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# 1

#### Politics is Schmittian – the law is an ineffective counter-weight against the executive

Kinniburgh 13 Colin, writer for Dissent magazine, Dissent, 5-27, http://www.dissentmagazine.org/blog/partial-readings-the-rule-of-law

The shamelessness of the endeavor is impressive—a far cry, in many ways, from the CIA’s secretive Cold War–era assassination plots. Obama has succeeded in anchoring a legal infrastructure for state-sponsored assassinations on foreign soil while trumpeting it, in broad daylight, as a framework for accountability. Peppered with allusions to the Constitution and to “the law” more generally, the call for transparency instead appears to provide an Orwellian foil for a remarkable expansion of executive powers. Existing laws, domestic or international, are proving a hopelessly inadequate framework with which to hold the Obama administration accountable for arbitrary assassinations abroad. No doubt it is tempting to turn to the Constitution, the Universal Declaration of Human Rights, and other relevant legal documents as a litmus test for the validity of government actions. Many progressive media outlets have a tendency to seize on international law, especially, as a straightforward barometer of injustice: this is particularly true in the case of the Israel-Palestine conflict, as an editorial in the current issue of Jacobin points out. Both domestic and international legal systems often do afford a certain clarity in diagnosing excesses of state power, as well as a certain amount of leverage with which to pressure the states committing the injustices. To hope, however, that legal systems alone can redress gross injustices is naive. Many leftists—and not just “bloodless liberals”—feel obliged to retain faith in laws and courts as a lifeline against oppression, rather than as mere instruments of that same oppression. Even Marx, when he was subjected, along with fellow Communist League exiles, to a mass show trial in Prussian courts in the 1850s, was convinced that providing sufficient evidence of his innocence would turn the case against his accuser, Wilhelm Stieber, a Prussian secret agent who reportedly forged his evidence against the communists. In his writings, Marx expressed his disillusionment with all bourgeois institutions, including the courts; in practice, he hoped that the law would serve him justice. Richard Evans highlights this tension in his insightful review of Jonathan Sperber’s Karl Marx: A Nineteenth-Century Life, published in the most recent London Review of Books. “Naively forgetting,” writes Evans, “what they had said in the Manifesto – that the law was just an instrument of class interests – Marx and Engels expected [their evidence against Stieber] to lead to an acquittal, but the jury found several of the defendants guilty, and Stieber went unpunished.” Marx’s disappointment is all too familiar. It is familiar from situations of international conflict, illustrated by Obama’s drone strikes justifications; it is evident, too, when a police officer shoots dead an unarmed Bronx teenager in his own bathroom, and the charge of manslaugher—not murder—brought against the officer is dropped for procedural reasons by the presiding judge. This is hardly the first such callous ruling by a New York court in police violence cases; the last time charges were brought against an NYPD officer relating to a fatal shooting on duty, in 2007, they were also dropped. Dozens of New Yorkers have died at the hands of the police since then, and Ramarley Graham’s case was the first that even came close to a criminal conviction—only to be dropped for ludicrous reasons. Yet New York’s stop-and-frisk opponents are still fighting their battle out in the courts. In recent months, many activists have invested their hopes for fairer policing in a civil class action suit, Floyd, et. al. vs. City of New York, which may just convict the NYPD of discrimination despite the odds. District court judge Shira Scheindlin, profiled in this week’s New Yorker, has gained a reputation for ruling against the NYPD in stop-and-frisk cases, even when it has meant letting apparently dangerous criminals off the hook. In coming weeks, she is likely to do the same for the landmark Floyd case, in what may be a rare affirmation of constitutional law as a bulwark against state violence and for civil liberties. Even if the city wins the case, the spotlight that stop-and-frisk opponents have shined on the NYPD has already led to a 51 percent drop in police stops in the first quarter of this year. Still, when the powerful choose the battlefield and write the laws of war, meeting them on their terms is a dangerous game.

#### That naturalizes injustice and obviates the reasons why those injustices occur – it ignores root causes

Lobel, 7 **–** Assistant Professor of Law, University of San Diego, (Orly, Harvard Law Review, 120 Harv. L. Rev. 937)

Psychological cooptation is produced by the law precisely because law promises more than it can and will deliver. At the same time, law is unlike other sets of rules or systems in which we feel as though we have more choice about whether to participate. As described earlier, law presents itself simultaneously as the exclusive source of authority in a society and as the only engine for social change. It further presents itself as objective, situated outside and above politics. Thus, social actors who enter into formal channels of the state risk transformation into a particular hegemonic consciousness**.** Relying upon the language of law and legal rights to bring change legitimates an ideological system that masks inequality. [95](http://www.lexis.com/research/retrieve?_m=b7d531dcca7209b987833602ed6fbb4e&docnum=23&_fmtstr=FULL&_startdoc=1&wchp=dGLbVzb-zSkAt&_md5=3f8bfd4662cb01d0d1bf9f28a63e1155&focBudTerms=lobel%20and%20harvard&focBudSel=all#n95) When social demands are fused into legal action and the outcomes are only moderate adjustments of existing social arrangements, the process in effect naturalizes systemic injustice. The legal process reinforces, rather than resists, the dominant ideologies, institutions, and social hierarchies of the time. For example, when a court decision declares the end of racial segregation but de facto segregation persists, individuals become blind to the root causes of injustice and begin to view continued inequalities as inevitable and irresolvable. Similarly, rights-based discourse has a legitimation effect, since rights mythically present themselves as outside and above politics**.** [96](http://www.lexis.com/research/retrieve?_m=b7d531dcca7209b987833602ed6fbb4e&docnum=23&_fmtstr=FULL&_startdoc=1&wchp=dGLbVzb-zSkAt&_md5=3f8bfd4662cb01d0d1bf9f28a63e1155&focBudTerms=lobel%20and%20harvard&focBudSel=all#n96) Meanwhile, the legal framework allows the courts to implement a color blindness ideology and grant only symbolic victories rather than promote meaningful progress. [97](http://www.lexis.com/research/retrieve?_m=b7d531dcca7209b987833602ed6fbb4e&docnum=23&_fmtstr=FULL&_startdoc=1&wchp=dGLbVzb-zSkAt&_md5=3f8bfd4662cb01d0d1bf9f28a63e1155&focBudTerms=lobel%20and%20harvard&focBudSel=all#n97) As such, the role of law is one that in fact ensures the [\*958] "continued subordination of racial and other minority interests," while pacifying the disadvantaged who rely on it**.** [98](http://www.lexis.com/research/retrieve?_m=b7d531dcca7209b987833602ed6fbb4e&docnum=23&_fmtstr=FULL&_startdoc=1&wchp=dGLbVzb-zSkAt&_md5=3f8bfd4662cb01d0d1bf9f28a63e1155&focBudTerms=lobel%20and%20harvard&focBudSel=all#n98) Social movements seduced by the "myth of rights" assume a false sequence, namely "that litigation can evoke a declaration of rights from courts; that it can, further, be used to assure the realization of these rights; and, finally, that realization is tantamount to meaningful change."

#### The concern with understanding and politicizing law is the problem. This concern has trapped progressives, radicals and liberals into the dead-end of pointing out the politics of different court decisions.

West 6, Pf Law @ Georgetown, (Robin, *Harvard Journal of Law & Gender*, Winter, lexis)

