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### Plan

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

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#### Current deference to the executive over detention policy has downed judicial independence

McCormack 8/20/13 (Wayne, E. W. Thode Professor of Law at the University of Utah S.J. Quinney College of Law, "U.S. Judicial Independence: Victim in the “War on Terror”," https://today.law.utah.edu/projects/u-s-judicial-independence-victim-in-the-war-on-terror/)

One of the principal victims in the U.S. so-called “war on terror” has been the independence of the U.S. Judiciary. Time and again, challenges to assertedly illegal conduct on the part of government officials have been turned aside, either because of overt deference to the Government or because of special doctrines such as state secrets and standing requirements. The judiciary has virtually relinquished its valuable role in the U.S. system of judicial review. In the face of governmental claims of crisis and national security needs, the courts have refused to examine, or have examined with undue deference, the actions of government officials.¶ The U.S. Government has taken the position that inquiry by the judiciary into a variety of actions would threaten the safety of the nation. This is pressure that amounts to intimidation. When this level of pressure is mounted to create exceptions to established rules of law, it undermines due process of law. Perhaps one or two examples of Government warnings about the consequences of a judicial decision would be within the domain of legal argument. But a long pattern of threats and intimidation to depart from established law undermines judicial independence. That has been the course of the U.S. “war on terror” for over a decade now.¶ Here are some of the governmental actions that have been challenged and a brief statement of how the Courts responded to Government demands for deference.¶ 1. Guantanamo.¶ In Boumediene v. Bush,1 the Supreme Court allowed the U.S. to detain alleged “terrorists” under unstated standards to be developed by the lower courts with “deference” to Executive determinations. The intimidation exerted on the Court was reflected in Justice Scalia’s injudicious comment that the Court’s decision would “surely cause more Americans to be killed.”¶ 2. Detention and Torture¶ Khalid El-Masri2 claimed that he was detained in CIA “black sites” and tortured – case dismissed under the doctrine of “state secrets privilege.” (SSP)¶ Maher Arar3 is a Canadian citizen who was detained at Kennedy Airport by U.S. authorities, shipped off to Syria for imprisonment and mistreatment, and finally released to Canadian authorities – case dismissed under “special factors” exception to tort actions for violations of law by federal officials – awarded $1 million by Canadian authorities.¶ Jose Padilla4 was arrested deplaning at O’Hare Airport, imprisoned in the U.S. for four years without a hearing and allegedly mistreated in prison – case dismissed on grounds of “good faith” immunity.¶ Binyam Mohamed5 was subjected to “enhanced interrogation techniques” at several CIA “black sites” before being repatriated to England, which awarded him £1 million in damages – U.S. suit dismissed under SSP.¶ 1 553 U.S. 723 (2008).¶ 2 El-Masri v. United States, 479 F.3d 296 (4th Cir. 2007).¶ 3 Arar v. Ashcroft, 414 F. Supp. 2d 250 (E.D.N.Y. 2005), aff’d by 585 F.3d 559 (2009).¶ 4 Padilla v. Yoo, 678 F.3d 748 (9th Cir. 2012).¶ 5 Mohamed v. Jeppesen Dataplan, 614 F.3d 1070 (9th Cir. en banc 2010) damages – U.S. suit dismissed under SSP.¶ 3. Unlawful Detentions¶ Abdullah Al-Kidd6 arrested as a material witness, held in various jails for two weeks, and then confined to house arrest for 15 months – suit dismissed on grounds of “qualified immunity” and apparent validity of material witness warrant.¶ Ali Al-Marri was originally charged with perjury, then detained as an enemy combatant, for a total detention of four years before the Fourth Circuit finally held that he must be released or tried.7¶ Javad Iqbal8 was detained on visa violations in New York following 9/11 and claimed he was subjected to mistreatment on the basis of ethnic profiling – suit dismissed on grounds that he could not prove Attorney General authorization of illegal practices and court’s unwillingness to divert attention of officials away from national security.¶ Osama Awadallah9 was taken into custody in Los Angeles after his name and phone number were found on a gum wrapper in the car of one of the 9/11 hijackers – charged with perjury before grand jury and held as material witness – Second Circuit reversed district court ruling on abuse of the material witness statute¶ 4. Unlawful Surveillance¶ Amnesty International10 is one of numerous organizations that brought suit believing that its communications, especially with foreign clients or correspondents had been monitored by the National Security Agency – suit dismissed because the secrecy of the NSA spying program made it impossible to prove that any particular person or group had been monitored. The validity of the entire Foreign Surveillance Act (FISA) rests on the “special needs” exception to the Fourth Amendment, a conclusion that was rejected by one district court although accepted by others.¶ 5. Targeted Killing¶ Anwar Al-Awlaki (or Aulaqi)11 was reported by press accounts as having been placed on a “kill list” by President Obama – suit by his father dismissed on grounds that Anwar himself could come forward and seek access to U.S. courts – not only Anwar but his son were then killed in separate drone strikes.¶ 6. Asset Forfeiture¶ 6 Al-Kidd v. Ashcroft, 580 F.3d 949, 951-52 (9th Cir. 2009).¶ 7Al-Marri v. Wright, 487 F.3d 160 (4th Cir. 2007).¶ 8 Ashcroft v. Iqbal, 129 S. Ct. 1937 (2009)¶ 9 United States v. Awadallah, 349 F.3d 42 (2d Cir. 2003); see also In re Grand Jury Material Witness Detention, 271 F. Supp. 2d 1266 (D. Or. 2003); In re Application of U.S. for a Material Witness Warrant, 213 F. Supp. 2d 287 (S.D. N.Y. 2002).¶ 10 Clapper v. Amnesty Int'l USA, 133 S. Ct. 1138 (2013).¶ 11 Al-Aulaqi v. Obama, 727 F. Supp. 2d 1 (D.D.C. 2010)¶ Both Al Haramain Islamic Foundation12 and KindHearts for Charitable Humanitarian Development13 have been found by the Department of Treasury to be fronts for raising money for Hamas, and their assets have been blocked – despite findings of due process violations by the lower courts, the blocking of assets has been upheld on the basis that their support for terrorist activities is public knowledge.¶ Avoiding Accountability¶ The “head in the sand” attitude of the U.S. judiciary in the past decade is a rather dismal record that does not fit the high standard for judicial independence on which the American public has come to rely. Many authors have discussed these cases from the perspective of civil rights and liberties of the individual. What I want to highlight is how undue deference to the Executive in “time of crisis” has undermined the independent role of the judiciary. Torture, executive detentions, illegal surveillance, and now killing of U.S. citizens, have all escaped judicial review under a variety of excuses.¶ To be clear, many of the people against whom these abuses have been levied are, or were, very dangerous if not evil individuals. Khalid Sheikh Muhamed and Anwar al-Aulaqi should not be allowed to roam free to kill innocent civilians. But hundreds of years of history show that there are ways of dealing with such people within the limits of restrained government without resort to the hubris and indignity of unreviewed executive discretion. The turning of blind eyes by many, albeit not all, federal judges is a chapter of this history that will weigh heavily against us in the future.¶ No judge wants to feel responsible for the deaths of innocents. But moral responsibility for death is with those who contribute to the act. Meanwhile the judge has a moral responsibility for abuses by government of which the judiciary is a part. ¶

**In the status quo, the courts are ceding their responsibility to check executive abuses of individual rights**

**CJA et al 3** ("Brief of the Center for Justice and Accountability, International League for Human Rights, and Individual Advocates for the Independence of the Judiciary in Emerging Democracies," October, Odah vs. USA and Rasul vs. Bush, <http://jenner.com/system/assets/assets/5567/original/AmiciCuriae_Center_for_Justice_Int_League_Human_Rights_Adv_For_Indep_Judiciary2.pdf?1323207521>)

