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

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

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

#### 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 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)

\*Edited for Gendered Language

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~~ [they] is **robbed of [their] ~~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.

#### 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 Greenberg evidence, detailed assault by soldiers, the pains of solitary confinement, and threats to family and friends.

#### 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.**

#### Violence is proximately caused – root cause logic is flawed 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

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(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.

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#### The permutation is the best option – our affirmative represents a synthesis of identity perspectives, all marked by historic and ongoing *extreme violence*, but the response CANNOT be to turn to violence ourselves, only through the creation of commonality, by bridging the gap between the affirmative’s critique of state violence and the negatives equally compelling indictment of the state can we hope to avoid the recreation of brutal violence

Enns 13 (Diane Enns, PhD Suny Binghamton, Associate Professor of Philosophy and Peace Studies, McMaster University, “Just Rage: Politics Without Consensus” in *On Terror and Extreme Violence,* Institute for Philosophy and Social Theory, Belgrade: forthcoming 2013)

Arendt stresses often enough the devastating effects of violence on politics, arguing, as Rancière does regarding terrorism, that violence is for the most part at cross-­‐purposes with political life. But ultimately, faced with the grim reality of the Holocaust, she is unable to say violence is never justifiable. In one of the most intriguing passages of On Violence, we read: "Violence can be justifiable, but it never will be legitimate. Its justification loses in plausibility the farther its intended end recedes into the future. No one questions the use of violence in self-­‐defense, because the danger is not only clear but also present, and the end justifying the means is immediate."67 The distinction she makes between legitimate and justifiable helps us to manage the contradiction between the belief that harming or taking another human life is wrong—unlawful, illegitimate—and yet after the fact, paradoxically just or reasonable, provided there was no other means of escape or possibility of resistance. It is not an absolute principle of nonviolence we need to establish if we agree that self-­‐defense is a right. The challenge for us is to consider, in each case, at what point self-­‐ defense ceases to be self-­‐defense and becomes something else: a pre-­‐emptive attack, premeditated murder, a "disposition matrix." The temporal aspect matters—we can't justify violence as self-­‐defense if its proposed ends are found far in the future. But we could establish the care for existence as a universal principle, or a politics of civility that is essentially a politics of the right to have rights, a politics that establishes the conditions for all politics. Concretely this means we must do everything possible to preserve these conditions. Rather than repeat the well-­‐worn question—when is violence justifiable?—we might ask instead: what can we find in our power to do at this very moment to protect the space of exchange and agreement? How do we keep open this space, guard its fragility from those who would destroy it, especially in the face of tyranny, of brutal repression fueled by fear of the just rage of the masses? I am arguing that we could amend the terms of Rancière's tenth thesis on politics to read: The essence of politics resides not in the modes of dissensual subjectivation that reveal a society in its difference to itself, but in the modes of consensual subjectivation that reveal a society in what is common to itself. The intractable nature of many conflicts in the world today makes this "common to itself" extraordinarily difficult to find, but all the more necessary. The only hope of reversing the effects of extreme violence, and preventing further cycles of violence, rests in finding the fragile points of contact between individuals and groups, friends and enemies, victims and perpetrators, all suffering the aftermath of violence to varying degrees. Crossing the threshold to violence means "that politics may vanish entirely from the world." Now, in this "era of protest," the desperate yearning for what Arendt specified as the content of political life—inserting ourselves into the world by word and deed, beginning something entirely new—might give birth to new forms of agreement and civility.

