States, so presidential compliance with this obligation may demonstrate that such law can in fact constrain the President. This is true, as we explain further in Part III, even if the effect on presidential behavior is motivated by concerns about external political perceptions rather than an internal sense of fidelity to law (or judicial review). n120

**No circumvention – review mechanism distributes power and insulates from pressure**

**Siegel 12** - Senior Editor for UCLA Law Review, UCLA Law Review, April, 2012, 59 UCLA L. Rev. 1076Reconciling Caperton and Citizens United: When Campaign Spending Should Compel Recusal of Elected Officials, Samuel P. Siegel

BIO: \* AUTHOR Samuel P. Siegel is a Senior Editor for UCLA Law Review

The influence of campaign expenditures is further lessened when an adjudicatory decision is made by a **group of executive officials**, even if each of those officials is directly accountable to the elected official. For example, the Committee on Foreign Investment in the United States - comprised of top-ranking officials from various executive departments n258 - is a body authorized by Congress to screen and investigate foreign-investment proposals "to determine the effects of the transaction on the national security of the United States," n259 negotiate mitigation agreements with foreign investors to minimize national security concerns, n260 and, should mitigation efforts fail, recommend to the president that she block the [\*1119] deal, n261 powers that are "like individual adjudications (or quasi-adjudications)." n262 Yet the very fact that a committee, rather than a single officer, exercises this adjudicatory power **insulates its decisions from presidential control**: "With a single agency, the President could credibly threaten to remove or otherwise pressure or discipline that agency's Secretary or Administrator. **But there is strength in numbers**." n263 Thus, **even within a unitary executive**, such a structure **would likely temper** the **influence** that campaign expenditures would have on the outcome of an adjudication.

#### -- Turn – programs of action:

#### A) They give up on active problem-solving

Lewandowski 94 (Joseph D., Associate Professor and Philosophy Program Coordinator – The University of Central Missouri, “Heidegger, Literary Theory and Social Criticism”, Philosophy and Social Criticism, Ed. Rasmussen, p. 119)

Spanos rightly rejects the 'textuality' route in Heidegger and Criticism precisely because of its totalizing and hypostatizing tendencies. Nevertheless, he holds on to a **destructive hermeneutics** as disclosure. But as I have already intimated, disclosure alone cannot support a critical theory oriented toward emancipation. I think a critical theory needs a less totalizing account of language, one that articulates both the emphatic linguistic capacity to spontaneously disclose worlds - its innovative 'worlding' possibilities - and its less emphatic, but no less important, capacity to communicate, **solve problems in** and criticize the world. The essential task of the social critic - and any literary theory that wants to be critical - is to couple world disclosure with problem-solving, to mediate between the extra-ordinary world of 'textuality' and the everyday world of 'texts'. In this alternative route, literary theory may become the kind of emancipatory oriented critical theory it can and should be.

#### B) Suffering results – outweighs ontology

Jarvis 00 (Darryl, Senior Lecturer in International Relations – University of Sydney, International Relations and the Challenge of Postmodernism, p. 128-129)