For more than two hundred years, this Court has stood as a bulwark against unilateral action by the executive. In so doing, this Court has fulfilled its constitutional obligations. Still more, this Court has helped to make the United States a model for emerging democracies seeking to secure fundamental rights from encroachment by unchecked executive power. This case threatens to break that fundamental line of defense against the tyranny of executive power. The executive claims that it can put its actions beyond the reach of the judiciary by holding people in the United States Naval Base at Guantánamo Bay, Cuba. This effort to place itself outside judicial control is fundamentally inconsistent with the structure of the U.S. government. The Constitution divides federal power among three co-equal branches, and no branch has the power to eliminate, unilaterally, the power of the others to review and, if necessary, correct its actions. Although this Court has at times deferred to the decisions of the executive and legislature when they act together, it has never abdicated its constitutional obligation to review the unilateral actions of either the executive or the legislature. Domestically, this case therefore represents an important test of this country’s commitment to the independence of the judiciary. This is chiefly, but not solely, a domestic concern. People around the world have long noted that the United States’ experiment with a tripartite government and an independent judiciary has, with some notable and regretted missteps, 7 succeeded in living up to the ideals expressed in its Constitution. They have noted that the federal judiciary, specifically this Court, has managed to guarantee civil liberties even in times of strife. This success has made the U.S. system a model for countries around the world, particularly countries seeking to construct a civil society after decades of tyranny and oppression. However, these attempts to construct civil societies are consistently under assault. And as in this case, often the lead argument for dismantling such systems is national security. Indeed, some would-be democracies already have begun to justify prolonged detentions without judicial review on the basis of the detentions at Guantánamo Bay. Amici urge this Court to exercise jurisdiction over the claims asserted by the detainees at Guantánamo Bay not only because it is the only result consistent with more than two hundred years of legal precedent in this country, but also because the people of countries around the world look to the United States to uphold the ideals so elegantly reflected in its Constitution. When the United States fails to live up to these ideals, the cause of individual rights is diminished not just here but everywhere. ARGUMENT I. A GOVERNMENT WITH CHECKS AND BALANCES IS ESSENTIAL TO SAFEGUARDING INDIVIDUAL FREEDOMS. A. For More Than 200 Years The United States Has Recognized That A Strong, Independent Judiciary Is Essential To The Preservation Of Individual Liberties. The United States was founded on the ideal that a tripartite system of government was essential to the preservation of freedom. Giving life to the political theories of such philosophers as Locke and Montesquieu, the Framers determined that freedom could only be assured if each branch of the government served as a check on the other. See Bernard Bailyn, The Ideological Origins of the American Revolution 26-30, 323 (1992); Gordon S. Wood, The Creation 8 Of The American Republic 1776-1787, 150-52 (1993). According to Montesquieu, there can be no liberty “if the power of judging is not separate from legislative power and from executive power . . . . If it were joined to executive power, the judge could have the force of an oppressor.” Montesquieu, The Spirit of the Laws 157 (1748) (Anne Cohler, et al., eds., Cambridge Univ. Press (1989)). Echoing Montesquieu, the Framers proclaimed that “The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny.” The Federalist No. 47 (James Madison); see also Bowsher v. Synar, 478 U.S. 714, 722 (1986) (“Even a cursory examination of the Constitution reveals the influence of Montesquieu’s thesis that checks and balances were the foundation of a structure of government that would protect liberty.”). In this balance, the judiciary, no less than any other branch, ensures that the government of the United States does not, in one fell swoop or by increments, become tyrannical. While the U.S. system of government necessarily contemplates a series of checks and balances, the Framers and this Court recognized that those checks are a dead letter unless exercised. “The hydraulic pressure inherent within each of the separate Branches to exceed the outer limits of its power, even to accomplish desirable objectives, must be resisted.” I.N.S. v. Chadha, 462 U.S. 919, 951 (1983). While these checks and balances must certainly be exercised in times of peace, they become all the more crucial in times of crisis. The Constitution is not a fair weather document. Its provisions do not allow either the executive or the legislative branches to dismantle it for convenience whatever the threat. "[T]he existence of inherent powers ex necessitate to meet an emergency . . . is something the forefathers omitted. \* \* \* Aside from suspension of the privilege of the writ of habeas corpus in time of rebellion or invasion . . . they made no express provision for exercise of extraordinary authority because of a crisis." Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 649-50 (1952) (Jackson, J., concurring). This is so because whatever the perceived threat, at all 9 times “[t]he declared purpose of separating and dividing the powers of government [is] . . . to ‘diffus[e] power the better to secure liberty,’” Bowsher, 478 U.S. at 721-22. To allow anything less would upset the very nature of the U.S. system of government and threaten individual rights. See Ex parte Milligan, 71 U.S. (4 Wall.) 2, 125 (1866) (the Framers “knew . . . the nation they were founding . . . would be involved in war . . . and that unlimited power, wherever lodged at such a time, was especially hazardous to freemen”). B. Much of the World Has Followed The United States’ Lead. In the two and a half centuries since the Framers advocated for the importance of independent judicial review in preventing oppression and tyranny by an unchecked executive, history has proven them right. First, as discussed in Section II, infra, the example of the United States itself has demonstrated that this safeguard works. Second, as discussed in Section III, infra, the international conventions adopted by the United Nations and other intergovernmental organizations reflect the nearly universal, if often only aspirational, recognition of these principles by the global community. Finally, as discussed in Section IV, infra, the profoundly high regard with which these principles are held has been most dramatically demonstrated by the efforts and sacrifices of those struggling to establish their emerging democracies as stable, free and just countries within the community of nations. Thus, the United States’ heritage of a judiciary empowered to check executive power has become more than a national hallmark. It has become a fundamental element of modern governments seeking to ensure individual freedoms. Just as the people of the United States have recognized that a strong judiciary is essential to individual freedoms, so too have the peoples of other nations around the world. 10 II. IN THE UNITED STATES, THIS COURT HAS ALWAYS EXERCISED JURISDICTION TO ENSURE THAT THE EXECUTIVE’S AUTHORITY TO DEPRIVE INDIVIDUAL RIGHTS IS CHECKED. Consistent with its role in this system of government, this Court has always protected its role as the final arbiter of the propriety of executive actions. See Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803). At the most basic level, the executive cannot unilaterally determine the scope of this Court's jurisdiction. See United States v. Nixon, 418 U.S. 683 (1974) (Supreme Court has power to review President's claim of absolute privilege); see also Bartlett v. Bowen, 816 F.2d 695 (D.C. Cir. 1987) (sovereign immunity doctrine does not permit Congress to preclude judicial review of congressional acts). Even acting together with Congress, the executive cannot usurp the power of the Supreme Court to review the constitutionality of its acts. Chadha, 462 U.S. at 941-42. This is as true when we are at war as when we are peace. See, e.g., Youngstown, 343 U.S. 579. Although this Court recognizes that the executive has broad authority to prosecute war and maintain national security, see, e.g., Ex parte Quirin, 317 U.S. 1, 10 (1942), this Court has made clear that these powers have judicially circumscribed limits. "[W]hat are the allowable limits of military discretion, and whether or not they have been overstepped in a particular case, are judicial questions." Sterling v. Constantin, 287 U.S. 378, 401 (1932) (emphasis added); see also Duncan v. Kahanamoku, 327 U.S. 304, 321 n.18 (1946) (despite a declaration of "martial law" in the Territory of Hawaii after Japan attacked Pearl Harbor, Hawaiian inhabitants were fully entitled to constitutional protection during trial by military tribunals). As it had in Kahanamoku, this Court curtailed executive action during the Korean conflict. Fearing that an imminent general strike in the steel industry threatened national security, President Truman directed the Secretary of Commerce to seize the steel mills. This Court enjoined the seizure on the grounds that the President did not possess authority under the "war power" to order that an industry be nationalized. See Youngstown, 343 U.S. 579. Questions about the scope of unchecked executive power 11 often arise when the executive insists that it can hold an individual indefinitely without trial, and particularly when the detained invokes the writ of habeas corpus. This Court traditionally has exercised jurisdiction over such challenges, recognizing the writ as a critical tool for checking the abuse of power by the executive. I.N.S. v. St. Cyr, 533 U.S. 289, 302 (2001) (“At its historical core, the writ of habeas corpus has served as a means of reviewing the legality of Executive detention, and it is in that context that its protections have been strongest.”); Brown v. Allen, 344 U.S. 443, 533 (1955) (Jackson, J., concurring in result) (“The historic purpose of the writ has been to relieve detention by executive authorities without judicial trial.”); cf. The Federalist No. 84 (Alexander Hamilton) (“[T]he practice of arbitrary imprisonments [has] been, in all ages, the favorite and most formidable instrument[] of tyranny.”). Moreover, this Court, notwithstanding the Suspension Clause (U.S. Const. Art. I, § 9, cl. 2), has put limits on the power of the political branches, even when acting together, to suspend the writ. The writ, according to this Court, cannot be suspended at the whim of either the executive or the legislative branch. Rather, this Court has held, even in a time of declared war or martial law, the writ may only be suspended when the courts are closed or when they cannot properly exercise the full limit of their jurisdiction. Milligan, 71 U.S. at 127. See also St. Cyr, 555 U.S. at 303-14 (Congress’ attempt to prevent review by writ of habeas corpus of detention decision in immigration case did not foreclose review of legality of decision to detain). To be sure, this Court often defers to the executive’s decision to deprive people of their liberty, particularly where the executive is simply implementing a Congressional directive. But this Court has not abdicated the power to review executive action. Rather, this Court chooses not to second-guess the executive’s decision after satisfying itself that the executive has indeed acted constitutionally and within the scope of legislative authorization. See, e.g., United States v. Curtiss-Wright Export Corp., 299 U.S. 304 (1936) (reviewing decision of executive branch to criminalize action to determine if authorized by joint resolution of Congress); Hirabayashi v. United States, 320 U.S. 81, 93 (1943) (noting 12 that when Congress and the President act together in matters concerning war "it is not for any court to sit in review of the wisdom of their action or substitute its judgment for theirs"); see also Korematsu v. United States, 323 U.S. 214, 217-18 (1945) ("[W]e are unable to conclude that it was beyond the war power of Congress and the Executive to exclude those of Japanese ancestry from the West Coast war area . . . . The military authorities . . . ordered exclusion . . . in accordance with Congressional authority to the military to say who should, and who should not, remain in the threatened areas." (emphasis added)). This Court has asserted its jurisdiction and protected the writ even where the executive simply detains people not admitted to enter the United States, a sphere in which this Court has concluded the political branches act with plenary power. In Shaughnessy v. United States ex rel. Mezei, 345 U.S. 206 (1953), for example, this Court concluded that Mr. Mezei, a noncitizen seeking to enter the United States, was not entitled to full constitutional protections. In deciding not to overturn the executive’s decision to exclude and detain Mr. Mezei or even require the executive to disclose its reasons for doing so, this Court did not deny Mr. Mezei the right to challenge his detention through a writ of habeas corpus. Mezei, 345 U.S. at 213 (“Concededly, his movements are restrained by authority of the United States, and he may by habeas corpus test the validity of his exclusion.”). Rather, after implicitly determining that it had jurisdiction, this Court found that the legislature had expressly authorized the executive to do what it had done, noting that the “Attorney General may lawfully exclude [Mr. Mezei] without a hearing as authorized by the emergency regulations promulgated pursuant to the Passport Act.” Id. at 214-15 (emphasis added). See also Zadvydas v. Davis, 533 U.S. 678, 688 (2001) (exercising review because, while the legislature had empowered the executive with some discretion, “[t]he aliens here . . . do not seek review of the Attorney General’s exercise of discretion; rather, they challenge the extent of the Attorney General’s authority . . . and the extent of that authority is not a matter of discretion”); cf. United States ex rel. Knauff v. Shaughnessy, 338 U.S. 537, 544 (1950) (“Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned.”). 13 Similarly, in Ex parte Quirin, this Court reviewed the executive’s decision to detain the defendants — enemy aliens — and, before refusing to grant the requested writ of habeas corpus, determined that the procedures and rights afforded were those provided by the legislative branch. Referring to the Articles of War enacted by Congress, 10 U.S.C. §§ 1471 to 1593, which specifically provided for trial by military courts, this Court determined that the executive was acting pursuant to his powers as Commander in Chief but also “[b]y his Order creating the present Commission . . . has undertaken to exercise the authority conferred upon him by Congress . . . .” 317 U.S. at 28. In Johnson v. Eisentrager, 339 U.S. 763 (1950), this Court did not abdicate to the executive the power of judicial review that it has guarded since Marbury v. Madison. Although it found that the Eisentrager defendants could not seek habeas relief, this Court only reached that conclusion after noting that the defendants were provided the process specifically prescribed by the legislative branch. Id. at 777 (defendants were tried by Military Commissions). In other words, this Court did not deny the Eisentrager defendants a right to review without considering that the defendants were tried by “military tribunals under . . . [the] Articles of War.” Id. at 797 (Black, J., dissenting). And, as this Court took great pains in Ex parte Quirin to note, both the military tribunals and the Articles of War were the result of legislative enactments that provided the executive the authority to use them as it did and set forth the procedures due. 317 U.S. at 25-29. Eisentrager, therefore, does not stand for the proposition that the executive is entitled on its own to detain and then determine the process, if any, it considers appropriate. Rather, it stands for the proposition that this Court will not review executive action properly delegated by Congress pursuant to its authority to, among other things, “declare War . . . and make Rules concerning Captures on Land and Water.” U.S. Const. Art. I, § 8, cl. 10. Thus, by its own terms, Eisentrager does not apply here. In both Eisentrager and Ex Parte Quirin, the executive detained prisoners and held military tribunals pursuant to Articles of War that were enacted by Congress. By contrast, here, the executive is acting alone, without authorization from 14 Congress.2 The legislative branch did not grant the executive the power to hold the Guantánamo detainees without any process or judicial review. This Court, therefore, has authority to review these detentions.3