#### 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.

**2AC The Law**

#### 1NC evidence says the law itself is slavery – but this is about the failures of the legal system, which need to be fixed, not burned

#### 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.

**2AC State Good**

**2AC - Scheuerman**

#### Burning it down only replaces the state with authoritarianism

Scheuerman 6 (William, Prof of Poli Sci @ Indiana, “Survey Article: Emergency Powers and the Rule of

Law After 9/11\*” The Journal of Political Philosophy: Volume 14, Number 1 p. 73-74\_

By the conclusion of Tushnet’s argument, however, it remains unclear what remains of the rule of law. Like Cole, Tushnet accurately identifies a key tension in Gross’ argument: Gross insists on the extra-legality of emergency action while simultaneously suggesting how various legal mechanisms (e.g., a retrospective judicial condemnation) might work to restrain the executive. Tushnet resolves this tension, however, by systematically eliminating Gross’ residual legalistic impulses. Contra Gross, courts “can neither endorse nor condemn” emergency action, since “extra-constitutional powers are ‘reviewed’—and disciplined—not by law but by a mobilized citizenry.”51 Because Schmitt was right to argue that emergency power and legality do not mix, the only effective restraints on their exercise are somehow non-legal: only “the vigilance of the public acting, as it was put in the era of the American Revolution, ‘out of doors,’” can protect us from potentially abusive forms of emergency rule.52 Tushnet’s proposal is even more vulnerable to some of the criticisms directed against Gross. Most obviously, a model which condones executive crisis measures beyond the bounds of the law while disparaging the possibility of legal controls altogether hardly seems supportive of the rule of law. Tushnet’s radical democratic allusions to a “mobilized citizenry” obviously distinguishes him from Schmitt. Yet his sharp conceptual juxtaposition of democratic politics to traditional elements of liberal legality (e.g., the idea of a people acting “out of [legal] doors”) echoes Schmitt’s attempt to draw a bright line between democracy and liberalism. As has been widely noted in the secondary literature in Schmitt, however, this leaves Schmitt with a portrayal of democracy amounting to little more than mass-based authoritarian rule**,** in which “the people” become a plaything of their rulers. Democracy without civil liberties, the rule of law, or constitutionalism is not, in fact, democracy, but instead most likely rule of the mob by politically manipulative elites. The same can probably be expected of a democracy in which the citizenry lacks effective legal restraints on executive emergency action. Given Tushnet’s endorsement of some of Schmitt’s ideas, it might be useful for him better to explain how his model of crisis government would help secure us from yet another variety of executive-centered mass rule. Recent political history provides examples galore of political leaders relying on the specter of crises—real or otherwise—to generate “vigilant” public support while undertaking illegal and unconstitutional action. Authoritarian emergency government and some measure of popular mobilization are by no means necessarily opposed.

#### Read blue

#### Uniting different coalitions is necessary to overcome white supremacy---the alt recreates “divide and conquer”

bell hooks 3, social critic extraordinaire, “Beyond Black Only: Bonding Beyond Race”, http://prince.org/msg/105/50299?pr