More is the pity that such irrational and obviously abstruse debate should so occupy us at a time of great global turmoil. That it does and continues to do so reflect our lack of judicious criteria for evaluating theory and, more importantly, the lack of attachment theorists have to the real world. Certainly it is right and proper that we ponder the depths of our theoretical imaginations, engage in epistemological and ontological debate, and analyze the sociology of our knowledge. But to support that this is the only task of international theory, let alone the most important one, **smacks of intellectual elitism** and **displays** a certain **contempt** for those who search for guidance in their daily struggle as actors in international politics. What does Ashley’s project, his deconstructive efforts, or valiant fight against positivism say to the truly marginalized, oppressed, and destitute? How does it help solve the plight of the poor, the displaced refugees, the casualties of war, or the émigrés of death squads? Does it in any way speak to those whose actions and thoughts comprise the policy and practice of international relations? On all these questions one must answer **no**. This is not to say, of course, that all theory should be judged by its technical rationality and problem-solving capacity as Ashley forcefully argues. But to support that problem-solving technical theory is not necessary—or in some way bad—is a **contemptuous position** that abrogates any hope of solving some of the **nightmarish realities that millions confront daily**. As Holsti argues, we need ask of these theorists and their theories the ultimate question, **“So what?”** To what purpose do they deconstruct, problematize, destabilize, undermine, ridicule, and belittle modernist and rationalist approaches? Does this get us any further, make the world any better, or enhance the human condition? In what sense can this “debate toward [a] bottomless pit of epistemology and metaphysics” be judged pertinent, relevant, helpful, or cogent to anyone other than those foolish enough to be scholastically excited by abstract and recondite debate. Contrary to Ashley’s assertions, then, a poststructural approach fails to empower the marginalized and, in fact, abandons them. Rather than analyze the political economy of power, wealth, oppression, production, or international relations and render and intelligible understanding of these processes, Ashley succeeds in ostracizing those he portends to represent by delivering an obscure and highly convoluted discourse. If Ashley wishes to chastise structural realism for its abstractness and detachment, he must be prepared also to face similar criticism, especially when he so adamantly intends his work to address the real life plight of those who struggle at marginal places.

#### 8. No impact

 **Dickinson 4** (Dr. Edward Ross, Professor of History – University of Cincinnati, “Biopolitics, Fascism, Democracy: Some Reflections on Our Discourse About ‘Modernity’”, Central European History, 37(1), p. 18-19)

In an important programmatic statement of 1996 Geoff Eley celebrated the fact that Foucault’s ideas have “fundamentally directed attention away from institutionally centered conceptions of government and the state . . . and toward a dispersed and decentered notion of power and its ‘microphysics.’”48 The “broader, deeper, and less visible ideological consensus” on “technocratic reason and the ethical unboundedness of science” was the focus of his interest.49 But the “power-producing effects in Foucault’s ‘microphysical’ sense” (Eley) of the construction of social bureaucracies and social knowledge, of “an entire institutional apparatus and system of practice” ( Jean Quataert), simply do not explain Nazi policy.50 The destructive dynamic of Nazism was a product not so much of a particular modern set of ideas as of a particular modern political structure, one that could realize the disastrous potential of those ideas. What was critical was not the expansion of the instruments and disciplines of biopolitics, which occurred everywhere in Europe. Instead, it was the principles that guided how those instruments and disciplines were organized and used, and the external constraints on them. In National Socialism, biopolitics was shaped by a totalitarian conception of social management focused on the power and ubiquity of the völkisch state. In democratic societies, biopolitics has historically been **constrained** by a rights-based strategy of social management. This is a point to which I will return shortly. For now, the point is that what was decisive was actually politics at the level of the state. A comparative framework can help us to clarify this point. Other states passed compulsory sterilization laws in the 1930s — indeed, individual states in the United States had already begun doing so in 1907. Yet they **did not proceed** tothe next steps adopted by National Socialism — mass sterilization, mass “eugenic” abortion and murder of the “defective.” Individual figures in, for example, the U.S. did make such suggestions. But **neither** the **political structures** of democratic states **nor** their **legal and political principles** **permitted** such policies actually being enacted. Nor did the scale of forcible sterilization in other countries match that of the Nazi program. I do not mean to suggest that such programs were not horrible; but in a **democratic** political **context** they did not develop the dynamic of constant radicalization and escalation that characterized Nazi policies.