#### Rasul v. Bush didn’t go far enough to protect habeas corpus and end torture of detainees

Greenberg 7 (American historian, professor, and author. She is Director of the Center on National Security at Fordham University's School of Law, In These Times, “8 Reasons to Close Guantanamo Now” February 12, http://inthesetimes.com/article/3024/8\_reasons\_to\_close\_guantamo\_now)

#1 It is a legal no-man’s-land Guantánamo Bay Naval Base was established as a coaling and naval station under U.S. control in 1903. It has no civilian legal authority (you can’t get a marriage license there, and you can’t be arraigned) and U.S. military authority is limited. According to the Department of Justice, the prison is not indisputably U.S. territory, nor does it necessarily fall under the jurisdiction of any foreign entity. According to the Church Report–an official investigation of Guantánamo prepared by Vice Admiral Albert T. Church III, a former navy inspector general for the Armed Services Committee–Guantánamo’s uncertain legal footing may have been a fundamental reason the administration decided to use the facility to interrogate al-Qaeda and Taliban fighters. “Perhaps most importantly,” the report states, “GTMO was considered a place where [other] benefits could be realized without the detainees having the opportunity to contest their detention in the U.S. courts.” According to Northwestern University Professor Joseph Margulies, the administration’s legal position rests on “the remarkable claim that the prisoners have no rights because they are foreign nationals detained outside the sovereign territory of the United States.” In 2004, in Rasul v. Bush, the Supreme Court ruled that U.S. courts have jurisdiction in hearing habeas corpus petitions from Guantánamo. Yet through a series of laws and military rulings, the administration has continued to argue that the prisoners do not have the right to contest their detention in a U.S. court. #2 It violates the Geneva Conventions Guantánamo is a prisoner-of-war camp that is not labeled as such. From the beginning, the administration took the legal position that the captives brought to Cuba were not prisoners of war, but fell into the vague, newly created legal category of “enemy combatants.” But according to the International Committee of the Red Cross Commentary to the conventions, no such intermediate ground between civilians and prisoners of war exists: “Every person in enemy hands must have some status under international law: he is either a prisoner of war and, as such, covered by the Third Convention, a civilian covered by the Fourth Convention, [or] a member of the medical personnel of the armed forces who is covered by the First Convention. There is no intermediate status; nobody in enemy hands can fall outside the law.” As the camp was being built, military personnel I interviewed said they knew not to use the words “prison-camp,” or “prison.” Why? Under the Geneva Conventions, a prisoner cannot be interrogated, punished, or forced to answer questions beyond rank, name and serial number. #3 Prisoners are degraded and abused Abusive treatment of Guantánamo detainees has been documented in lawyers’ notes, FBI memos, statements from released detainees and court affidavits submitted by attorneys representing detainees. Jumah Al Dossari, a Bahraini detainee who has been incarcerated at Gitmo for five years, wrote to his lawyer, “At Guantánamo, soldiers have assaulted me, placed me in solitary confinement, threatened to kill me, threatened to kill my daughter, and told me I will stay in Cuba for the rest of my life. They have deprived me of sleep, forced me to listen to extremely loud music and shined intense lights in my face. They have placed me in cold rooms for hours without food, drink or the ability to go to the bathroom or wash for prayers. They have wrapped me in the Israeli flag and told me there is a holy war between the Cross and the Star of David on the one hand and the Crescent on the other. They have beaten me unconscious.” All of what he describes is illegal for the 194 countries that have ratified the Geneva Conventions–of which the United States is one–as well as those that have ratified the Convention Against Torture (which the United States has signed, with reservations). #4 Prisoners have no way to prove their innocence Under the Constitution, every prisoner in U.S. custody has the right to legal representation and to due process, i.e. a trial (habeus corpus). Yet the detainees at Guantánamo, though afforded Combatant Status Review Tribunals, cannot have their own counsel at those hearings and have no meaningful way of contesting evidence, some of which is secret. To date, not one individual among the nearly 800 incarcerated at Guantánamo has been charged with a crime recognized under either U.S. or international law. Moreover, the Military Commissions Act (MCA) of 2006 is the latest attempt to strip captives of their right to argue their appeals in U.S. courts. MCA is currently being challenged in two cases–al Odah v. United States of America and Boumediene v. Bush. Briefs in these cases argue that the Act is unconstitutional and that the retroactive suspension of the detainees’ right of habeas corpus does not apply to pending cases. These briefs focus on the Constitution’s Writ of Habeus Corpus, which states that such rights shall only be revoked at times of rebellion or invasion.