And law is indeed a strikingly conservative and conserving set of institutions and practices. I argued in the book that legal critics, feminist and otherwise, should elevate the concept of harm in our thinking about law. And when we do so, we should think much more than we currently do about the harms sustained by various subordinated groups, including women. All I want to add here in response to some of Halley's remarks is that harm- and law-focused inquiries with respect to gender or otherwise that come from such a focus are indeed reformist projects. They are projects about how law could do better, instrumentally, what it claims to do, and what it does do some of the time, what it does not do at all well most of the time, and often does not do at all, period. However, while it is important to get judge-made law to do better what it already does, it is even more important. I think, to put law in its place. Law--meaning here, adjudicative law--is (lo and behold) not politics. It cannot do what politics might be able to do. It has been a tragic mistake, I think, of liberals, radicals, identitarian theorists, critical legal scholars, and progressives of all stripes involved in law, legal theory, and legalism of the past half century, to assert, and so repetitively and confidently, the contrary. The domain of adjudicative law has its own ethics. It is for the most part deeply moored in conservative values. It has some redemptive potential and therefore some play for progressive gains, but really not much. More important, it has the potential, all in the name of justice, to further aggravate the harmsit manages to so successfully avoid. *Caring for Justice* was an attempt to expose the aggravation of harm done by law in the name of justice, exploit its redemptive potential, and argue that others should do this also. But completely aside from the arguments of that book, I think this is still a very important and very much under-examined question for progressive lawyers to ask: how much can be asked of adjudicative law? Again, my answer is "not much." Others disagree. My current retrospective on the place of Catharine MacKinnon's jurisprudence in our law and letters, for example, argues that a part of the brilliance of her labors over the last thirty years has been her quite conscious embrace of law and legalism, rather than the domain of politics, culture, or education, to achieve evolutionary changes in our understanding of both sexual injury and sexual justice. [**97**](http://www.lexis.com/research/retrieve?_m=39680407fb828dfdd157d657f657a888&docnum=53&_fmtstr=FULL&_startdoc=51&wchp=dGLbVtz-zSkAt&_md5=4f80854bd4621b982f860148cd3f92b3&focBudTerms=casey%20and%20foucault%20and%20abortion&focBudSel=all#n97) She has been phenomenally successful in pushing law to become a **[\*48]** vehicle for that evolutionary change. By contrast, I think, the benighted attempt over the last half century of progressive constitutional lawyers and theorists to employ the stratagems and ethics of legalism so as to refigure our fundamental politics, to achieve substantive equality, expand liberty, and the like--and to do so by urging on courts the development of progressive interpretations of their constitutional corollaries--has been a pretty striking failure, and not only because of the current Republican staffing of the courts. Obviously, the arguments put forward by progressives, radicals, and liberals in their thousands upon thousands of pages of briefs--arguments about what equality should look like, about what freedoms we all should or should not have, about democracy, about speech, about reproduction, about race, about sex, and so on and so on and so on, as well as their constitutional corollaries, from *Brown* [98](http://www.lexis.com/research/retrieve?_m=39680407fb828dfdd157d657f657a888&docnum=53&_fmtstr=FULL&_startdoc=51&wchp=dGLbVtz-zSkAt&_md5=4f80854bd4621b982f860148cd3f92b3&focBudTerms=casey%20and%20foucault%20and%20abortion&focBudSel=all#n98) to *Roe* [99](http://www.lexis.com/research/retrieve?_m=39680407fb828dfdd157d657f657a888&docnum=53&_fmtstr=FULL&_startdoc=51&wchp=dGLbVtz-zSkAt&_md5=4f80854bd4621b982f860148cd3f92b3&focBudTerms=casey%20and%20foucault%20and%20abortion&focBudSel=all#n99) to *Casey* [100](http://www.lexis.com/research/retrieve?_m=39680407fb828dfdd157d657f657a888&docnum=53&_fmtstr=FULL&_startdoc=51&wchp=dGLbVtz-zSkAt&_md5=4f80854bd4621b982f860148cd3f92b3&focBudTerms=casey%20and%20foucault%20and%20abortion&focBudSel=all#n100) to *Lawrence* [101-](http://www.lexis.com/research/retrieve?_m=39680407fb828dfdd157d657f657a888&docnum=53&_fmtstr=FULL&_startdoc=51&wchp=dGLbVtz-zSkAt&_md5=4f80854bd4621b982f860148cd3f92b3&focBudTerms=casey%20and%20foucault%20and%20abortion&focBudSel=all#n101-)-are vital arguments with which to engage. The problem is that these arguments should be--and are not--the bread and butter of very ordinary politics, completely traditionally understood. The repeated insistence by liberal legalists over the last half-century that these arguments are, in fact, in law's domain has not secured progressive victories and has had the perverse effect instead of impoverishing our politics. [**102**](http://www.lexis.com/research/retrieve?_m=39680407fb828dfdd157d657f657a888&docnum=53&_fmtstr=FULL&_startdoc=51&wchp=dGLbVtz-zSkAt&_md5=4f80854bd4621b982f860148cd3f92b3&focBudTerms=casey%20and%20foucault%20and%20abortion&focBudSel=all#n102) The repeated insistence by critical legal scholars over the last thirty years that, contra liberalism, there is no difference between law and politics--and that what follows is simply that all those legal arguments in all of those endless Supreme Court opinions pontificating over the meaning of liberty and equality are in fact political arguments--has not changed this dynamic one bit. It has not only underscored the total absence of any coherent progressive instrumentalism from left understandings of the potential of law. Of greater consequence, it has also even **further emasculated and eviscerated** our politics, worse than liberalism could have done if it had tried, and it did not. The critical insistence on the deconstruction of the differences between law and politics has only reinforced, rather than challenged in any meaningful way, the liberal legalist conceit that law, rather than politics ordinarily understood, is the domain of radical and liberal political thought. We have no political "left" in this country, in part, because those who would otherwise be inclined to make one have instead poured their thought, their passion, and their commitments into litigation [\*49] strategies or into the project of pointing out over and over the politics of those projects**.** The result of this has been an entrenched conservatism across the board**-**-the board, that is, of both law and politics. Progressives need to re-direct their political arguments, including the radical arguments, out of law and law reviews and into the domain of politics. We first have to get over the lazy assumption that there is no need to do so--either because law is much loftier than ordinary politics, such that ennobling political arguments *ought* to be made in judicial fora (liberalism); or because there's no difference between law and politics, so that pointing out that legal arguments are through and through political is the beginning and end of political thought (critical). There are alternatives to both, and we ought to start figuring out what they are.

#### Drone courts are a farce--they legitimate and entrench Obama's kill list without creating real restraints. Congress and the courts become an accomplice to illegitimate exec power

Greenwald 13 (Glenn, former Constitutional and civil rights litigator, May 3, “The bad joke called 'the FISA court' shows how a 'drone court' would work,” The Guardian, http://www.guardian.co.uk/commentisfree/2013/may/03/fisa-court-rubber-stamp-drones)

The rationale offered is the same as what was used to justify the Fisa court: the President needs some check on who he targets, but requiring that he charge the person he wants to kill with a crime and convict them in a real court is too cumbersome. Therefore, this reasoning goes, a "drone court" modeled on the Fisa court is the happy medium: he'll have some constraints on his power to kill whomever he wants, but its secretive, one-sided process and lowered levels of required proof will ensure the necessary agility and flexibility he needs as Commander-in-Chief. As the NYT Editors put it: the drone court "would be an analogue" to the Fisa court whereby: "If the administration has evidence that a suspect is a terrorist threat to the United States, it would have to present that evidence in secret to a court before the suspect is placed on a kill list." But does anyone believe that a "drone court" would be any less of a mindless rubber-stamp than the Fisa court already is? Except for a handful of brave judges who take seriously their constitutionally assigned role of independence, the vast majority of federal judges are far too craven to tell the president that he has not submitted sufficient proof that would allow him to kill someone he claims is a Terrorist. The fact that it would all take place in secret, with only the DOJ present, further ensures that the results would mirror the embarrassing subservience of the Fisa court. As former Pentagon chief counsel Jeh Johnson put it in a speech last month discussing this proposal: "Its proceedings would necessarily be ex parte and in secret, and, like a FISA court, I suspect almost all of the government's applications would be granted, because, like a FISA application, the government would be sure to present a compelling case. So, at the same time the New York Times editorial page promotes a FISA-like court for targeted lethal force, it derides the FISA court as a 'rubber stamp' because it almost never rejects an application. How long before a 'drone court' operating in secret is criticized in the same way?" Precisely. But like the Fisa court, such a "drone court" would be far worse than merely harmless. Just imagine how creepy and tyrannical it is to codify a system where federal judges - in total secrecy and with only government lawyers present - issue execution warrants that allow the president to kill someone who has never been charged with a crime. It's true that the president is already doing this, and is doing it without any external oversight. But a fake, illusory judicial process lends a perceived legitimacy to his execution powers that is not warranted by the reality of this process. Worse, it further infects the US judiciary with warped, secretive procedures more akin to a Star Chamber than anything recognized by the US Constitution. Beyond that, it takes a program that is now seen as a radical presidential power grab - Obama's kill list - and legitimizes and entrenches it by making both the Congress and courts cooperative parties.It's one thing to have a secret court that lends a veneer of legality and legitimacy to the government's rampant spying behavior. It's quite another to have one that authorizes the government to kill people who have never been charged with, let alone convicted of, any actual crime. But it's a rather powerful reflection of how warped our political culture has become that a secret, unaccountable, one-sided "court" is being widely proposed to issue execution warrants, and that this is the "moderate" or even "liberal" position. How anyone could look at the Fisa court and want to replicate its behavior in the context of presidential executions is really mystifying.