#### 9. Venezuela advantage – legalism is necessary to spur action – that’s Yammamoto

#### Indefinite detention is a form of torture – it rises to the level of cruel, degrading treatment that produces feelings of absolute despair and powerlessness

Goering 13 (Curt, executive director of the Center for Victims of Torture, "End indefinite detention now," http://thehill.com/blogs/congress-blog/homeland-security/313761-end-indefinite-detention-now)

Indefinite detention is an unlawful practice that rises to the level of cruel, inhuman and degrading treatment in direct violation of U.S. laws and our obligations under international laws, including the UN Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, signed by the United States 25 years ago during President Reagan’s final year in office.¶ Placing prisoners in custody indefinitely without charge or trial has absolutely no place in our laws. As Sen. Patrick Leahy (D-Vt.) said during the hearing, “Countries that champion the rule of law and human rights do not lock away prisoners indefinitely without charge or trial.”¶ We oppose indefinite detention on behalf of torture survivors, because among those we care for are survivors who have suffered while being imprisoned without charge or trial and without being told when, if ever, they might be released.¶ From our experience healing survivors of torture and war related atrocities, we know indefinite detention causes severe, prolonged and harmful health and mental health problems for those imprisoned. Our intensive work with individual torture survivors, combined with medical literature that documents the damaging physical and psychological effects of indefinite detention, causes us to oppose this practice. For example, research by Physicians for Human Rights has found that the effects of indefinite detention include depression and suicide; Post Traumatic Stress Disorder; and damage to the body’s immune, cardiovascular and central nervous systems.¶ Many of the survivors we serve who were imprisoned without trial or charge speak of the absolute despair they felt, never knowing if their detention would come to an end. CVT clinicians who work with survivors of torture that have been indefinitely detained tell us that with no defined end, survivors feel there is no guarantee there will ever be an end. This creates severe, chronic emotional distress: hopelessness, debilitation, uncertainty, and powerlessness. The hunger strike among the detainees at Guantanamo underscores the despair among prisoners facing indefinite detention. Hunger strikes are a form of expression by individuals who have no other way of making their demands known.

**Torture dehumanizes victim and torturer alike – Only finding ways to publically expose and repair the social harms created by torture can break the cycle of vengeance that threatens to collapse the social order – turns your V2L impacts**

**Chanbonpin 11** (Kim, Assistant Professor of Law at John Marshall Law School, “"We Don't Want Dollars, Just Change": Narrative Counter-Terrorism Strategy, an Inclusive Model for Social Healing, and the Truth About Torture Commission”, 6 Nw. J. L. and Soc. Pol'y 1, Winter, L/N)

Torture by government (even on non-citizens) represents a breach of social and legal norms that injures not only individuals, but society as a whole. Torture, almost by definition, requires the dehumanization of all parties involved. n21 When a person is tortured, he is **robbed of his very humanity**. As Professors J. Jeremy Wisnewski and R.D. Emerick assert: "The very thing that constitutes us--the fact that we are agents capable of exercising our autonomy in the world--is what we are deprived of when we are subjected to torture." n22 A torture victim's psychic and physical associations with the social world around him are disrupted by the abuse and, once broken, those bonds are nearly irreparable. n23 Nor does the torturer escape from the experience unharmed. To be successful at his task, the agent of torture has been desensitized to violence and cruelty. n24 [\*7] The torturer must adopt the fiction that his victim has ceased to be worthy of humane treatment and dignity. n25 This fantasy wreaks havoc on basic epistemological notions of humanity shared by people as social beings. n26 As former United Nations Secretary-General Kofi Annan has observed, "Torture is an atrocious violation of human dignity. It dehumanizes both the victim and the perpetrator." n27 Therefore, both the tortured and the torturers require some repair, some healing, some renewal of their humanity. Furthermore, the U.S. public has also been adversely impacted by the government's torture policies. As targets of the terrorist attacks on September 11, 2001, as witnesses of the photos of detainee abuse at Abu Ghraib, as readers of the series of Office of Legal Counsel (OLC) memos (collectively, the Torture Memos) authorizing torturous interrogation methods, the U.S. body politic is also in need of repair and healing. The aim of the redress project I propose in this Article, then, is to seek out ways to publicly repair those social harms.