#### Indefinite detention is torture and causes severe mental and physical anguish, in addition to violating the Convention against Torture

The Hill 13 (July 27, Curt Goering “End Indefinite Detention Now” http://thehill.com/blogs/congress-blog/homeland-security/313761-end-indefinite-detention-now)  
In written testimony, the Center for Victims of Torture (CVT) addressed the human rights implications of indefinite detention of prisoners held at Guantanamo. The continued indefinite detention of individuals at Guantanamo – some of whom have been held over 11 years without being charged or tried – is inconsistent with U.S. treaty obligations and constitutional principles. Indefinite detention is an unlawful practice that rises to the level of cruel, inhuman and degrading [treatment](http://thehill.com/blogs/congress-blog/homeland-security/313761-end-indefinite-detention-now) 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](http://thehill.com/blogs/congress-blog/homeland-security/313761-end-indefinite-detention-now); 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.

#### Detainee abuse continues in spite of the supposed changes in Obama’s stance towards torture compared to that of Bush

Glaser 13 (John, Editor at Antiwar.com, Published at the American Conservative Magazine, The Daily Caller and Truthout, “Obama Indefinitely Detains, Not Just at Gitmo”, 8/5, http://antiwar.com/blog/2013/08/05/obama-indefinitely-detains-not-just-at-gitmo/)

The debate about Gitmo hasn’t changed since the early years of the Bush administration. Despite it’s public pronouncements, the Obama administration seems to have settled on keeping the detention center open and upholding indefinite detention as a staple of the war on terror. But Gitmo isn’t the only issue here. The U.S.-controlled prison at Bagram airbase in Afghanistan is nicknamed, according to The Washington Post, “The Second Guantanamo.” The United States holds 67 non-Afghan prisoners there, including some described as hardened al-Qaeda operatives seized from around the world in the months after the Sept. 11, 2001, attacks. More than a decade later, they’re still kept in the shadowy facility at Bagram air base outside Kabul. In a 2011 interview, an attorney for Human Rights First Daphne Eviatar told CBS of Bagram: “It’s worse than Guantanamo, because there are fewer rights.” Last year, the U.S. gave in to demands from Afghan President Hamid Karzai to give full control of the approximately 3,000 inmates in Bagram detention center to the Afghan government as part of the transition to withdraw most U.S. troops from the country in 2014. The Obama administration ended up quibbling over a small portion of the detainees, insisting on continued U.S. control. Many of the detainess kept there by the U.S. have not been charged or tried, and many have been severely abused. In 2012, an Afghan investigative commission accused the American military of abusing detainees in the Bagram prison facilities, prompting Karzai’s push on the issue. “Contrary to the Obama administration’s stated goals of increasing Afghan sovereignty and strengthening the rule of law in Afghanistan,” said Tina M. Foster, Executive Director of the International Justice Network, “this aspect of the transition will leave a dangerous legacy of unchecked and limitless power in the hands of whoever takes control of the country long after coalition forces have withdrawn.” “The power to detain perceived enemies of the state indefinitely and without trial will not only lead to more arbitrary arrests and human rights abuses,” Foster added, “but will continue to fuel the insurgency for years to come – it is a great victory for the Taliban and a great loss for the Afghan people.” In 2008, the Supreme Court ruled that denying the right of habeas corpus to Gitmo detainees was unconstitutional. In response, the U.S. government provided not actual trials but habeas corpus review. Despite many detainees being cleared for release in this process, Obama still insists on caging them. Now, scores of inmates are starving themselves in protest of their mistreatment, only to be force-fed by guards, which is a form of torture. This sorry existence probably pales in comparison to that endured by detainees in U.S. custody in Bagram. Somehow, we hardly hear anything about the Obama administration’s policies in The Second Guantanamo.

#### Judicial Review is key to preventing torture

**Amnesty International** USA, Guantanamo, and Beyond: The Continuing Pursuit of Unchecked Executive Power, May 13, 20**05**, http://web.amnesty.org/library/Index/ENGAMR510632005

Judicial review of the lawfulness of detentions is a fundamental safeguard against arbitrary detention, torture and ill-treatment, and "disappearance". Unsurprisingly, then, with the US courts having been kept out of reviewing the cases for more than three years, there is evidence that all these categories of abuse have occurred at the hands of US authorities in the "war on terror". Indeed, Amnesty International believes that abuses have been the result of official policies and policy failures and linked to the executive decision to leave detainees unprotected by not only the courts, but also by the prohibition on torture and other cruel, inhuman or degrading treatment as defined under international humanitarian and human rights treaties binding on the USA. The US administration still does not believe itself legally bound by the Geneva Conventions in relation to the detainees in Guantánamo, Afghanistan and in secret locations, by customary international law, or by the human rights treaty prohibition on the use of cruel, inhuman or degrading treatment in the case of foreign detainees in US custody held outside of US sovereign territory. Nor has it expressly abandoned the notion that the President may in times of war ignore all the USA’s international legal obligations and order torture, or that torturers may be exempted from criminal liability by entering a plea of "necessity" or "self-defence" (see below).

#### Torture is a deontological evil that must be rejected

**Gross,** (Oren, Professor, Law, University of Minnesota, MINNESOTA LAW REVIEW, June 20**04**, p. 1492-1493.

Absolutists - those who believe that an unconditional ban on torture ought to apply without exception regardless of circumstances - often base their position on deontological grounds. For adherents of the absolutist view of morality, torture is intrinsically wrong. It violates the physical and mental integrity of the person subjected to it, negates her autonomy, and deprives her of human dignity. It reduces her to a mere object, a body from which information is to be extracted; it coerces her to act in a manner that may be contrary to her most fundamental beliefs, values, and interests, depriving her of any choice and controlling her voice. Torture is also wrong because of its depraving and corrupting effects on individual torturers and society at large. Moreover, torture is an evil that can never be justified or excused. Under no circumstances should the resort to torture be morally acceptable or legally permissible. It is a reprehensible action whose wrongfulness may never be assuaged or rectified morally even if the consequences of taking such action in any particular case are deemed to be, on the whole, good. Indeed, one may argue that the inherent wrongfulness of torture and possible good consequences are incommensurable, i.e., they cannot be measured by any common currency and therefore cannot be compared, or balanced, one against the other. The conclusion drawn from such a claim is that "the wrong of torture can be taken as a trump or side constraint on welfare maximization in all possible cases."

**Torture dehumanizes victim and torturer alike – it robs humanity of dignity and conditions us to accept violence. 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. The perspective of the oppressed should be addressed.**

**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).

#### I am Tucker Boyce, and I would like to acknowledge my privilege inside and outside the debate space – I grew up in a safe suburban community that was isolated from many real-world harms that happen to people in communities every day. I haven’t had to worry about basic necessities like having a home and food.

#### As a white male I have been given opportunities and gone to institutions where I have been given not only advantages in terms of resources to travel to debate tournaments, but also in general to get an education at a state university.