#### Our alternative is to bring democracy alive by defying the law. Individuals should recognize they are not controlled byt drones. Once we realize that Presidents and courts cannot determine who we are nor should they be looked at as the ultimate source of authority, then fundamental change is possible.

Zinn ‘5 (Howard, Z Magazine, It's Not up to the Court, November)

There is enormous hypocrisy surrounding the pious veneration of the Constitution and "the rule of law." The Constitution, like the Bible, is infinitely flexible and is used to serve the political needs of the moment. When the country was in economic crisis and turmoil in the Thirties and capitalism needed to be saved from the anger of the poor and hungry and unemployed, the Supreme Court was willing to stretch to infinity the constitutional right of Congress to regulate interstate commerce. It decided that the national government, desperate to regulate farm production, could tell a family farmer what to grow on his tiny piece of land. When the Constitution gets in the way of a war, it is ignored. When the Supreme Court was faced, during Vietnam, with a suit by soldiers refusing to go, claiming that there had been no declaration of war by Congress, as the Constitution required, the soldiers could not get four Supreme Court justices to agree to even hear the case. When, during World War I, Congress ignored the First Amendment's right to free speech by passing legislation to prohibit criticism of the war, the imprisonment of dissenters under this law was upheld unanimously by the Supreme Court, which included two presumably liberal and learned justices: Oliver Wendell Holmes and Louis Brandeis. It would be naive to depend on the Supreme Court to defend the rights of poor people, women, people of color, dissenters of all kinds. Those rights only come alive when citizens organize, protest, demonstrate, strike, boycott, rebel, and violate the law in order to uphold justice. The distinction between law and justice is ignored by all those Senators--Democrats and Republicans--who solemnly invoke as their highest concern "the rule of law." The law can be just; it can be unjust. It does not deserve to inherit the ultimate authority of the divine right of the king. The Constitution gave no rights to working people: no right to work less than twelve hours a day, no right to a living wage, no right to safe working conditions. Workers had to organize, go on strike, defy the law, the courts, the police, create a great movement which won the eight-hour day, and caused such commotion that Congress was forced to pass a minimum wage law, and Social Security, and unemployment insurance. The Brown decision on school desegregation did not come from a sudden realization of the Supreme Court that this is what the Fourteenth Amendment called for. After all, it was the same Fourteenth Amendment that had been cited in the Plessy case upholding racial segregation. It was the initiative of brave families in the South--along with the fear by the government, obsessed with the Cold War, that it was losing the hearts and minds of colored people all over the world--that brought a sudden enlightenment to the Court. The Supreme Court in 1883 had interpreted the Fourteenth Amendment so that nongovernmental institutions hotels, restaurants, etc.-could bar black people. But after the sit-ins and arrests of thousands of black people in the South in the early Sixties, the right to public accommodations was quietly given constitutional sanction in 1964 by the Court. It now interpreted the interstate commerce clause, whose wording had not changed since 1787, to mean that places of public accommodation could be regulated by Congressional action and be prohibited from discriminating. Soon this would include barbershops, and I suggest it takes an ingenious interpretation to include barbershops in interstate commerce. The right of a woman to an abortion did not depend on the Supreme Court decision in Roe v. Wade. It was won before that decision, all over the country, by grassroots agitation that forced states to recognize the right. If the American people, who by a great majority favor that right, insist on it, act on it, no Supreme Court decision can take it away. The rights of working people, of women, of black people have not depended on decisions of the courts. Like the other branches of the political system, the courts have recognized these rights only after citizens have engaged in direct action powerful enough to win these rights for themselves. Still, knowing the nature of the political and judicial system of this country, its inherent bias against the poor, against people of color, against dissidents, we cannot become dependent on the courts, or on our political leadership. Our culture--the media, the educational system--tries to crowd out of our political consciousness everything except who will be elected President and who will be on the Supreme Court, as if these are the most important decisions we make. They are not. They deflect us from the most important job citizens have, which is to bring democracy alive by organizing, protesting, engaging in acts of civil disobedience that shake up the system. That is why Cindy Sheehan's dramatic stand in Crawford, Texas, leading to 1,600 anti-war vigils around the country, involving 100,000 people, is more crucial to the future of American democracy than the mock hearings on Justice Roberts or the ones to come on Judge Alito. That is why the St. Patrick's Four need to be supported and emulated. That is why the GIs refusing to return to Iraq, the families of soldiers calling for withdrawal from the war, are so important. That is why the huge peace march in Washington on September 24 bodes well. Let us not be disconsolate over the increasing control of the court system by the right wing. The courts have never been on the side of justice, only moving a few degrees one way or the other, unless pushed by the people. Those words engraved in the marble of the Supreme Court, "Equal Justice Before the Law," have always been a sham. No Supreme Court, liberal or conservative, will stop the war in Iraq, or redistribute the wealth of this country, or establish free medical care for every human being. Such fundamental change will depend, the experience of the past suggests, on the actions of an aroused citizenry, demanding that the promise of the Declaration of Independence--an equal right to life, liberty, and the pursuit of happiness--be fulfilled.

# 2

#### Our interpretation is that the aff must defend the hypothetical enactment of the United States Federal Government increasing statutory restrictions

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

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

#### This is best --- limits --- being able to garner advantages based off of in round discourse, reps and discussions allows for an infinite number of diverse advantage areas that makes it impossible to be prepared for --- it no longer matters what the topic is but what the discussions that we have --- it also creates an unpredictable burden of the different number of things that they could claim

# 3

CIA seeking authority to turn Yemen into Pakistan and Obama is currently resisting

Ruppert 12 Madison, End of the Lie, http://endthelie.com/2012/04/19/cia-seeking-authority-to-radically-expand-covert-drone-campaign-in-yemen/#axzz2klurb4jY

The American Central Intelligence Agency (CIA) is now seeking new authority to expand their covert bombing campaign, which is carried out via unmanned aerial vehicles (UAVs, better known as drones), including the power to murder suspected terrorists in Yemen even when they do not know who the people they are killing actually are. That’s right, according to U.S. officials quoted by The Washington Post they want to launch attacks “against terrorism suspects even when it does not know the identities of those who will be killed.” Keep in mind, Yemen is also where U.S. President Barack Obama first flexed his muscles by carrying out the extrajudicial assassination of Americans. The CIA is seeking permission to use so-called “signature strikes” which give them the ability to bomb targets based on nothing more than “intelligence indicating patterns of suspicious behavior.” They claim that some of this might be images showing militants gathering at areas which are known al Qaeda compounds or unloading explosives, although the accuracy of these assessments is highly questionable. It is well known that the military cannot keep up with the amount of intelligence they are gathering with these drones, and when you throw civilians with little to no accountability into the kill chain, you have a potentially dangerous combination. The practice of bombing alleged militants without even knowing who they are or who they will kill with the missile strike has been the hallmark of the CIA’s drone activities in Pakistan, which has directly contributed to the large civilian death toll. The exact numbers are disputed but the New America Foundation puts the number of casualties between 1,717 and 2,680 between 2004 and 2011, while between 293 and 471 of those were civilians. The Bureau of Investigative Journalism out of the UK, on the other hand, says that around 3,000 have been killed by drone strikes and between 391 and 780 of those were civilians. However, even that larger number is being questioned by a Pakistani lawyer Shahzad Akbar, who is also the co-founder of the human rights organization Foundation for Fundamental Rights. “Most of the victims who are labeled militants might be Taliban sympathizers but they are not involved in any criminal or terrorist acts,” Akbar said. “The Americans often use the fact that someone carries a weapon as proof they’re a combatant. If that’s the criteria, then the U.S. will have to commit genocide, because all men in that area carry AK-47s. It’s part of their culture.” This statement is still relevant in examining the situation in Yemen, as they would like to begin employing the exact same techniques that have shown such disastrous results in Pakistan. According to unnamed U.S. officials, CIA Director David Petraeus has requested permission to expand the tactics used in Pakistan to alleged militants in Yemen. If Petraeus gets his way, it would likely even further ramp up the bombings in Yemen which are already incredibly frequent. Indeed, there have been no less than eight attacks in the last four months, although keep in mind those are only the ones we know about. The Washington Post claims that Obama endorsing signature strikes would signal a major policy shift with potentially risky consequences since “the administration has placed tight limits on drone operations in Yemen.” They further claim that this is done “to avoid being drawn into an often murky regional conflict and risk turning militants with local agendas into potential al-Qaeda recruits,” although as we all know that is hardly accurate given that we know that innocent people have been killed in Yemen already. Another anonymous Obama administration figure refused to discuss American tactics in Yemen while claiming “there is still a very firm emphasis on being surgical and targeting only those who have a direct interest in attacking the United States.” If this is true, then 16-year-old American citizen Abdulrahman bin Anwar Al Awlaki, born in Denver, Colorado had “a direct interest in attacking the United States.” According to a statement from the family, the teenage boy “went out with his friends for dinner in the moonlight and they were struck by an American rocket that killed Abdulrahman and his friends.” Thankfully, not all officials are jumping behind the idea. “How discriminating can they [signature strikes] be?” One senior U.S. official who is familiar with the proposal pondered. The official also voiced concern over the United States potentially being seen as taking sides in a civil war as the local insurgency is allegedly “joined at the hip” with the al Qaeda-affiliated group in Yemen. “I think there is the potential that we would be perceived as taking sides in a civil war,” he said. The officials stated that the CIA’s proposal has been put before the National Security Council, but no decision has been made as of yet. Officials from both the CIA and White House would not publicly comment on the matter, although if it is approved, which I believe is quite likely, we might hear some official announcements. On the other hand, such a policy would be quite easy to enact unofficially while still flatly denying any such activity and ignoring any reports of civilian casualties. Individuals who support the proposal claim that American intelligence gathering abilities in Yemen have sufficiently improved enough to make it possible to expand the drone campaign and include signature strikes while supposedly still keeping the risk of civilian deaths to a minimum. Personally, I find this assertion quite dubious at best. If U.S. intelligence collection was sufficient to ensure a minimal risk of civilian casualties, why was a 16-year-old boy from Colorado slaughtered? Furthermore, a former senior U.S. military official familiar with the drone operations in Pakistan claimed that the CIA “killed most of their ‘list people’ [meaning kill list people] when they didn’t know they were there.” Once again, considering the source and the motive to potentially put forth misleading information in this situation makes me hesitant to buy it. The Washington Post says that Obama ruled out a proposal similar to this one over a year ago, but the CIA still believes that they can be more effective against the supposed terrorists by bombing people without identifying them before they slaughter them.