African Americans have been at the forefront of the struggle to end racism and white supremacy in the United States since individual free black immigrants and the larger body of enslaved blacks first landed here. Even though much of that struggle has been directly concerned with the plight of black people, all gains received from civil rights work have had tremendous positive impact on the social status of all non-white groups in this country. Bonding between enslaved Africans, free Africans, and Native Americans is well documented. Freedom fighters from all groups (and certainly there were many traitors in all three groups who were co-opted by rewards given by the white power structure) understood the importance of solidarity-of struggling against the common enemy, white supremacy. The enemy was not white people. It was white supremacy. ¶ Organic freedom fighters, both Native and African Americans, had no difficulty building coalitions with those white folks who wanted to work for the freedom of everyone. Those early models of coalition building in the interest of dismantling white supremacy are often forgotten. Much has happened to obscure that history. The construction of reservations (many of which were and are located in areas where there are not large populations of black people) isolated communities of Native Americans from black liberation struggle. And as time passed both groups began to view one another through Eurocentric stereotypes, internalizing white racist assumptions about the other. Those early coalitions were not maintained. Indeed the bonds between African Americans struggling to resist racist domination, and all other people of color in this society who suffer from the same system, continue to be fragile, even as we all remain untied by ties, however frayed and weakened, forged in shared anti-racist struggle. ¶ Collectively, within the United States people of color strengthen our capacity to resist white supremacy when we build coalitions. Since white supremacy emerged here within the context of colonization, the conquering and conquest of Native Americans, early on it was obvious that Native and African Americans could best preserve their cultures by resisting from a standpoint of political solidarity. The concrete practice of solidarity between the two groups has been eroded by the divide-and-conquer tactics of racist white power and by the complicity of both groups. Native American artist and activist of the Cherokee people Jimmie Durham, in his collection of essays A Certain Lack of Coherence, talks about the 1960’s as a time when folks tried to regenerate that spirit of coalition: “In the 1960’s and ‘70’s American Indian, African American and Puerto Rican activists said, as loudly as they could, “This country is founded on the genocide of one people and the enslavement of another.” This statement, hardly arguable, was not much taken up by white activists.” As time passed, it was rarely taken up by anyone. Instead the fear that one’s specific group might receive more attention has led to greater nationalism, the showing of concern for one’s racial or ethnic plight without linking that concern to the plight of other non-white groups and their struggles for liberation. ¶ Bonds of solidarity between people of color are continuously ruptured by our complicity with white racism. Similarly, white immigrants to the United States, both past and present, establish their right to citizenship within white supremacist society by asserting it in daily life through acts of discrimination and assault that register their contempt for and disregard of black people and darker-skinned immigrants mimic this racist behavior in their interactions with black folks. In her editorial “On the Backs of Blacks” published in a recent special issue of TIME magazine Toni Morrison discusses the way white supremacy is reinscribed again and again as immigrants seek assimilation: ¶ All immigrants fight for jobs and space, and who is there to fight but those who have both? As in the fishing ground struggle between Texas and Vietnamese shrimpers, they displace what and whom they can…In race talk the move into mainstream America always means buying into the notion of American blacks as the real aliens. Whatever the ethnicity or nationality of the immigrant, his nemesis is understood to be African American…So addictive is this ploy that the fact of blackness has been abandoned for the theory of blackness. It doesn’t matter anymore what shade the newcomer’s skin is. A hostile posture toward resident blacks must be struck at the Americanizing door. ¶ Often people of color, both those who are citizens and those who are recent immigrants, hold black people responsible for the hostility they encounter from whites. It is as though they see blacks as acting in a manner that makes things harder for everybody else. This type of scapegoating is the mark of the colonized sensibility which always blames those victimized rather than targeting structures of domination. ¶ Just as many white Americans deny both the prevalence of racism in the United States and the role they play in perpetuating and maintaining white supremacy, non-white, non-black groups, Native, Asian, Hispanic Americans, all deny their investment in anti-black sentiment even as they consistently seek to distance themselves from blackness so that they will not be seen as residing at the bottom of this society’s totem pole, in the category reserved for the most despised group. Such jockeying for white approval and reward obscures the way allegiance to the existing social structure undermines the social welfare of all people of color. White supremacist power is always weakened when people of color bond across differences of culture, ethnicity, and race. It is always strengthened when we act as though there is no continuity and overlap in the patterns of exploitation and oppression that affect all of our lives. ¶ To ensure that political bonding to challenge and change white supremacy will not be cultivated among diverse groups of people of color, white ruling groups pit us against one another in a no-win game of “who will get the prize for model minority today.” They compare and contrast, affix labels like “model minority,” define boundaries, and we fall into line. Those rewards coupled with internalized racist assumptions lead non-black people of color to deny the way racism victimizes them as they actively work to disassociate themselves from black people. This will to disassociate is a gesture of racism. ¶ Even though progressive people of color consistently critique these standpoints, we have yet to build a contemporary mass movement to challenge white supremacy that would draw us together. Without an organized collective struggle that consistently reminds us of our common concerns, people of color forget. Sadly forgetting common concerns sets the stage for competing concerns. Working within the system of white supremacy, non-black people of color often feel as though they must compete with black folks to receive