This Article posits that the post-9/11 torture program has--in addition to individual and corporeal wounds--created social wounds. Radiating beyond the particular injuries suffered by individual victims of torture is a broader social trauma. The violation of domestic and international laws prohibiting torture represents a breach of social and legal norms that has injured society as a whole. Other scholars have described the special dangers associated with injuries wrought by widespread, systematic human rights abuses. For one, when government is responsible for transgressing its own laws, it is deeply unsettling because it demonstrates government's potential to deviate from the established social order again in the future. In addition, violent abuses such as torture tend to create and perpetuate a continuing cycle of vengeance and retribution. n28 The project of social healing, then, is to break that cycle and find ways to publicly repair social harms

#### Even if our attempts to eliminate torture fail, speaking out against it still reorients us in a moral way – our ethics matter

Bangert 5 (Bryon Bangert, Research Associate at the Poynter Center for the Study of Ethics and American Institutions and Ph.D. in Religious Ethics from Indiana University, “The Tortured Logic of Torture,” June 20, <http://www.bloomington.in.us/~bbangert/torture.pdf>)

Precisely because torture is generally practiced in secret**,** shuttered from public scrutiny in all kinds of ways, we must ask whether it is beyond the reach of legal and moral constraint.Does it do any good to be morally opposed to torture? Can we hope someday to prevent the practice in fact as well as in law? Or must we, to the contrary, contemplate a future in which rogue terrorists or other enemies of the state are bound to present us someday with a real, live, ticking bomb scenario, the likes of which will require that our military and intelligence forces have honed their skills at interrogatory torture to the nth degree if some unimaginable catastrophe is to be avoided? Must a very calculated discretion become the unspoken part of official U.S. policy 69 regarding torture? That is to say, is Bowden right that we must publicly condemn torture as immoral, but wisely and discreetly continue to practice it when circumstances demand**?** ¶ It should be transparent by now that I want to answer this question in the negative, but also that I do not want to appear the fool. Human beings are capable of enormous evil. One dare not be sanguine about the efficacy of moral prohibitions against violence, terrorism, or torture. But one must also wonder whether the fearful effort to save ourselves from the rogue terrorist and [their] ticking bomb, poison gas, or deadly virus, does not threaten an even greater terror. It is wishful thinking to believe that, in a free and open democratic society, it will ever be possible completely to insure our safety against the worst designs of the most determined terrorist. But we run the risk of destroying all that really matters most in civilization by sanctionging inhumane measures to save it from destruction at the hands of others. Can we really believe that a free, open, democratic society can flourish in tandem with a sustained, intentional, covert intelligence gathering apparatus that is prepared to torture human beings in secret, without legal sanction, without legal recourse, indefinitely, out of fear and on the chance that they may provide some information that will diminish the risks to our physical security? In a society that knowingly tolerates, despite legal sanctions, the covert, unchecked, unofficially endorsed practice of torture, **every citizen bears** some **responsibility.** Every citizen is also a potential “detainee.”¶ How we think about torture, and what we are prepared to do about it, finally comes down to the question of the kind of world in which we want to live. It is hardly in our power to secure such a world for ourselves, but it is not beyond our power to orient ourselves one way rather than another, and to make some not insignificant gestures toward the world we want to inhabit. Even lip service is not a morally inconsequential act. It is hard to resist the influence of one’s own words, even when spoken without real conviction. To continue to speak against torture, and to continue to maintain in public and political life that torture is wrong, immoral, and never to be legally sanctioned or permitted, will have its effect on moral sensibilities. ¶ To say that torture is always wrong, and if possible to believe it, will serve as a restraint against any contrary impulses we may have to give it sanction or justification**. ¶** In short, although it is hypocrisy to condemn torture while equivocating over its meaning, as the Bush administration has done in its attempt to make some forms of torture permissible, hypocrisy in this case seems preferable to an outright defense or allowance of torture. A more morally serious consideration of torture will lead us beyond such hypocrisy. In light of the foregoing argument, to condemn torture with genuine conviction, despite not knowing whether there might be some circumstance in which that conviction could be overruled, must be regarded as a moral obligation. It is a crucial gesture toward the creation of the sort of world that must exist if human beings are not to be destroyed by turning against themselves. Torture entails self destruction, for both the tortured and the torturer. It is not only the tortured, but also the torturer, who is driven by the dynamics of the torture situation to turn against self, to act in ways that consume and destroy his or her own humanity. We must remain unequivocal in our moral objection to torture. ¶ (This evidence has been gender paraphrased).