#### I’m also privileged enough not to experience the harms of indefinite detention – I’ve never been arrested let alone detained indefinitely like those in Guantanamo. Jumah Al Dossari wrote on his experience at Gitmo in our Greenburg evidence, detailed assault by soldiers, the pains of solitary confinement, and threats to family and friends.

#### Debating the state isn’t capitulation – discussing government policy creates understanding that facilitates resistance

Donovan and Larkin 6 (Clair and Phil, Australian National University, Politics, 26(1))

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

#### 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 Outta 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.**

#### Ethical policymaking requires calculation of our impacts

Nikolas Gvosdev 5 (Nikolas, Exec Editor of The National Interest, The Value(s) of Realism, SAIS Review 25.1, Muse)  
As the name implies, realists focus on promoting policies that are achievable and sustainable. In turn, the morality of a foreign policy action is judged by its results, not by the intentions of its framers. A foreign policymaker must weigh the consequences of any course of action and assess the resources at hand to carry out the proposed task. As Lippmann warned, Without the controlling principle that the nation must maintain its objectives and its power in equilibrium, its purposes within its means and its means equal to its purposes, its commitments related to its resources and its resources adequate to its commitments, it is impossible to think at all about foreign affairs.8 Commenting on this maxim, Owen Harries, founding editor of The National Interest, noted, "This is a truth of which Americans—more apt to focus on ends rather than means when it comes to dealing with the rest of the world—need always to be reminded."9 In fact, Morgenthau noted that "there can be no political morality without prudence."10 This virtue of prudence—which Morgenthau identified as the cornerstone of realism—should not be confused with expediency. Rather, it takes as its starting point that it is more moral to fulfill one's commitments than to make "empty" promises, and to seek solutions that minimize harm and produce sustainable results. Morgenthau concluded: [End Page 18] Political realism does not require, nor does it condone, indifference to political ideals and moral principles, but it requires indeed a sharp distinction between the desirable and the possible, between what is desirable everywhere and at all times and what is possible under the concrete circumstances of time and place.11 This is why, prior to the outbreak of fighting in the former Yugoslavia, U.S. and European realists urged that Bosnia be decentralized and partitioned into ethnically based cantons as a way to head off a destructive civil war. Realists felt this would be the best course of action, especially after the country's first free and fair elections had brought nationalist candidates to power at the expense of those calling for inter-ethnic cooperation. They had concluded—correctly, as it turned out—that the United States and Western Europe would be unwilling to invest the blood and treasure that would be required to craft a unitary Bosnian state and give it the wherewithal to function. Indeed, at a diplomatic conference in Lisbon in March 1992, the various factions in Bosnia had, reluctantly, endorsed the broad outlines of such a settlement. For the purveyors of moralpolitik, this was unacceptable. After all, for this plan to work, populations on the "wrong side" of the line would have to be transferred and resettled. Such a plan struck directly at the heart of the concept of multi-ethnicity—that different ethnic and religious groups could find a common political identity and work in common institutions. When the United States signaled it would not accept such a settlement, the fragile consensus collapsed. The United States, of course, cannot be held responsible for the war; this lies squarely on the shoulders of Bosnia's political leaders. Yet Washington fell victim to what Jonathan Clarke called "faux Wilsonianism," the belief that "high-flown words matter more than rational calculation" in formulating effective policy, which led U.S. policymakers to dispense with the equation of "balancing commitments and resources."12 Indeed, as he notes, the Clinton administration had criticized peace plans calling for decentralized partition in Bosnia "with lofty rhetoric without proposing a practical alternative." The subsequent war led to the deaths of tens of thousands and left more than a million people homeless. After three years of war, the Dayton Accords—hailed as a triumph of American diplomacy—created a complicated arrangement by which the federal union of two ethnic units, the Muslim-Croat Federation, was itself federated to a Bosnian Serb republic. Today, Bosnia requires thousands of foreign troops to patrol its internal borders and billions of dollars in foreign aid to keep its government and economy functioning. Was the aim of U.S. policymakers, academics and journalists—creating a multi-ethnic democracy in Bosnia—not worth pursuing? No, not at all, and this is not what the argument suggests. But aspirations were not matched with capabilities. As a result of holding out for the "most moral" outcome and encouraging the Muslim-led government in Sarajevo to pursue maximalist aims rather than finding a workable compromise that could have avoided bloodshed and produced more stable conditions, the peoples of Bosnia suffered greatly. In the end, the final settlement was very close [End Page 19] to the one that realists had initially proposed—and the one that had also been roundly condemned on moral grounds.

#### Violence is proximately caused – root cause logic is poor scholarship

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(Matthew and Geoff, Žižek and Politics: An Introduction, p. 231 – 233)

We realise that this argument, which we propose as a new ‘quilting’ framework to explain Žižek’s theoretical oscillations and political prescriptions, raises some large issues of its own. While this is not the place to further that discussion, we think its analytic force leads into a much wider critique of ‘Theory’ in parts of the latertwentieth- century academy, which emerged following the ‘cultural turn’ of the 1960s and 1970s in the wake of the collapse of Marxism. Žižek’s paradigm to try to generate all his theory of culture, subjectivity, ideology, politics and religion is psychoanalysis. But a similar criticism would apply, for instance, to theorists who feel that the method Jacques Derrida developed for criticising philosophical texts can meaningfully supplant the methodologies of political science, philosophy, economics, sociology and so forth, when it comes to thinking about ‘the political’. Or, differently, thinkers who opt for Deleuze (or Deleuze’s and Guattari’s) Nietzschean Spinozism as a new metaphysics to explain ethics, politics, aesthetics, ontology and so forth, seem to us candidates for the same type of criticism, as a reductive passing over the empirical and analytic distinctness of the different object fields in complex societies. In truth, we feel that Theory, and the continuing line of ‘master thinkers’ who regularly appear particularly in the English- speaking world, is the last gasp of what used to be called First Philosophy. The philosopher ascends out of the city, Plato tells us, from whence she can espie the Higher Truth, which she must then bring back down to political earth. From outside the city, we can well imagine that she can see much more widely than her benighted political contemporaries. But from these philosophical heights, we can equally suspect that the ‘master thinker’ is also always in danger of passing over the salient differences and features of political life – differences only too evident to people ‘on the ground’. Political life, after all, is always a more complex affair than a bunch of ideologically duped fools staring at and enacting a wall (or ‘politically correct screen’) of ideologically produced illusions, from Plato’s timeless cave allegory to Žižek’s theory of ideology. We know that Theory largely understands itself as avowedly ‘post- metaphysical’. It aims to erect its new claims on the gravestone of First Philosophy as the West has known it. But it also tells us that people very often do not know what they do. And so it seems to us that too many of its proponents and their followers are mourners who remain in the graveyard, propping up the gravestone of Western philosophy under the sign of some totalising account of absolutely everything – enjoyment, différance, biopower . . . Perhaps the time has come, we would argue, less for one more would- be global, allpurpose existential and political Theory than for a multi- dimensional and interdisciplinary critical theory that would challenge the chaotic specialisation neoliberalism speeds up in academe, which mirrors and accelerates the splintering of the Left over the last four decades. This would mean that we would have to shun the hope that one method, one perspective, or one master thinker could single- handedly decipher all the complexity of socio- political life, the concerns of really existing social movements – which specifi cally does not mean mindlessly celebrating difference, marginalisation and multiplicity as if they could be suffi cient ends for a new politics. It would be to reopen critical theory and non- analytic philosophy to the other intellectual disciplines, most of whom today pointedly reject Theory’s legitimacy, neither reading it nor taking it seriously.