white attention. Some are even angry at what they wrongly perceive as a greater concern on the part of white of the dominant culture for the pain of black people. Rather than seeing the attention black people receive as linked to the gravity of our situation and the intensity of our resistance, they want to make it a sign of white generosity and concern. Such thinking is absurd. If white folks were genuinely concerned about black pain, they would challenge racism, not turn the spotlight on our collective pain in ways that further suggest that we are inferior. Andrew Hacker makes it clear in Two Nations that the vast majority of white Americans believe that “members of the black race represent an inferior strain of the human species.” He adds: “In this view Africans-and Americans who trace their origins to that continent-are seen as languishing at a lower evolutionary level than members of other races.” Non-black people of color often do not approach white attention to black issues by critically interrogating how those issues are presented and whose interests the representations ultimately serve. Rather than engaging in a competition that sees blacks as winning more goodies from the white system than other groups, non-black people of color who identify with black resistance struggle recognize the danger of such thinking and repudiate it. They are politically astute enough to challenge a rhetoric of resistance that is based on competition rather than a capacity on the part of non-black groups to identify with whatever progress blacks make as being a positive sign for everyone. Until non-black people of color define their citizenship via commitment to a democratic vision of racial justice rather than investing in the dehumanization and oppression of black people, they will always act as mediators, keeping black people in check for the ruling white majority. Until racist anti-black sentiments are let go by other people of color, especially immigrants, and complain that these groups are receiving too much attention, they undermine freedom struggle. When this happens people of color war all acting in complicity with existing exploitative and oppressive structures. ¶ As more people of color raise our consciousness and refuse to be pitted against one another, the forces of neo-colonial white supremacist domination must work harder to divide and conquer. The most recent effort to undermine progressive bonding between people of color is the institutionalization of “multiculturalism”. Positively, multiculturalism is presented as a corrective to a Eurocentric vision of model citizenship wherein white middle-class ideals are presented as the norm. Yet this positive intervention is undermined by visions of multiculturalism that suggest everyone should live with and identify with their own self contained group. If white supremacist capitalist patriarchy is unchanged then multiculturalism within that context can only become a breeding ground for narrow nationalism, fundamentalism, identity politics, and cultural, racial, and ethnic separatism. Each separate group will then feel that it must protect its own interests by keeping outsiders at bay, for the group will always appear vulnerable, its power and identity sustained by exclusivity. When people of color think this way, white supremacy remains intact. For even though demographics in the United States would suggest that in the future the nation will be more populated by people of color, and whites will no longer be the majority group, numerical presence will in no way alter white supremacy if there is no collective organizing, no efforts to build coalitions that cross boundaries. Already, the white Christian Right is targeting large populations of people of color to ensure that the fundamentalist values they want this nation to uphold and represent will determine the attitudes and values of these groups. The role Eurocentric Christianity has played in teaching non-white folks Western metaphysical dualism, the ideology that under girds binary notion of superior/inferior, good/bad, white/black, cannot be ignored. While progressive organizations are having difficulty reaching wider audiences, the white-dominated Christian Right organizes outreach programs that acknowledge diversity and have considerable influence. Just as the white-dominated Christian church in the U.S. once relied on biblical references to justify racist domination and discrimination, it now deploys a rhetoric of multiculturalism to invite non-white people to believe that racism can be overcome through a shared fundamentalist encounter. Every contemporary fundamentalist white male-dominated religious cult in the U.S. has a diverse congregation. People of color have flocked to these organizations because they have felt them to be places where racism does not exist, where they are not judged on the basis of skin color. While the white-dominated mass media focus critical attention on black religious fundamentalist groups like the Nation of Islam, and in particular Louis Farrakhan, little critique is made of white Christian fundamentalist outreach to black people and other people of color. Black Islamic fundamentalism shares with the white Christian Right support for coercive hierarchy, fascism, and a belief that some groups are inferior and others superior, along with a host of other similarities. Irrespective of the standpoint, religious fundamentalism brainwashes individuals not to think critically or see radical politicization as a means of transforming their lives. When people of color immerse themselves in religious fundamentalism, no meaningful challenge and critique of white supremacy can surface. Participation in a radical multiculturalism in any form is discouraged by religious fundamentalism. ¶ Progressive multiculturalism that encourages and promotes coalition building between people of color threatens to disrupt white supremacist organization of us all into competing camps. However, this vision of multiculturalism is continually undermined by greed, one group wanting rewards for itself even at the expense of other groups. It is this perversion of solidarity the authors of Night Vision address when they assert: “While there are different nationalities, races and genders in the U.S., the supposedly different cultures in multiculturalism don’t like to admit what they have in common, the glue of it all-parasitism. Right now, there’s both anger among the oppressed and a milling around, edging up to the next step but uncertain what it is fully about, what is means. The key is the common need to break with parasitism.” A based identity politics of solidarity that embraces both a broad based identity politics which acknowledges specific cultural and ethnic legacies, histories, etc. as it simultaneously promotes a recognition of overlapping cultural traditions and values as well as an inclusive understanding of what is gained when people of color unite to resist white supremacy is the only way to ensure that multicultural democracy will become a reality.