#### Policy relevance is key and turns their impacts- engaging the state is key

**Gunning ‘7** (Government and Opposition Volume 42 Issue 3, Pages 363 - 393 Published Online: 21 Jun 2007 A Case for Critical Terrorism Studies?1 Jeroen Gunning.

The notion of emancipation also crystallizes the need for policy engagement. For, unless a 'critical' field seeks to be policy relevant, which, as Cox rightly observes, means combining 'critical' and 'problem-solving' approaches, **it does not fulfil its 'emancipatory' potential**.94 One of the temptations of 'critical' approaches is to remain mired in critique and deconstruction **without moving beyond this to reconstruction and policy relevance.**95 Vital as such critiques are, the challenge of a critically constituted field is also to engage with policy makers – and 'terrorists'– and work towards the realization of new paradigms, new practices, and a transformation, however modestly, of political structures. That, after all, is the original meaning of the notion of 'immanent critique' that has historically underpinned the 'critical' project and which, in Booth's words, involves 'the discovery of the latent potentials in situations on which to build political and social progress', as opposed to putting forward utopian arguments that are not realizable. Or, as Booth wryly observes, 'this means building with one's feet firmly on the ground, not constructing castles in the air' and asking 'what it means for real people in real places'.96 Rather than simply critiquing the status quo, or noting the problems that come from an un-problematized acceptance of the state, a 'critical' approach must, in my view, also concern itself with offering concrete alternatives. Even while historicizing the state and oppositional violence, and challenging the state's role in reproducing oppositional violence, it must wrestle with the fact that **'the concept of the modern state and sovereignty embodies a coherent response to many of the central problems** of political life', **and** in particular to 'the place of **violence** in political life'. Even while 'de-essentializing and deconstructing claims about security', it must concern itself with 'howsecurity is to be redefined', and in particular on what theoretical basis.97 Whether because those critical of the status quo are wary of becoming co-opted by the structures of power (and their emphasis on instrumental rationality),98 or because policy makers have, for obvious reasons (including the failure of many 'critical' scholars to offer policy relevant advice), a greater affinity with 'traditional' scholars, the role of 'expert adviser' is more often than not filled by 'traditional' scholars.99 The result is that policy makers are insufficiently challenged to question the basis of their policies and develop new policies based on immanent critiques. A notable exception is the readiness of European Union officials to enlist the services of both 'traditional' and 'critical' scholars to advise the EU on how better to understand processes of radicalization.100 But this would have been impossible if more critically oriented scholars such as Horgan and Silke had not been ready to cooperate with the EU. Striving to be policy relevant does not mean that one has to accept the validity of the term 'terrorism' or stop investigating the political interests behind it. Nor does it mean that each piece of research must have policy relevance or that one has to limit one's research to what is relevant for the state, since the 'critical turn' implies a move beyond state-centric perspectives. End-users could, and should, thus include both state and non-state actors such as the Foreign Office and the Muslim Council of Britain and Hizb ut-Tahrir; the zh these fragmented voices can converge, there are two further reasons for retaining the term 'terrorism'. One of the key tasks of a critically constituted field is to investigate the political usage of this term. For that reason alone, it should be retained as a central marker. But, even more compellingly, the term 'terrorism' is currently so dominant that a critically constituted field cannot afford to abandon it. Academia does not exist outside the power structures of its day. However problematic the term, it dominates public discourse and as such **needs to be engaged with, deconstructed and challenged, rather than abandoned and left to those who use it without problematization** or purely for political ends. Using the term also increases the currency and relevance of one's research in both funding and policy circles, as well as among the wider public. It is because of this particular constellation of power structures that a 'critical' field cannot afford, either morally or pragmatically, to abandon the term 'terrorism'. This leads to the twin problems of policy relevance and cultural sensitivity. A critically conceived field cannot afford to be policy irrelevant while remaining true to the 'emancipatory' agenda implicit in the term 'critical', nor can it be uncritically universalist without betraying its 'critical' commitment.