#### 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.

#### Broad indicts of epistemology don’t take out our impacts – you should weigh specific evidence to get closer to the truth

Kratochwil, professor of international relations – European University Institute, ‘8

(Friedrich, “The Puzzles of Politics,” pg. 200-213)

In what follows, I claim that the shift in focus from “demonstration” to science as practice provides strong prima facie reasons to choose pragmatic rather than traditional epistemological criteria in social analysis.¶ Irrespective of its various forms, the epistemological project includes an argument that all warranted knowledge has to satisfy certain field- independent criteria that are specified by philosophy (a “theory of know- ledge”). The real issue of how our concepts and the world relate to each other, and on which non-idiosyncratic grounds we are justified to hold on to our beliefs about the world, is “answered” by two metaphors. The first is that of an inconvertible ground, be it the nature of things, certain intuitions (Des- cartes’ “clear and distinct ideas”) or methods and inferences; the second is that of a “mirror” that shows what is the case.¶ There is no need to rehearse the arguments demonstrating that these under- lying beliefs and metaphors could not sustain the weight placed upon them. A “method” à la Descartes could not make good on its claims, as it depended ultimately on the guarantee of God that concepts and things in the outer world match. On the other hand, the empiricist belief in direct observation forgot that “facts” which become “data” are – as the term suggests – “made”. They are based on the judgements of the observer using cultural criteria, even if they appear to be based on direct perception, as is the case with colours.4¶ Besides, there had always been a sneaking suspicion that the epistemo- logical ideal of certainty and rigour did not quite fit the social world, an objection voiced first by humanists such as Vico, and later rehearsed in the continuing controversies about erklären and verstehen (Weber 1991; for a more recent treatment see Hollis 1994). In short, both the constitutive nature of our concepts, and the value interest in which they are embedded, raise peculiar issues of meaning and contestation that are quite different from those of description. As Vico (1947) suggested, we “understand” the social world because we have “made it”, a point raised again by Searle concerning both the crucial role played by ascriptions of meaning (x counts for y) in the social world and the distinction between institutional “facts” from “brute” or natural facts (Searle 1995). Similarly, since values are constitutive for our “interests”, the concepts we use always portray an action from a certain point of view; this involves appraisals and prevents us from accepting allegedly “neutral” descriptions that would be meaningless. Thus, when we say that someone “abandoned” another person and hence communicate a (contestable) appraisal, we want to call attention to certain important moral implica- tions of an act. Attempting to eliminate the value-tinge in the description and insisting that everything has to be cast in neutral, “objective”, observational language – such as “he opened the door and went through it” – would indeed make the statement “pointless”, even if it is (trivially) “true” (for a powerful statement of this point, see Connolly 1983).¶ The most devastating attack on the epistemological project, however, came from the history of science itself. It not only corrected the naive view of knowledge generation as mere accumulation of data, but it also cast increasing doubt on the viability of various field-independent “demarcation criteria”. This was, for the most part, derived from the old Humean argument that only sentences with empirical content were “meaningful”, while value statements had to be taken either as statements about individual preferences or as meaningless, since de gustibus non est disputandum. As the later dis- cussion in the Vienna circle showed, this distinction was utterly unhelpful (Popper 1965: ch. 2). It did not solve the problem of induction, and failed to acknowledge that not all meaningful theoretical sentences must correspond with natural facts.¶ Karl Popper’s ingenious solution of making “refutability” the logical cri- terion and interpreting empirical “tests” as a special mode of deduction (rather than as a way of increasing supporting evidence) seemed to respond to this epistemological quandary for a while. An “historical reconstruction” of science as a progressive development thus seemed possible, as did the specification of a pragmatic criterion for conducting research.¶ Yet again, studies in the history of science undermined both hopes. The different stages in Popper’s own intellectual development are, in fact, rather telling. He started out with a version of conjectures and refutations that was based on the notion of a more or less self-correcting demonstration. Con- fronted with the findings that scientists did not use the refutation criterion in their research, he emphasised then the role of the scientific community on which the task of “refutation” devolved. Since the individual scientist might not be ready to bite the bullet and admit that she or he might have been wrong, colleagues had to keep him or her honest. Finally, towards the end of his life, Popper began to rely less and less on the stock of knowledge or on the scientists’ shared theoretical understandings – simply devalued as the “myth of the framework” – and emphasised instead the processes of communica- tion and of “translation” among different schools of thought within a scien- tific community (Popper 1994). He still argued that these processes follow the pattern of “conjecture and refutation”, but the model was clearly no longer that of logic or of scientific demonstration, but one that he derived from his social theory – from his advocacy of an “open society” (Popper 1966). Thus a near total reversal of the ideal of knowledge had occurred. While formerly everything was measured in terms of the epistemological ideal derived from logic and physics, “knowledge” was now the result of deliberation and of certain procedural notions for assessing competing knowledge claims. Politics and law, rather than physics, now provided the template.¶ Thus the history of science has gradually moved away from the epistemo- logical ideal to focus increasingly on the actual practices of various scientific communities engaged in knowledge production, particularly on how they handle problems of scientific disagreement.5 This reorientation implied a move away from field-independent criteria and from the demonstrative ideal to one in which “arguments” and the “weight” of evidence had to be appraised. This, in turn, not only generated a bourgeoning field of “science studies” and their “social” epistemologies (see Fuller 1991), but also suggested more generally that the traditional understandings of knowledge production based on the model of “theory” were in need of revision.¶ If the history of science therefore provides strong reasons for a pragmatic turn, as the discussion above illustrates, what remains to be shown is how this turn relates to the historical, linguistic and constructivist turns that preceded it. To start with, from the above it should be clear that, in the social world, we are not dealing with natural kinds that exist and are awaiting, so to speak, prepackaged, their placement in the appropriate box. The objects we investi- gate are rather conceptual creations and they are intrinsically linked to the language through which the social world is constituted. Here “constructivists”, particularly those influenced by Wittgenstein and language philosophy, easily link up with “pragmatists” such as Rorty, who emphasises the product- ive and pragmatic role of “vocabularies” rather than conceiving of language as a “mirror of nature” (Rorty 1979).¶ Furthermore, precisely because social facts are not natural, but have to be reproduced through the actions of agents, any attempt to treat them like “brute” facts becomes doubly problematic. For one, even “natural” facts are not simply “there”; they are interpretations based on our theories. Secondly, different from the observation of natural facts, in which perceptions address a “thing” through a conceptually mediated form, social reality is entirely “arti- ficial” in the sense that it is dependent on the beliefs and practices of the actors themselves. This reproductive process, directed by norms, always engenders change either interstitially, when change is small-scale or adaptive – or more dramatically, when it becomes “transformative” – for instance when it produces a new system configuration, as after the advent of national- ism (Lapid and Kratochwil 1995) or after the demise of the Soviet Union (Koslowski and Kratochwil 1994). Consequently, any examination of the social world has to become in a way “historical” even if some “structuralist” theories attempt to minimise this dimension. [. . .]¶ Therefore a pragmatic approach to social science and IR seems both necessary and promising. On the one hand, it is substantiated by the failure of the epistemological project that has long dominated the field. On the other, it offers a different positive heuristics that challenges IR’s traditional disciplin- ary boundaries and methodological assumptions. Interest in pragmatism therefore does not seem to be just a passing fad – even if such an interpre- tation cannot entirely be discounted, given the incentives of academia to find, just like advertising agencies, “new and improved” versions of familiar products.

## 2AC

### 2AC

Acknowledge my privilege

My name is Amy Feinberg, and I would like to acknowledge my privilege inside and outside the debate space. I’m a white woman who grew up in a suburb of Atlanta. I went to a good high school and didn’t have to worry about where my next meal would come from. I am fortunate to go to a state university where I am receiving a strong education.

I debate for the University of Georgia, where I don’t have to pay for my travel and had three coaches for this round alone. I consider myself extremely lucky that I am not a body identified by the state as a potential threat that can be detained indefinitely without charge.