**2AC Wilderson**

#### Turn: Impact Replication

#### A) Wilderson’s conception of social death is based off of a flawed methodology which interrupts the transformative potential of the African Diaspora

BÂ 2011 – Portsmouth University (SAËR MATY, “The US Decentred: From Black Social Death to Cultural Transformation,” Cultural Studies Review, volume 17 number 2 September 2011)

A few pages into Red, White and Black, I feared that it would just be a matter of time before **Wilderson’s black‐as‐social‐death idea** and multiple attacks on issues and scholars he disagrees with **run** (him) **into (theoretical) trouble**. This happens in chapter two, ‘The Narcissistic Slave’, where he critiques black film theorists and books. For example, Wilderson declares that Gladstone Yearwood’s Black Film as Signifying Practice (2000) ‘betrays a kind of conceptual anxiety with respect to the historical object of study— ... it clings, anxiously, to the film‐as‐text‐as‐legitimateobject of Black cinema.’ (62) He then quotes from Yearwood’s book to highlight ‘just how vague the aesthetic foundation of Yearwood’s attempt to construct a canon can be’. (63) And yet Wilderson’s highlighting is problematic because it overlooks the ‘Diaspora’ or ‘African Diaspora’, a key component in Yearwood’s thesis that, crucially, neither navel‐gazes (that is, at the US or black America) nor pretends to properly engage with black film. Furthermore, Wilderson separates the different waves of black film theory and approaches them, only, in terms of how a most recent one might challenge its precedent. Again, his approach is problematic because it does not mention or emphasise the inter‐connectivity of/in black film theory. As a case in point, Wilderson does not link Tommy Lott’s mobilisation of Third Cinema for black film theory to Yearwood’s idea of African Diaspora. (64) Additionally, of course, Wilderson seems unaware that Third Cinema itself has been fundamentally questioned since Lott’s 1990s’ theory of black film was formulated. Yet another consequence of **ignoring the African Diaspora** is that it **exposes Wilderson’s corpus of films as unable to carry the weight of the transnational argument he attempts to advance.** Here, **beyond the US‐centricity** or ‘social **and political specificity of [his] filmography’**, (95) I am talking about Wilderson’s choice of films. For example, Antwone Fisher (dir. Denzel Washington, 2002) is attacked unfairly for failing to acknowledge ‘a grid of captivity across spatial dimensions of the Black “body”, the Black “home”, and the Black “community”’ (111) while films like Alan and Albert Hughes’s Menace II Society (1993), overlooked, do acknowledge the same grid and, additionally, problematise Street Terrorism Enforcement and Prevention Act (STEP) policing. The above examples expose the fact of Wilderson’s dubious and questionable conclusions on black film. **Red, White and Black is particularly undermined by Wilderson’s** propensity for **exaggeration and blinkeredness**. In chapter nine, ‘“Savage” Negrophobia’, he writes: The philosophical anxiety of Skins is all too aware that through the Middle Passage, African culture became Black ‘style’ ... Blackness can be placed and displaced with limitless frequency and across untold territories, by whoever so chooses. Most important, there is nothing real Black people can do to either check or direct this process ... Anyone can say ‘nigger’ because anyone can be a ‘nigger’. (235)7 Similarly, in chapter ten, ‘A Crisis in the Commons’, Wilderson addresses the issue of ‘Black time’. Black is irredeemable, he argues, because, at no time in history had it been deemed, or deemed through the right historical moment and place. In other words, the black moment and place are not right because they are ‘the ship hold of the Middle Passage’: ‘the most coherent temporality ever deemed as Black time’ but also ‘the “moment” of no time at all on the map of no place at all’. (279) Not only does Pinho’s more mature analysis expose this point as preposterous (see below), **I** also **wonder what Wilderson makes of the countless** historians’ and sociologists’ **works on slave ships, shipboard insurrections and/during the Middle Passage**,8 or of groundbreaking jazz‐studies books on cross‐cultural dialogue like The Other Side of Nowhere (2004). Nowhere has another side, but **once Wilderson theorises blacks as socially and ontologically dead while dismissing jazz as ‘belonging nowhere** and to no one, simply there for the taking’, (225**) there seems to be no way back.** It is therefore hardly surprising that Wilderson ducks the need to provide a solution or alternative to both his sustained bashing of blacks and anti‐ Blackness.9 Last but not least, Red, White and Black ends like a badly plugged announcement of a bad Hollywood film’s badly planned sequel: ‘How does one deconstruct life? Who would benefit from such an undertaking? The coffle approaches with its answers in tow.’ (340)