#### Cia drone control would establish a norm of covert TK- reinforces the state of exception

Alston 11 President and Fellows of Harvard College. All Rights Reserved. Harvard National Security Journal 2011 Harvard National Security Journal 2 Harv. Nat'l Sec. J. 283 The CIA and Targeted Killings Beyond Borders Philip Alston John Norton Pomeroy Professor of Law, New York University School of Law. The author was UN Special Rapporteur on extrajudicial, summary or arbitrary executions from 2004 until 2010. lexis

In terms of the de jure legal situation, one can begin with the proposition that the CIA is obligated to respect United States law, and thus to comply with international law to the extent that it is reflected in the former. But various authors, especially those with links to the government, have also noted that there are no statutory requirements in U.S. law requiring the CIA to comply with international law, n291 and international law does not explicitly prohibit covert operations. n292 In an oft-quoted anecdote, a former CIA Director, Admiral Stansfield Turner, remarked that, "The FBI agent's first reaction when given a job is, 'How do I do this within the law?' The CIA agent's first reaction when given a job is, 'How do I do this regardless of the law of the country in which I am operating?'" n293 Others have noted, albeit not in relation to targeted killings, that "[b]y definition, it is the job of [the CIA] to break the laws of other countries." n294 It can reasonably be inferred that international law is not going to provide any significant constraint upon the Agency's determination to do its job unless two conditions are satisfied. The first is that the relevant international law standard is clearly and explicitly part of domestic United States law. And the second is that there is a system of domestic oversight ensuring that such international norms are factored into the overall equation of domestic accountability. We will consider that second element below. Perhaps the most interesting question about the CIA and international law concerns the de facto legal situation, or the actual practice. The reality, of course, is that the foreign operations of the intelligence agencies of all countries by definition take place below the radar screen, and many, if not most, of their activities will violate the laws of the third [\*369] countries in which they operate, as well as perhaps violating international law norms. This applies as much to Russian agents operating in the United States as it does to U.S. intelligence operatives in Pakistan. n295 But if this is the case and if there seem to be very few instances in which states make a fuss about the activities of foreign intelligence agencies, does it really matter if they are de jure illegal? As Michael Reisman has noted, covert action takes place under "a much more complex operational code than formal statements of prohibition would lead one to anticipate." n296 Thus even verbal condemnation on the part of an affected government will often cloak de facto acquiescence. This proposition has been taken even further by Colonel Kathryn Stone with her assertion that "[m]ost of the world has come to look at CIA de facto wars as a way of life because most powers benefit from their own CIA-equivalents operating in foreign countries . . . ." n297 The question then is what limits apply. Intelligence gathering is apparently very widely tolerated, economic espionage perhaps less so, but what about targeted killings by intelligence agents? Because of the clandestine and sometimes covert nature of intelligence activities, and the responses to them, relatively little is publicly known in terms of state practice. But four variables would seem to be of particular importance in predicting when a passive or restrained response will be forthcoming from an affected state. They are the status of the individual agent, the nature of the covert action, power relations, and the independence of the judicial system.

# 4

#### Vitz and I advocate: In the next available test case, the Supreme Court of the United States should rule that due process protections should be expanded to individuals who have been detained in the war on terror.

#### Status quo military tribunals are forms of executive power where there are no checks on the expansion of Govermentality. Tribunals are created, used, and enforced by the executive whenever they desire. The people who are tried are subjected to no true trial but are left as victims of the state.

Butler ‘4 (2004, Judith Butler is a Professor of Rhetoric and Comparative Literature at U.C. Berkeley, “Precarious Life: The Powers of Mourning and Violence”, pg. 74-76 AH)

The danger that these prisoners are said to pose is unlike dangers¶ that might be substantiated in a court of law and redressed through¶ punishment. In the news conference on March 21, 2002, Department¶ of Defense General Counsel Haynes answers a reporter's question in¶ a way that confirms that this equivocation is at work in their thinking.¶ An unnamed reporter in the news conference, concerned about the¶ military tribunal, asks: If someone is acquitted of a crime under this¶ tribunal, will they be set free? Haynes replied:¶ If we had a trial right this minute, it is conceivable that somebody¶ could be tried and acquitted of that charge, but might not¶ automatically be released. The people we are detaining, for example,¶ in Guantanamo Bay, Cuba, are enemy combatants that [sic) we¶ captured on the battlefield ~~see~~king to harm US soldiers or allies, and¶ they're dangerous people. At the moment, we're not about to¶ release any of them unless we find that they don't meet those¶ criteria. At some point in the future ...¶ The reporter then interrupted, saying: "But if you (can't] convict¶ them, if you can't find them guilty, you would still paint them with¶ that brush that we find you dangerous even though we can't convict¶ you, and continue to incarcerate them?" After some to and fro,¶ Haynes stepped up to the microphone, and explained that "the people that we now hold at Guantanamo are held for a specific reason that is¶ not tied specifically to any particular crime. They're not held they're¶ not being held on the basis that they are necessarily¶ criminals." They will not be released unless the US finds that "they¶ don't meet those criteria," but it is unclear what criteria are at work¶ in Haynes's remark. If the new military tribunal sets the criteria, then¶ there is no guarantee that a prisoner will be released in the event of¶ exoneration. The prisoner exonerated by trial may still be "deemed¶ dangerous," where that deeming is based in no established criteria.¶ Establishing dangerousness is not the same as establishing guilt and,¶ in Haynes's ~~view~~, and in ~~view~~s subsequently repeated by administrative¶ spokespersons, the executive branch's power to deem a¶ detainee dangerous preempts any determination of guilt or innocence¶ established by a military tribunal. In the wake of this highly qualified approach to the new military¶ tribunals (themselves regarded as illegitimate), we ~~see~~ that these are¶ tribunals whose rules of evidence depart in radical ways from both¶ the rules of civilian courts and the protocols of existing military¶ courts, that they will be used to try only some detainees, that the¶ office of the President will decide who qualifies for these secondary¶ military tribunals, and that matters of guilt and innocence reside¶ finally with the executive branch. If a military tribunal acquits a¶ person, the person may still be deemed dangerous, which means that¶ the determination by the tribunal can be preempted by an extra-legal¶ determination of dangerousness. Given that the military tribunal is¶ itself extra-legal, we ~~see~~m to be witnessing the replication of a¶ principle of sovereign state prerogative that knows no bounds. At¶ every step of the way, the executive branch decides the form of the¶ tribunal, appoints its members, determines the eligibility of those to¶ be tried, and assumes power over the final judgment; it imposes the¶ trial selectively; it dispenses with conventional evidentiary procedure. And it justifies all this through recourse to a determination of¶ "dangerousness" which it alone is in the position to decide. A certain¶ level of dangerousness takes a human outside the bounds of law, and¶ even outside the bounds of the military tribunal itself, makes that¶ human into the state's possession, infinitely detainable. What counts¶ as "dangerous" is what is deemed dangerous by the state, so that,¶ once again, the state posits what is dangerous, and in so positing it,¶ establishes the conditions for its own preemption and usurpation of¶ the law, a notion of law that has already been usurped by a tragic¶ facsimile of a trial.