Tucker and I have not directly indefinitely detained people – but as he says in cross-x, we are all in our way responsible if we do not speak out against it, even if that speaking out does not result in the ending of all torture – that’s the Bangert evidence

The role of ballot is to vote for the team that best offers a blueprint for the state to change torture policies

We believe that talking about that is important – orienting towards the state is the best option and having a blueprint is key

1. 1AC Gunning ev – emancipatory potential can only be achieved with the state
2. Is the 1AC narrative
3. Is the side constraint

Inevitably, talking about these things increases our education of them which solves all of the reasons that we just need to talk about this

It’s not about solving every instance of torture – it’s about a reorientation of the state to combat torture – the aff is the best step to do this

Perm do the plan and the alternative

We should Endorse the right of all people to be free from state-sponsored violence

#### Solves better – blanket critiques of the state gloss-over nuanced resistance and crush subversion – perm is critical to effective transformation

Brown 1 (Wendy, Professor of Political Science – University of California, Berkeley, Politics Out of History, p. 35-37)

But here the problem goes well beyond superficiality of political analysis or compensatory gestures in the face of felt impotence. A mor­alistic, gestural politics often inadvertently becomes a regressive poli­tics. Moralizing condemnation of the National Endowment for the Arts for not funding politically radical art, of the U.S. military or the White House for not embracing open homosexuality or sanctioning gay marriage, or even of the National Institutes of Health for not treat­ing as a political priority the lives of HIV target populations (gay men, prostitutes, and drug addicts) conveys at best naive political expecta­tions and at worst, patently confused ones. For this condemnation implicitly figures the state (and other mainstream institutions) as if it did not have specific political and economic investments, as if it were not the codification of various dominant social powers, but was, rather, a momentarily misguided parent who forgot her promise to treat all her children the same way. These expressions of moralistic outrage implicitly cast the state as if it were or could be a deeply demo­cratic and nonviolent institution; conversely, it renders radical art, rad­ical social movements, and various fringe populations as if they were not potentially subversive, representing a significant political chal­lenge to the norms of the regime, but rather were benign entities and populations entirely appropriate for the state to equally protect, fund, and promote. Here, moralism’s objection to politics as a domain of power and history rather than principle is not simply irritating: it re­suits in a troubling and confused political stance. It misleads about the nature of power, the state, and capitalism; it misleads about the nature of oppressive social forces, and about the scope of the project of transformation required by serious ambitions for justice. Such ob­fuscation is not the aim of the moralists but falls within that more general package of displaced effects consequent to a felt yet unac­knowledged impotence. It signals disavowed despair over the pros­pects for more far-reaching transformations.

They’ve said the aff is not wrong but is not enough – that means at best their alternative is plan plus which means perm do the alt

Krishna 93 (Sankaran, Professor of Political Science – University of Hawaii, Alternatives, 18)

While this point is, perhaps, debatable, Der Derian’s further assertion, that a postmodern critique of the Gulf War mobilization would be somehow more effective, sounds less convincing. An alternative, late-modern tactic against total war was to war on totality itself, to delegitimize all sovereign truths based on class, nationalist, or internationalist metanarratives … better strategically to play with apt critiques of the powerful new forces unleashed by cyberwar than to hold positions with antiquated tactics and nostalgic unities. (AD: 177-178; emphasis in original) The dichotomous choice presented in this excerpt is straightforward: one either indulges in total critique, delegitimizing all sovereign truths, or one is committed to “nostalgic” essentialist unities that have become obsolete and have been the grounds for all our oppressions. In offering this dichotomous choice, Der Derian replicates a move made by Chaloupka in his equally dismissive critique of the more mainstream nuclear opposition, the Nuclear Freeze movement of the early 1980s, that, according to him, was operating along obsolete lines, emphasizing “facts” and “realities” while a “postmodern” President Reagan easily outflanked them through an illusory Star Wars program. (See KN: chapter 4) Chaloupka centers this difference between his own supposedly total critique of all sovereign truths (which he describes as nuclear criticism in an echo of literary criticism) and the more partial (and issue-based) criticism of what he calls “nuclear opposition” or “antinuclearists” at the very outset of his book. (KN: xvi) Once again, the unhappy choice forced upon the reader is to join Chaloupka in his total critique of all sovereign truths or be trapped in obsolete essentialisms. This leads to a **disastrous politics**, pitting groups that have the most in common (and **need to unite** on some basis **to be effective**) against each other. Both Chaloupka and Der Derian thus reserve their most trenchant critique for political groups that should, in any analysis, be regarded as the closest to them in terms of an oppositional politics and their desired futures. Instead of finding ways to live with these differences and to (if fleetingly) coalesce against the New Right, this fratricidal critique is **politically suicidal**. It obliterates the space for a political activism based on provisional and contingent coalitions, for uniting behind a common cause even as one recognizes that the coalition is comprised of groups that have very differing (and possibly unresolvable) views of reality. Moreover, it fails to consider the possibility that there may have been other, more compelling reasons for the “failure” of the Nuclear Freeze movement or anti-Gulf War movement. Like many a worthwhile cause in our times, they failed to garner sufficient support to influence state policy. The response to that need not be a totalizing critique that delegitimizes all narratives. The blackmail inherent in the choice offered by Der Derian and Chaloupka, between total critique and “ineffective” partial critique ought to be transparent. Among other things, it effectively militates against the construction of provisional or strategic essentialisms in our attempts to create space for an activist politics. In the next section, I focus more widely on the genre of critical international theory and its impact on such an activist politics.

### Identity

#### 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.”

### Alternative

#### The alternative to the current system fails – no blueprint

Kliman, professor of economics – Pace University, ‘4

(Andrew, “Alternatives to Capitalism: What Happens After the Revolution?” http://akliman.squarespace.com/writings/)

I. Concretizing the Vision of a New Human Society We live at a moment in which it is harder than ever to articulate a liberatory alternative to capitalism. As we all know, the collapse of state-capitalist regimes that called themselves “Communist,” as well as the widespread failures of social democracy to remake society, have given rise to a widespread acceptance of Margaret Thatcher’s TINA – the belief that “there is no alternative.” Yet the difficulty in articulating a liberatory alternative is not mostly the product of these events. It is an inheritance from the past. To what extent has such an alternative ever been articulated? There has been a lot of progress – in theory and especially in practice – on the problem of forms of organization – but new organizational forms by themselves are not yet an alternative. A great many leftists, even revolutionaries, did of course regard nationalized property and the State Plan, under the control of the “vanguard” Party, as socialism, or at least as the basis for a transition to socialism. But even before events refuted this notion, it represented, at best, an evasion of the problem.It was largely a matter of leftists with authoritarian personalities subordinating themselves and others to institutions and power with a blind faith that substituted for thought. How such institutions and such power would result in human liberation was never made clear. Vague references to “transition” were used to wave the problem away. Yet as Marxist-Humanism has stressed for more than a decade, the anti-Stalinist left is also partly responsible for the crisis in thought. It, too, failed to articulate a liberatory alternative**,** offering in place of private- and state-capitalism little more than what Hegel (Science of Logic, Miller trans., pp. 841-42) called “the empty negative … a presumed absolute”: The impatience that insists merely on getting beyond the determinate … and finding itself immediately in the absolute, has before it as cognition nothing but the empty negative, the abstract infinite; in other words, a presumed absolute, that is presumed because it is not posited, not grasped; grasped it can only be through the mediation of cognition … . The question that confronts us nowadays is whether we can do better. Is it possible to make the vision of a new human society more concrete and determinate than it now is, through the mediation of cognition? According to a long-standing view in the movement, it is not possible. The character of the new society can only be concretized by practicealone**,** in the course of trying to remake **society. Yet** if this is true, we are faced with a vicious circle from which there seems to be no escape,because acceptance of TINA is creating barriers in practice. In the perceived absence of an alternative, practical struggles have proven to be self-limiting at best. They stop short of even trying to remake society totally – and for good reason. As Bertell Ollman has noted (Introduction to Market Socialism: The Debate among Socialists, Routledge, 1998, p. 1), **“**People who believe [that there is no alternative] will put up with almost any degree of suffering. Why bother to struggle for a change that cannot be? … people [need to] have a good reason for choosing one path **into the future rather than another.” Thus** the reason of the masses is posing a new challenge to the movement from theory. When masses of people require reasons before they act, a new human society surely cannot arise through spontaneous action alone. And exposing the ills of existing society does not provide sufficient reason for action when what is at issue is the very possibility of an alternative. If the movement from theory is to respond adequately to the challenge arising from below, it is necessary to abandon the presupposition – and it seems to me to be no more than a presupposition – that the vision of the new society cannot be concretized through the mediation of cognition. We need to take seriously Raya Dunayevskaya’s (Power of Negativity [PON], p. 184) claim in her Hegel Society of America paper that “There is no trap in thought. Though it is finite, it breaks through the barriers of the given, reaches out, if not to infinity, surely beyond the historic moment” (RD, PON, p. 184). This, too, is a presupposition that can be “proved” or “disproved” only in the light of the results it yields. In the meantime, the challenges from below require us to proceed on its basis.

### Circumvention and the Law

#### Only interrogating the failures of the American legal system allows us to prevent future institutionalized torture – legal discussions are uniquely critical

Mayerfeld, 7 – Associate Professor of Political Science, University of Washington (Jamie, “Playing by Our Own Rules: How U.S. Marginalization of International Human Rights Law Led to Torture.” 20 Harv. Hum. Rts. J. 89 2007. HeinOnline.)