#### B) This logic of social death replicates the violence of the middle passage – this takes out their arguments and is an impact turn to the alt

Brown 2009 – professor of history and of African and African American Studies specializing in Atlantic Slavery (Vincent, “Social Death and Political Life in the Study of Slavery,” http://history.fas.harvard.edu/people/faculty/documents/brown-socialdeath.pdf)

But this was not the emphasis of Patterson’s argument. As a result, those he has inspired have often conflated his exposition of slaveholding ideology with a description of the actual condition of the enslaved. Seen as a state of being, the concept of **social death is** ultimately **out of place in the political history of slavery. If studies** of slavery would **account for the** outlooks and **maneuvers of the enslaved as** an **important** part of that history, **scholars would do better to keep in view** the struggle against alienation rather than alienation itself. To see social death as a productive peril entails a subtle but significant shift in perspective, from seeing slavery as a condition to viewing enslavement as a predicament, in which **enslaved Africans and their descendants never ceased to pursue a politics of belonging, mourning, accounting, and regeneration**. In part, the usefulness of social death as a concept depends on what scholars of slavery seek to explain—black pathology or black politics, resistance or attempts to remake social life? For too long, debates about whether there were black families took precedence over discussions of how such families were formed; disputes about whether African culture had “survived” in the Americas overwhelmed discussions of how particular practices mediated slaves’ attempts to survive; and scholars felt compelled to prioritize the documentation of resistance over the examination of political strife in its myriad forms. But of course, because slaves’ social and political life grew directly out of the violence and dislocation of Atlantic slavery, these are false choices. And we may not even have to choose between tragic and romantic modes of storytelling, for history tinged with romance may offer the truest acknowledgment of the tragedy confronted by the enslaved: it took heroic effort for them to make social lives. There is romance, too, in the tragic fact that although scholars may never be able to give a satisfactory account of the human experience in slavery, they nevertheless continue to try. If scholars were to emphasize the efforts of the enslaved more than the condition of slavery, **we might at least tell richer stories about how the endeavors of the weakest and most abject have at times reshaped the world. The history of their** social and political **lives lies between resistance and oblivion, not in the nature of their condition but in their continuous struggles to remake it. Those struggles are slavery’s bequest to us.**

#### C) Their assumption of ontological blackness essentializes blackness as a racial category subservient to whiteness- replicates their impact

Welcome 2004 – completing his PhD at the sociology department of the City University of New York's Graduate Center (H. Alexander, "White Is Right": The Utilization of an Improper Ontological Perspective in Analyses of Black Experiences, Journal of African American Studies, Summer-Fall 2004, Vol. 8, No. 1 & 2, pp. 59-73)