#### A drone court would provide a veil of legitimacy while rubber-stamping the administration’s expansion of its campaign of global terror

Vladeck 13 Steve Vladeck 02/10/13 (Professor of Law and the Associate Dean for Scholarship at American University Washington College of Law. His teaching and research focus on federal jurisdiction, constitutional law, national security law, and international criminal law. “Why a “Drone Court” Won’t Work–But (Nominal) Damages Might...”, LawFare, from a conference hosted by Columbia Law School on targeted killings.)

That brings me to perhaps the biggest problem we should all have with a “drone court”–the extent to which, even if one could design a legally and practically workable regime in which such a tribunals could operate, its existence would put irresistible pressure on federal judges to sign off even on those cases in which they have doubts. As a purely practical matter, it would be next to impossible meaningfully to assess imminence, the existence of less lethal alternatives, or the true nature of a threat that an individual suspect poses ex ante. Indeed, it would be akin to asking law enforcement officers to obtain judicial review before they use lethal force in defense of themselves or third persons–when the entire legal question turns on what was actually true in the moment, as opposed to what might have been predicted to be true in advance. At its core, that’s why the analogy to search warrants utterly breaks down–and why it would hardly be surprising if judges in those circumstances approved a far greater percentage of applications than they might have on a complete after-the-fact record. Judges, after all, are humans. In the process, the result would be that such ex ante review would do little other than to add legitimacy to operations the legality of which might have otherwise been questioned ex post. Put another way, ex ante review in this context would most likely lead to a more expansive legal framework within which the targeted killing program could operate, one sanctioned by judges asked to decide these cases behind closed doors; without the benefit of adversary parties, briefing, or presentation of the facts; and with the very real possibility that the wrong decision could directly lead to the deaths of countless Americans. Thus, even if it were legally and practically possible, a drone court would be a very dangerous idea.

# Case

#### The status quo is solving better than your aff- there is a mobilized global community challenging US drone strikes in the squo.

Madea Benjamin, founder of CODEPINK in 2013 Medea Benjamin is cofounder of CODEPINK and the human rights organization Global Exchange. She is the author of Drone Warfare: Killing by Remote Control. “Drone Victims Come Out of the Shadows” Nov 5 http://fpif.org/drone-victims-come-shadows/?utm\_source=feedburner&utm\_medium=feed&utm\_campaign=Feed%3A+FPIF+%28Foreign+Policy+In+Focus+%28All+News%29%29

At each of the over 200 cities I’ve traveled to this past year with my book Drone Warfare: Killing by Remote Control, I ask the audience an easy question: Have they ever seen or heard from drone strike victims in the mainstream U.S. press? Not one hand has ever gone up. This is an obvious indication that the media has failed to do its job of humanizing the civilian casualties that accompany President Obama’s deadly drone program. This has started to change, with new films, reports, and media coverage finally giving the American public a taste of the personal tragedies involved. On October 29, the Rehman family—a father with his two children—came all the way from the Pakistani tribal territory of North Waziristan to the U.S. Capitol to tell the heart-wrenching story of the death of the children’s beloved 67-year-old grandmother. And while the briefing, organized by Congressman Alan Grayson, was only attended by four other congresspeople, it was packed with media. Watching the beautiful 9-year-old Nabila relate how her grandmother was blown to bits while outside picking okra softened the hearts of even the most hardened DC politicos. From the congressmen to the translator to the media, tears flowed. Even the satirical journalist Dana Milbank, who normally pokes fun at everything and everyone in his Washington Post column, covered the family’s tragedy with genuine sympathy. The visit by the Rehman family was timed for the release of the groundbreaking new documentary Unmanned: America’s Drone Wars by Robert Greenwald of Brave New Foundation. The emotion-packed film is filled with victims’ stories, including that of 16-year-old Tariq Aziz, a peace-loving, soccer-playing teenager obliterated three days after attending an anti-drone conference in Islamabad. Lawyers in the film pose the critical question: If Tariq was a threat, why didn’t they capture him at the meeting and give him the right to a fair trial? Another just released documentary is Wounds of Waziristan, a well-crafted, 20-minute piece by Pakistani filmmaker Madiha Tahir that explains how drone attacks rip apart communities and terrorize entire populations. Just as the visit and the films have put real faces on drone victims, a plethora of new reports by prestigious institutions—five in total—have exposed new dimensions of the drone wars. On October 22, Human Rights Watch issued a report on drone strikes in Yemen and Amnesty International issued another on drone strikes in Pakistan. While not calling for an end to all drone strikes, the reports detail cases of civilian casualties and criticize the U.S. government for considering itself above the rule of law and accountability. A third report, License to Kill, released by the Geneva-based group Al Karama, is much more damning of U.S. policy. While Amnesty and Human Rights Watch say drones are lawful under certain circumstances and mainly push for transparency, Al Karama asserts that the U.S. drone war is a clear violation of international law. It calls for an end to extrajudicial executions and targeted killings; complete reparations to victims; and a resolution by the UN Human Rights Council opposing the U.S. practice of extrajudicial executions. Adding to these well-researched reports by non-governmental organizations are two documents commissioned by the United Nations. One is by Christof Heyns, the UN’s special rapporteur on extrajudicial, summary, or arbitrary executions. The other is by Ben Emmerson, the special rapporteur on human rights and counter-terrorism. Heyns warns that while drones may be more targeted than other weapons, they are easier to use and may “lower social barriers against the use of lethal force.” He said that a “drones only” approach risks ignoring peaceful approaches such as individual arrests and trial, negotiations and building alliances. Emmerson said states have the obligation to capture terrorist suspects, when feasible, and should only use force as a last resort. He blasted the U.S. lack of transparency, calling it the single greatest obstacle to an evaluation of the civilian impact of drone strikes. He said states must be transparent about the acquisition and use of drones, the legal basis and criteria for targeting, and their impact. “National security does not justify keeping secret the statistical and methodological data about the use of drones,” he claimed. But perhaps more impactful than the UN reports themselves was the debate they engendered on the floor of the UN General Assembly. On October 26, for the first time ever, representatives from a broad swath of nations waited their turn to denounce the U.S. drone policy. Venezuela called drones “flagrantly illegal” and said they were a form of “collective punishment.” Brazil pushed the UN rapporteurs to take an even stronger stand. China called drones a “blank space in international law” and insisted that nations “respect the principles of UN charters, the sovereignty of states, and the legitimate rights of the citizens of all countries.” The representative of Pakistan tried to put to rest press reports that the Pakistani government secretly approved of the strikes. He stated that drones put all Pakistanis at risk and radicalize more people, and called for “an immediate cessation of drone strikes within the territorial boundaries of Pakistan.” This was the same sentiment expressed by Pakistani Prime Minister Nawaz Sharif in his October 23 meeting with President Obama. The U.S. government is feeling the pressure. It has taken steps to reduce civilian casualties and has reduced the actual number of strikes, but certainly not eliminated them. In fact, there was a drone strike in Somalia on October 28 and another one in Pakistan on October 31 that killed Taliban leader Hakimullah Mahsoud, who was about to engage in peace talks with the Pakistan government. While the reduction in the number of strikes is a partial victory, it cannot erase the hundreds of innocent lives lost over the years. Also, with the global proliferation of drones (thanks to the easing of restrictions on overseas sales and the introduction of domestic drones into U.S. skies by September 2015), their usage will inevitably increase. A mobilized global community is the only force that can serve as a restraining factor. It is also [the] best way to honor the Rehman family and other victims. As 13-year-old Zubair Rehman testified, “I hope that by telling you about my village and death of my grandmother, I can convince you that drones are not the answer. I hope I can return home to tell my community that Americans listened and are trying to help us solve the many problems we face. And maybe, just maybe, America may soon stop the drones.” Responding to this call is the Global Drone Summit November 16-17 in Washington DC, where hundreds of people from around the world will gather to strategize and to organize a global network. They will also announce campaigns to pressure the U.S. government to release the legal memos justifying drone strikes, and create a compensation fund for civilian victims. Check here to register for the summit or watch the livestream.