Americans need to ask themselves how the United States could adopt a policy of torture, and why, in particular, our legal system failed to prevent it. We all know that the terrorist threat made coercive interrogation newly respectable in the eyes of some public officials, that a general climate of fear and anger following the attacks of September 11 weakened public opposi- tion to torture, and that the Republican majority that controlled Congress until January 2007 chose, for both strategic and ideological reasons, to keep loose reins on the executive branch. However, we expect the law to protect fundamental human rights against bureaucratic zeal, partisan calculations, and shifts in public sentiment. The terrorist attacks of September 11 may have increased the temptation to authorize torture, but an effective legal regime is one that prevents torture precisely when its use becomes most tempting. Since we normally expect the law to erect impregnable barriers against the use of torture, we must ask why, in this case, the barriers gave way so easily. What makes the question even more acute is the emphatic prohibition of torture in both domestic and international law. Coverage of the torture outbreak has rightly focused attention on deci- sions by President Bush and his advisors. The Administration authorized physical and psychological coercion to extract information from prisoners, defending its policy with novel legal doctrines and tactics. Its choices, which break with decades of official U.S. policy and have provoked wide- spread shock and dismay among legal scholars and practitioners, are the proximate cause of the torture epidemic. Yet a full explanation of the problem must extend beyond the choices of Administration officials. The American philosophy of government is pre- mised on the Madisonian truth that fundamental rights, beginning with the right against government brutality, must not depend on the individual rectitude of public officials.2 3 Fundamental rights must be insulated from the misguided impulses of political leaders by strong institutional protec- tions. The much-vaunted virtue of the American political system is not the moral infallibility of its public officials, but their voluntary submission to the discipline of wise institutions. This is the familiar theory that former Secretary of Defense Donald Rumsfeld invoked when he told the Congres- sional Armed Services Committees, shortly after the Abu Ghraib revela- tions: "Mr. Chairman, I know you join me today in saying to the world, judge us by our actions, watch how Americans, watch how a democracy deals with the wrongdoing and with scandal and the pain of acknowledging and correcting our own mistakes and our own weaknesses." 24 Yet our polit- ical institutions have not performed as expected: the ability of the Bush Administration to adopt torture, and to maintain its policy in the face of explosive revelations, defies the story Americans tell about themselves as members of a rights-protecting democracy. It is essential that we under- stand why the American legal and political system failed. I shall argue that a principal (though not sole) cause of the failure was the longstanding refusal of the United States to incorporate international human rights law into its legal system. Well before the inauguration of George W. Bush and the events of September 11, the United States chose to loosen the binding force of its international human rights agreements. This choice had fateful consequences when the United States declared a "Global War on Terror" following the September 11 attacks. The U.S. marginalization of international human rights law made it far easier for Bush Administration officials to institutionalize abusive treatment. Major legal obstacles that would otherwise have confronted the Bush Administra- tion had been removed by previous congresses and administrations. The error of the traditional policy should now be manifest. International human rights law anticipates, and can help block, maneuvers like those used by the Bush Administration to violate human rights norms. The les- son of recent experience is that domestic human rights protections need international reinforcement. International human rights law helps fulfill the promises to individual freedom and dignity enshrined in our own Con- stitution. Only through the full adoption of international human rights law can the United States make a genuine commitment to human rights and be held to that commitment.

**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.

#### 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.

### -- Turn – political vacuum –

#### Ignoring the state causes neo-liberal violence – worse political forces fill-in

Barbrook 97 (Dr. Richard, School of Westminster, Nettime, “More Provocations”, 6-5,

http://www.nettime.org/Lists-Archives/nettime-l-9706/msg00034.html)

I thought that this position is clear from my remarks about the ultra-left posturing of the 'zero-work' demand. In Europe, we have real social problems of deprivation and poverty which, in part, can **only be solved by state action**. This does not make me a statist, but rather an anti-anti-statist. By opposing such intervention because they are carried out by the state, anarchists are **tacitly lining up with the neo-liberals**. Even worse, refusing even to vote for the left, they acquiese to rule by neo-liberal parties. I deeply admire direct action movements. I was a radio pirate and we provide server space for anti-roads and environmental movements. However, this doesn't mean that I support political abstentionism or, even worse, the mystical nonsense produced by Hakim Bey. It is great for artists and others to adopt a marginality as a life style choice, but most of the people who are economically and socially marginalised were never given any choice. They are excluded from society as a result of deliberate policies of deregulation, privatisation and welfare cutbacks carried out by neo-liberal governments. During the '70s, I was a pro-situ punk rocker until Thatcher got elected. Then we learnt the hard way that voting did change things and **lots of people suffered** if state power was withdrawn from certain areas of our life, such as welfare and employment. Anarchism can be a fun artistic pose. However, human suffering is not.

#### right takeover rolls-back all progressive gains

Rorty 98 (Richard, Professor of Comparative Literature and Philosophy – Stanford University, Achieving Our Country)

At that point, something will crack. The nonsuburban electorate will decide that the system has failed and start looking around for a strongman to vote for—someone willing to assure them that, once he is elected, the smug bureaucrats, tricky lawyers, overpaid bond salesmen, and postmodern professors will no longer be calling the shots. A scenario like that of Sinclair Lewis’ novel *It Can’t Happen Here* may then be played out. For once such a strongman takes office, nobody can predict what will happen. In 1932, most of the predictions made about what would happen if Hendenburg named Hitler chancellor were wildly overoptimistic. One thing that is very likely to happen is that the gains made in the past forty years by black and brown Americans and by homosexuals will be **wiped out**. Jocular contempt for women will come back into fashion. The words “nigger” and “kike” will once again be heard in the workplace. All the sadism which the academic Left has tried to make unacceptable to its students will come **flooding back**. All the resentment which badly educated Americans feel about having their manners dictated to them by college graduates will find an outlet. But such a renewal of sadism will not alter the effects of selfishness. For after my imagined strong[person]man takes charge, he will quickly make his peace with the international super-rich, just as Hitler made his with the German industrialists. He will invoke the glorious memory of the Gulf War to provoke military adventures which will generate short-term prosperity. He will be a disaster for the country and for the world. People will wonder with there was so little resistance to his evitable rise. Where, they will ask, was the American Left? Why was it only rightists like Buchanan who spoke to the workers about the consequences of globalization? Why could not the Left channel the mounting rage of the newly dispossessed? It is often said the we Americans, at the end of the twentieth century, no longer have a Left. Since nobody denies the existence of what I have called the cultural Left, this amounts to an admission that the Left is unable to engage in national politics. It is not the sort of Left which can be asked to deal with the consequences of globalization. To get the country to deal with those consequences, the present cultural Left would have to transform itself by opening relations with the residue of the old reformist Left, and in particular with the labor unions. It would have to talk much more about money, even at the cost of talking less about stigma. I have two suggestions about how to effect this transition. The first is that the Left should put a moratorium on theory. It should try to kick its philosophy habit. The second is that the Left should try to mobilize what remains of our pride in being Americans.

## 1AR

#### Calls for consistency are cloaked in critiques of “irrationality” – inconsistency of position need not signal inauthentic engagement, but rather could be part of the process of belief formation and innovation

Kyburg 87 (Henry E. Kyburg Jr., THE HOBGOBLIN, Source: The Monist, Vol. 70, No. 2, Irrationality (APRIL, 1987), pp. 141-151)

The connection between 'consistency' ' and "rationality" is not clear, however. It is assumed that rationality, that angelic norm to which all featherless bipeds are presumed to aspire, entails consistency if not logical omniscience. A failure of consistency that did not reflect merely a weakness of logical faculty would be a clear demonstration of irrationality. On that score, what follows must be construed as a defense of irrationality. I would prefer to regard it as an argument that even perfect rationality does not entail what is often regarded as consistency, and that in fact rationality entails a failure of consistency. In a nutshell: I may reasonably believe that some of the things I reasonably believe are false; and I may adjust my degrees of belief in response to evidence in ways that contradict Bayes's theorem. More exactly, I may believe (accept) each of a number of statements, and also believe (accept) a statement whose denial is entailed by that set of statements. And yet, I shall maintain, none of these beliefs need be regarded as irrational, nor should I necessarily seek to find a statement that is the "source" of the inconsistency in order to expunge it.