In many of the studies of blacks, the **experiences of whites, not blacks, are used as the backing for the construction of the warrants/rules that are employed to evaluate black experiences**, delimiting the "concepts and relationships that can exist" in the black community. The life histories of whites are used as the standard against which black experiences are measured and as the goals to which blacks are encouraged to strive. **The employment of this ontology fallaciously limits the range of black agency, producing deceitful narratives where the navigation of the social environment by blacks is dictated by** either a passive response to, or **a passive adoption of, white scripts.** This ontology erroneously limits descriptions and evaluations of black experiences, excluding viable causal determinants of the socio-economic status of blacks and constructing restricted descriptions of black agency. The **utilization of whiteness to determine** and/or evaluate **blackness begins when whiteness and white life histories come to represent what is "right."** "White is right" is a sarcastic phrase that was an extremely popular slur during the Black Power movement in the mid-1960s to the early 1970s; the utilization of this phrase represents a form of social critique that takes exception to both the privileging of white biographies as accurate descriptions of history and the reconstitution of these histories as a template that blacks and other people of color should follow for navigating social environments and achieving positive social mobility. Part of the prominence of the "white is right" perspective comes from the numerical superiority of whites. As a group, whites have been in the majority throughout the history of the United States and the prominence of the white experience has been used to argue that white experiences should be used as a social template. It has been used as such in the works of Robert Park (1939) and Gunnar Myrdal (1944), both of whom suggested that by copying the patterns of whites, blacks would achieve positive social mobility. However, use of the numerical superiority of whites to support claims about the "rightness" of white experiences relies on the equation of quantitative dominance with qualitative dominance and the employment of the fallacious argumentum ad populum. The actual source of the dominance of the "white is right" perspective lies in the dynamics of power. The location of the origins of the dominant ideology in power relations is conceptualized in the work of Michel Foucault (1980), who theorized that power is imbricated with discourse: We must make allowance for the complex and unstable process whereby discourse can be both an instrument and an effect of power, but also a hindrance, a stumbling-block, a point of resistance and a starting point for an opposing strategy. Discourse transmits and produces power; it reinforces it, but also undermines and exposes it, renders it fragile and makes it possible to thwart it (p. 101). Key to the deployment of discourses is an underlying strategy. As such, **the prominence of the "white is right" perspective can be traced to attempts to create an "order,"** or a way of thinking. Foucault's theoretical lens supports the hypothesis that the privileging of white experiences and the use of these experiences as an ontological framework for the analyses of black experiences is an effect of power imbalances.

### 2AC – 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

#### AND, Politics requires cooperation and the recognition of commonality, plurality is not an erasure of difference, but the very foundation of all society – the aff is a pre-requisite to their alternative

**Enns 13** (Diane Enns, PhD Suny Binghamton, Associate Professor of Philosophy and Peace Studies, McMaster University, “Just Rage: Politics Without Consensus” in *On Terror and Extreme Violence,* Institute for Philosophy and Social Theory, Belgrade: forthcoming 2013)

**Politics** is defined by Arendt as **action**. To act requires an appearance in public; this does not mean an individual act in isolation from others—it is meaningful only to the extent that it occurs in a context of plurality. In a passage that would not endear her to the generation of thinkers that came after her, who value absolute difference and wince at any reference to "sameness," Arendt writes in the opening pages of The Human Condition: "Plurality is the condition of human action because we are all the same, that is, human, in such a way that nobody is ever the same as anyone else who ever lived, lives, or will live."50 The **sameness** here **is not the elimination** or assimilation of difference, but the acknowledgement that our **common membership in a species**, and the fact that we inhabit a shared world, requires collective engagement with other points of view as well as collective action. We are singular and plural at once. Without human plurality there would be no politics, for politics is contingent on a world, conceived by Arendt as a space that both **gathers human beings into it** and separates them from one another. This is not a universe that could exist without humans, but a space created by encounters between **all political subjects**, not only between a police order and those who contest it. "Wherever people come together," Arendt writes, "the world thrusts itself between them, and it is in this inbetween space that **all human affairs are conducted**."51