#### Executive lawyers will teach the Executive how to blow off the plan

Shane 12 \*Peter M. Jacob E. Davis and Jacob E. Davis II Chair in Law, The Ohio State University Moritz School of Law. From 1978 to 1981, served in the Office of Legal Counsel, U.S. Department of Justice. Journal of National Security Law & Policy, 5 J. Nat'l Security L. & Pol'y 507

Yet, the ideological prism of presidentialism can bend the light of the law so that nothing is seen other than the claimed prerogatives of the sitting chief executive. Champions of executive power - even skilled lawyers who should know better - wind up asserting that, to an extraordinary extent, the President as a matter of constitutional entitlement is simply not subject to legal regulation by either of the other two branches of government. [\*511] Government attorneys must understand their unique roles as both advisers and advocates. In adversarial proceedings before courts of law, it may be fine for each of two contesting sides, including the government, to have a zealous, and not wholly impartial, presentation, with the judge acting as a neutral decisionmaker. But in their advisory function, government lawyers must play a more objective, even quasi-adjudicative, role. They must give the law their most conscientious interpretation. If they fail in that task, frequently there will be no one else effectively situated to do the job of assuring diligence in legal compliance. Government lawyers imbued with the ideology of presidentialism too easily abandon their professional obligations as advisers and too readily become ethically blinkered advocates for unchecked executive power. Jack Goldsmith headed the Office of Legal Counsel (OLC) for a little less than ten months in 2003-2004. Of the work done by some government attorneys and top officials after 9/11, he said they dealt with FISA limitations on warrantless surveillance by the National Security Agency (NSA) "the way they dealt with other laws they didn't like: they blew through them in secret based on flimsy legal opinions that they guarded closely so no one could question the legal basis for the operations." 7 He describes a 2003 meeting with David Addington, who was Counsel and later Chief of Staff to Vice President Dick Cheney, in which Addington denied the NSA Inspector General's request to see a copy of OLC's legal analysis in support of the NSA surveillance program. Before Goldsmith arrived at OLC, "not even NSA lawyers were allowed to see the Justice Department's legal analysis of what NSA was doing." 8

#### The executive can easily manipulate Congressional oversight

Beutler 13 Brian, senior congressional reporter for Talking Points, TPM, 6-19, http://tpmdc.talkingpointsmemo.com/2013/06/snowden-revelations-cast-new-doubts-on-intelligence-oversight-process.php

“We’ve learned from the past that there’s a right way and a wrong way to give Congress the information we need to make decisions about our laws and policies, but I think we’re still a work in progress when it comes to the level of transparency needed for meaningful exchange about ongoing activities,” Sen. Jay Rockefeller (D-WV), who sits on and used to chair the Senate Intelligence Committee, told TPM last Thursday. “The Bush Administration launched programs without any legal authority at all and then would show just the Intelligence Committee chairs and vice chairs a few perfunctory flip-charts - which we weren’t allowed to discuss even with each other — just so they could later claim ‘Congress was briefed.’ That created a deep distrust, and for me some skepticism lingers. It took years of wrangling with the intelligence community to open briefings up to more Senators, and there is still a lot of resistance to sharing information more broadly and with the public. But the process works far better today than in the past. The FISA law we passed requires multiple regular reports from the agencies, so if we see irregularities or areas of concern, we can pursue those.” It’s unusual for a member of the committee — even one who’s skeptical of the intelligence community’s most controversial practices — to critique the oversight process, even mildly. But reports and briefings are only as accurate and thorough as briefers are forthright and comprehensive — a variable that has hampered oversight efforts for years, according to members, aides and former aides who spoke with TPM. Likewise the sometimes arbitrary and legally dubious restrictions on what senior congressional aides with top-secret clearance are given access to, and what and to whom elected officials are allowed to tell even each other, can hobble the legislative branch’s efforts to understand what our spy agencies are really up to, let alone fulfill the government’s statutory obligation to fully and currently inform the Congress. Like all people with security clearances, members of the House and Senate intelligence committees are briefed about classified information in SCIFs — Sensitive Compartmented Information Facilities. On Capitol Hill, they’re “vaults,” tucked away underground and closed to the press. According to multiple sources briefings are much more informal than typical oversight hearings, and quite often, because the information under discussion isn’t typically blockbuster in nature, the only people who show up are the committee chairs and vice chairs. What transpires in these facilities — who briefs, how candid they are, how technical their information is, etc. — determines whether members and their cleared staffers obtain accurate understandings of U.S. intelligence programs. That epistemological problem introduces a high degree of uncertainty at the outset of the oversight process, and compounds other problems, such as the fact that committee members only hear from self-interested actors, can’t discuss what they’ve heard with outside experts or colleagues, and can’t affect changes in law without buy-in from the committee chairs at the very least. “Sometimes these briefings are a game of 20 questions,” former Rep. Jane Harman (D-CA), who used to chair the House Permanent Select Committee on Intelligence, told Reuters. “If you don’t ask exactly the right question, you don’t get the answer.” On all issues, across Congress, members rely on staff for subject-area knowledge. Between politicking and fundraising and traveling, it’s unrealistic to expect that every member has mastered all of the nuances of the issues their committees address. But most issues don’t require top-secret clearance. And here, members of the committee run into problems. First, their lawyers or aides with clearance aren’t typically techies, and their aides with technical expertise don’t typically have clearance. So there’s a skills mismatch. Imagine a scientific paper undergoing peer review by law professors. The problem gets even bigger when staff is denied access, and manifests in different ways depending on whether or not the member serves on the committee or not. Senior aides to members of the intel committees have access to a great deal of the intelligence community’s operations — including, in theory, the sorts of collection programs revealed by Edward Snowden. But the executive branch can pressure Congress to exclude these aides, and because the executive branch controls the information, Congress often accedes. They do as a matter of course when the so-called Gang of Eight (the committee chairs and vice chairs, House and Senate Minority Leaders, House Speaker and Senate Majority) are briefed on covert actions.

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**the law is the problem**

CRENSHAW 88, Pf Law @ UCLA, (Kimberle Williams, *Harvard Law Review*, May, lexis)

Legal historian Robert Gordon, for example, declares that one should look not only at the undeniably numerous, specific ways in which the legal system functions to screw poor people . . . **but rather** at all the ways in which **the system seems at first glance basically uncontroversial, neutral, acceptable**. This is Antonio Gramsci's notion of "hegemony," *i.e.,* that the most effective kind of domination takes place when both the dominant and dominated classes believe that the existing order, with perhaps some marginal changes, is satisfactory, or at least represents the most that anyone could expect, because things pretty much have to be the way they are. [**76**](http://www.lexis.com/research/retrieve?_m=2365c304878d445d7ea1ff2dfaa3edbd&docnum=47&_fmtstr=FULL&_startdoc=41&wchp=dGLbVlb-zSkAB&_md5=8d8987966aba5376e2917a9085ca5be0&focBudTerms=kristin%20bumiller&focBudSel=all#n76) According to Gordon, Gramsci directs our attention to the many thoughts and beliefs that people have adopted that **limit their ability "even to *imagine* that life could be different** and better." [**77**](http://www.lexis.com/research/retrieve?_m=2365c304878d445d7ea1ff2dfaa3edbd&docnum=47&_fmtstr=FULL&_startdoc=41&wchp=dGLbVlb-zSkAB&_md5=8d8987966aba5376e2917a9085ca5be0&focBudTerms=kristin%20bumiller&focBudSel=all#n77) Although society's structures of thought have been constructed by elites out of a universe of possibilities, people reify these structures and clothe them with the illusion of necessity. [**78**](http://www.lexis.com/research/retrieve?_m=2365c304878d445d7ea1ff2dfaa3edbd&docnum=47&_fmtstr=FULL&_startdoc=41&wchp=dGLbVlb-zSkAB&_md5=8d8987966aba5376e2917a9085ca5be0&focBudTerms=kristin%20bumiller&focBudSel=all#n78) **Law is an essential** [\*1352] **feature in the illusion of necessity** because it embodies and reinforces ideological assumptions about human relations that people accept as natural or even immutable. People act out their lives, mediate conflicts, and even perceive themselves **with** reference to the law. By **accepting the bounds of law** and ordering their lives according to its categories and relations, people think that they are confirming reality -- the way things must be. Yet by accepting the view of the world implicit in the law, people are also **bound by its conceptual limitations**. Thus conflict and antagonism are contained: the legitimacy of the entire order is never seriously questioned.