#### State institutions inevitable – our education is valuable teaches us to direct that opposition to those levers of power

Lawrence **Grossburg**, University of Illinois, We Gotta Get Outt a This Place, **1992**, p. 391-393

**The Left needs institutions which can operate within the systems of governance, understanding that such institutions are the mediating structures by which power is actively realized.** It is often **by directing opposition against specific institutions** that **power can be challenged.** The Left has assumed from some time now that, since it has so little access to the apparatuses of agency, its only alternative is to seek a public voice in the media through tactical protests. **The Left** does in fact need more visibility, but it also **needs greater access to the entire range of apparatuses of decision making and power**. Otherwise, the Left has nothing but its own self-righteousness. **It is not individuals who have produced** starvation and the other **social disgraces** of our world, **although it is individuals who must take responsibility for eliminating them. But to do so, they must act within organizations, and within the system of organizations which in fact have the capacity** (as well as the moral responsibility) **to fight them.** Without such organizations, the only models of political commit­ment are self-interest and charity. Charity suggests that we act on behalf of others who cannot act on their own behalf. But we are all precariously caught in the circuits of global capitalism, and every­one’s position is increasingly precarious and uncertain. It will not take much to change the position of any individual in the United States, as the experience of many of the homeless, the elderly and the “fallen” middle class demonstrates. Nor are there any guarantees about the future of any single nation. We can imagine ourselves involved in a politics where acting for another is always acting for oneself as well, a politics in which everyone struggles with the resources they have to make their lives (and the world) better, since the two are so intimately tied together! For example, we need to think of affirmation action as in everyone’s best interests, because of the possibilities it opens. We need to think with what Axelos has described as a “planetary thought” which “would be a coherent thought—but not a rationalizing and ‘rationalist’ inflection; it would be a fragmentary thought of the open totality—for what we can grasp are fragments unveiled on the horizon of the totality. Such a politics will not begin by distinguishing between the local and the global (and certainly not by valorizing one over the other) for the ways in which the former are incorporated into the latter preclude the luxury of such choices. **Resistance is always a local struggle, even when** (as in parts of the ecology movement) **it is imagined to connect into its global structures of articulation**: Think globally, act locally. Opposition is predicated precisely on locating the points of articulation between them, the points at which the global becomes local, and the local opens up onto the global. Since the meaning of these terms has to be understood in the context of any particular struggle, one is always acting both globally and locally: Think globally, act appropriately! Fight locally because that is the scene of action, but aim for the global because that is the scene of agency. “Local struggles directly target national and international axioms, at the precise point of their insertion into the field of imma­nence. This requires the imagination and construction of forms of unity, commonality and social agency which do not deny differences. Without such commonality, politics is too easily reduced to a ques­tion of individual rights (i.e., in the terms of classical utility theory); difference ends up “trumping” politics, bringing it to an end. The struggle against the disciplined mobilization of everyday life can only be built on affective commonalities, a shared “responsible yearning: a yearning out towards something more and something better than this and this place now.” The Left, after all, is defined by its common commitment to principles of justice, equality and democ­racy (although these might conflict) in economic, political and cultural life. It is based on the hope, perhaps even the illusion, that such things are possible. **The construction of an affective commonal­ity attempts to mobilize people in a common struggle, despite the fact that they have no common identity or character, recognizing that they are the only force capable of providing a new historical and oppositional agency. It strives to organize minorities into a new majority.**