# 2NC Courts

#### Prefer the war over ideas instead of the war over the courts

Jones 9 Van, president of the Ella Baker Center for Human Rights, in Oakland, California (ellabakercenter.org) and a National Apollo Alliance steering committee member. Interviewed by the Public Rhetorics and Permanent War research collective (Mirpuri, A., Feldman, K. P. and Roberts, G. M., Antiracism and Environmental Justice in an Age of Neoliberalism: An Interview with Van Jones. Antipode, 41: 401–415 http://onlinelibrary.wiley.com/store/10.1111/j.1467-8330.2009.00680.x/asset/j.14678330.2009.00680.x.pdf?v=1&t=h9db4rfu&s=4eb93e106487916d817d5ed955a183bd99085437)

#### VAN: This is such a heartbreaking question you’re asking me, given my journey to become an attorney and my view now. The right wing has done such an exceptionally brilliant job of capturing the judicial branch of all levels of government and just closing that door. I grew up in the post-civil rights Brown vs Board of Education delusion that the courts would save us. It was just a question of continuing to make good arguments in front of reasonable people and that somehow Scalia and Rehnquist and Clarence Thomas would suddenly go “I get it! You’re right!” and pour down justice. And that’s just silly. It’s not going to happen. The primacy of politics has been clearly asserted. We’re living in a lawless state. The Bush–Cheney–Rumsfeld Administration has just demonstrated that judicial oversight is just a weaker and weaker constraint on market and executive branch activity, military and police activity. To the extent that we’ll find a way out of this, the courts are going to have to play a very small role. I could be wrong, I’d be happy to read this 10 years from now and just laugh. But I don’t think that’s going to happen. To the extent that we’re talking about a pro-democracy movement vs an authoritarian one—you could argue that there’s a pro-democracy movement that’s formed up from 2002 until now that is going to have a bunch of problems because a section of that is now in government in the Democratic Party. But this thing is bigger than the Democratic Party. You could argue there’s a pro-democracy movement, and you don’t have to argue very hard that there’s an authoritarian movement that’s in power. If that’s what you’re looking at, then I would argue that the war of ideas is the main challenge. I would not look to the courts as an arena where we could advance that. I would look to creating new alliances, new success stories, new deeds that might win people over. There are possibilities besides just more Walmarts, more gadgets, more landfills, more incinerators, more wars. We’ve got to do stuff that’s beautiful and inspiring. The Green Jobs Corps will just be that, it’ll just be this beautiful and inspiring Mom and Apple Pie thing with a lot of neat stories in there about not just reclaiming material but reclaiming people, reclaiming communities, reclaiming children. We have to create new stories in the real world, get into fights with the worst offenders, or at least theworst offenders we can get our hands on, and beating them, and tell those inspirational stories of us overcoming odds and overcoming bad guys—in other words, creating heroic narratives out of our own lives so that people can see, “Oh, you can either be like these people or you can be like those people.” That’s going to be really important.

#### Checks and balances de-energize politics

Delmas 6, Candice, Georgia State University, "Liberalism and the Worst-Result Principle: Preventing Tyranny, Protecting Civil Liberty" Philosophy Theses. Paper 14.

However, one might object that liberal institutions and practices precisely intend to discourage citizen participation to the extent that it does threaten the institutional mechanisms of defense against abuses of power. The system of checks and balances, indeed, is designed in order to prevent abuses of power from the people, their representatives, and the government, and thus efficiently protect civil liberty. In What Should Legal Analysis Become?, Unger does point at the historical development of these “mobilization-hostile arrangements” intended by early 19th century liberals “to dampen popular frenzy and to make property safe;”99 yet he does not directly address the inadequacy of such arrangements. A more complete argument is to be found in False Necessity, in which he argues, on historical grounds, that popular engagement is crucial to safeguarding freedoms from governmental abuse of power. His argument is twofold. First, it consists in a general critique of the liberal division of political power and system of checks and balances which dangerously stifle the state. Second, it is programmatic: Unger argues in favor of a mass popular engagement in the political sphere, in order to facilitate structural transformation and protect civil liberty. Analyzing the history of modern constitutional states in the 20th century, Unger reveals that the state’s plasticity is a necessary condition for its safety and stability. As he studies the states’ different constitutional features, Unger sorts out the energizing ones, which enhance freedom by means of supporting the state’s constructive and reconstructive capabilities, from the disabling (liberal) ones, which prevent transformations and condemn the state to paralysis. In particular, they [i.e., liberal structures] prevent those in power from changing the formative context of power and production itself even when they were elected on precisely such a program. Any weakening of the restraints upon the state’s reconstructive capabilities seems at the same time to endanger the basic security of the individual against oppression by his rulers. The constitutional arrangements that result in this formula for paralysis (…) characteristically multiply the number of independent centers of power that must be captured, or persuaded to consent, before state power can be effectively mobilized behind any transformative objective.100 The liberal techniques of checks and balances result in the systematic setting of obstacles in the way of any transformative project, even one approved of by the people. A particularly clear example is provided by the New Deal in the 1930’s. The Supreme Court kept striking down as unconstitutional the efforts of the Congress and President Franklin D. Roosevelt to deal with the Great Depression, on the grounds that they sought an extensive regulation of the economy. The fact that the Supreme Court resisted the programs in spite of their strong popular support shows that Shklar’s belief in the courts’ “natural” adjustment to social consensus may be misguided. The people had to reelect the president and the other supporters of the New Deal to insist that fundamental change was wanted and force the Supreme Court to allow the proposed legislations to pass. Structural change, while not impossible, becomes extremely difficult, and made possible, in this case, only by the lucky fact that a Supreme Court Justice changed his mind, allowing the impasse to be broken. According to Unger, a system so reluctant to implement change, even in the face of an economic catastrophe, is not a good one, as it lacks the ability to respond to crisis in a timely manner. Hence for Unger, the worst-result principle demands moving away from liberal structures to avoid their debilitating effects on society. Unger further emphasizes that totalitarian regimes were established against the people’s will and because of fragilities of the liberal democratic state. He stresses that the collapse of European democracies of the interwar period was sometimes hastened by the relative immobility to which the constitutional arrangements often condemned the governments. In the wake of World War I, indeed, many socialist countries in Europe, like Germany, Austria, and Poland, promulgated new constitutions. These showed a strong commitment to the techniques of dispersion of power and primarily aimed at ensuring the obedience of the executive to the parliament. So great power was given to the parliament and at the same time heavy constraints were imposed upon the government that had to execute legislative policy. These constitutions were soon revised, because of their evident debilitating effects, thus leading to “two immediate causes: the change in the balance of political forces, from left to right, and the desire to give the executive decisional mobility in a domestic and international circumstance of perpetual insecurity.”101 But it was too late. The new elements introduced in the revised constitutions “proved insufficient to rescue states that had already been caught up in the deadly struggles of the interwar period.”102 The revisions just hastened the states’ collapse. Hence the perpetuation of impasse, supposed to protect against abuses of power, turns out to be totally counterproductive to its function, since it paralyzes the state’s ability to revise, adapt and preserve itself when endangered. The link between the techniques of checks and the safeguards of freedom is thus an illusion, as impediments to popular initiative are likely to bring about what they were designed to prevent – tyranny. Unger’s worst-result norm demands avoidance of liberal politics not only because of their de-energizing effects, but also – and most importantly – because they are ineffective in their defense of freedoms. In contrast to this paralytic, de-energized politics, which frustrate us from our ability to experiment, Unger argues in favor of empowering the party in office to execute its program.

# 2NC Welsh

**Debate should strive to become more worldly. And those doesn’t just mean having solidarity with victims. It means having solidarity for types of resistance. The aff’s hatred of all politics that is anywhere close to the state is a way of narrowing opportunities for solidarity and it’s dismissive and it’s a form of cruelty. They ignore that good people have been struggling for centuries to fights for rights and minimize the abuse of the state.**

ISAAC 2, New School for Social Research, (Jeffrey C., Social Research, Summer, p. EXAC)

The central section is Arendt's brief and rather awkward discussion of "the temporary alliance between the mob and the elite" (Arendt, 1973: 326-40). What concerns Arendt is the "terrifying roster of distinguished men" attracted to totalitarianism. From the discussion that follows it becomes clear that the "elite" in question is the **intellectual elite**, or at least a large subset of it, who exulted in the explosion of bourgeois society and all of its hypocrisies, and **who embraced** what they saw as the possibility of something **more authentic** (those named include Sorel, Pareto, Junger, Brecht, Celine, Gide, and Malraux). Arendt makes clear that she both understands and admires the "authenticity and passion" and indeed the sheer brilliance of these intellectuals. Anti-humanist, anti-liberal, and anti-individualist, they abhorred that "the bourgeoisie claimed to be the guardian of Western traditions and confounded all moral issues by parading publicly virtues which it not only did not possess in private and business life, but actually held in contempt" (334). It is easy to overlook, she notes, "how justified disgust can be in a society wholly permeated with the ideological outlook and moral standards of the bourgeoisie.... [W]hat a temptation to flaunt extreme attitudes in the hypocritical twilight of double moral standards" (328, 334). Nonetheless, Arendt argues, these intellectuals were making a terrible mistake. By flaunting the hypocrisies of bourgeois society they **believed** they were **heralding a more authentic mode of existence**; but in fact they merely fed the widespread cynicism of the time, and "encourage [d] everyone to discard the uncomfortable mask of hypocrisy" and embrace the values of nihilism (335). These cynical intellectuals raged against the double standards and mendacities of their society. But they "did not know they were running their heads not against walls but against open doors" (335). They did not realize that their exposures **did not promise a more satisfying form of life**, but only fueled the destruction of bourgeois order by nihilistic murderers. Arendt concludes with the damning though understated observation that they utterly lacked "a sense of reality" (335). What does Arendt mean here? She does not attribute primary responsibility, either causal or moral, for the rise of totalitarianism to these intellectuals, who were basically without power. But she does imply that they were guilty of a serious intellectual and indeed **ethical failure**, connected to the fact that while brilliant they were also cynical. Disgusted with bourgeois hypocrisy and its double standards, they abandoned standards altogether. Revolted by the impoverishment of social relationships, they abandoned all sense of genuine solidarity with fellow citizens or human beings. It was not simply that they lacked any clear sense of the actual consequences of their rage against liberalism. They also failed to offer, or to stand by, any moral values. They were enemies of hypocrisy rather than partisans of liberty. They lacked any "sense of reality"--any **sense of their responsibility** for the common world inhabited by men and women, and any sense of the role of their own ideas as potential sources of human good or evil. The theme of the conjunction of intellect and evil recurs again in the concluding sections of Origins, this time in connection not with the irresponsibility of intellectuals as such, but with the relentless logic of totalitarian ideologies. There is, she argues, not simply a dogmatism but a cruelty inherent in the totalistic explanations furnished by such ideologies. Such cruelty derives from the complete independence of totalitarian ideologies from "all experience." Totalitarian thinking reduces all that is unique, novel, or contingent to the simple terms of its own purported truth. All experience becomes reducible to the terms of that truth, and is forced, not simply politically but also intellectually, to conform to these terms. This accounts for what Arendt considers the most terrifying feature of totalitarian thought, its "stringent logicality." Ideological thinking, she argues, "orders facts into an absolutely logical procedure which starts from an axiomatically accepted premise, deducing everything else from it; that is, it proceeds with a consistency that exists nowhere in the realm of reality" (Arendt, 1973: 471). The ideologue, Arendt maintains, demands a consistency that is inconsistent with "the realm of reality." She does not deny that logic is a method of ordering concepts, or that consistency may be an intellectual virtue. But she maintains that such consistency is not and cannot be a defining quality of the world. The world is too complex, too pluralistic, to admit such consistency. It consists of the disparate experiences, beliefs, and convictions of diverse individuals and groups. And it consists of complex situations that admit of difficult and often tragic choices. The demand for consistency in such a world is too monistic. It is an intellectual conceit--and a conceit specific to intellectuals--to imagine that inconsistency or contradiction is the world's most profound problem, and that the resolution of such inconsistency by logical methods is the most important intellectual-cum-political task. For the elimination of inconsistency may well threaten the elimination of situational ambiguities and differences of opinion that are endemic to the human condition. And, more to the point, the world's most profound problem is not inconsistency or ambiguity or even hypocrisy. It is the infliction of harm and suffering on humans by other humans, and the consequent denial of elemental human dignity to the vulnerable and dispossessed. It is, in short, the denial of freedom to human beings. The "stringent logicality" of ideological thinking not only fails to make this suffering a primary concern; it **actually exacerbates this suffering**, **through its own cruel lack of political responsibility**, and through its tendency to gravitate toward cruel and unsavory causes that seem noble because of their relentless ideological consistency (see Shklar, 1984). I want to be clear about this. Arendt is talking about totalitarian ideologies, principally Nazism and Stalinism. She is not arguing that all of those who turn "logicality" into a supreme virtue are quasi totalitarians. But in criticizing totalitarian modes of thinking, she also makes a more general point: that "strict logicality," whatever its intellectual merits, can be hostile to other and more important human values. Intellectuals, she believes, are peculiarly liable to ignore this, for they often inhabit an imaginary world of pure ideality, in which ideas, especially their own ideas, predominate. This is the peculiar unworldliness of the intellectual. It is the source of much brilliance. But if intellectuals want to be social critics then they **must become worldly**, They must appreciate the irreducible complexity and plurality of the world (see Arendt, 1971: 50-54).

# 2NC AT: Perm

Lost in the aff’s details: Systemic critiques are only way to delegitmize exceptional violence. The isolated nature of the aff distorts the critic's broader field of vision

Saas 12 \*\*William O. Pf Department of Communication Arts and Sciences at the Pennsylvania State University. symploke > Volume 20, Numbers 1-2

How might one critique this massive network of violence that has become so enmeshed in our contemporary geo-socio-political reality? Is there any hope for reversing the expansion of executive violence in the current political climate, in which the President enjoys minimal resistance to his most egregious uses of violence? How does exceptional violence become routine? Answers to these broad and difficult questions, derived as they are from the disorientingly vast and hyper-accelerated retrenchment of our current political situation, are best won through the broad strokes of what Slavoj Žižek calls "systemic" critique. For Žižek, looking squarely at interpersonal or subjective violences (e.g., torture, drone strikes), drawn as we may be by their gruesome and immediate appeal, distorts the critic's broader field of vision. For a fuller picture, one must pull one's critical focus back several steps to reveal the deep, objective structures that undergird the spectacular manifestations of everyday, subjective violence (Žižek 2008, 1-2). Immediately, however, one confronts the limit question of Žižek's mandate: how does one productively draw the boundaries of a system without too severely dampening the force of objective critique? For practical purposes, this essay leaves off discussion of neoliberal economic domination, vital as it may be to a full accounting for the U.S.' latest and most desperate expressions of state solvency. Offered instead is a critique of the organizational violence of the U.S.' executive bureaucratic apparatus, an apparatus called into being by charismatic decree, made banal through quasi-legal codification, and guaranteed by popular disinterest. Considered also will be the peculiar, if also somewhat inevitable, continuity of the apparatus's growth under the Obama administration. Candidate Obama's pledge to transparency may now seem an example of truly "mere" [End Page 66] campaign rhetoric, but the extent to which his presidency has exceeded that of George W. Bush in terms of exceptional violence bears some attention. The central difference between the presidencies of Bush and Obama, I suggest, has been the discursive means by which their respective administrations have cultivated an image of charismatic rule. This essay proceeds in three steps. I begin by outlining a recent case of subjective violence, the assassination of Anwar al-Awlaki by drone strike, and then pull back to reveal the structural support for that strike. In the second section, taking Max Weber as my guide, I argue that bureaucratic domination is both the derivative speech act of, and the logic that underwrites, the violence of the modern liberal-democratic state. Under stable conditions, the state bureaucracy facilitates the hegemony of abstract, depersonalized, and mechanical Enlightenment legal-rationalism—what Foucault called liberal "governmentality"—by maintaining relative equilibrium between liberal autonomy and distributive justice among the citizenry. In other words, modern bureaucracy effectively mediates the two poles, "liberty" and "equality," that comprise what political theorists have called the liberal-democratic paradox (Mouffe 2009). When an event is framed as threatening to strip the state of its rhetorical power, however, the bureaucratic apparatus becomes the crucible for what I identify in the third section, with additional help from Carl Schmitt and Giorgio Agamben, as charismatic domination, or the rhetorical exploitation of a vulnerable population by a sovereign decider. Under these conditions, the state bureaucracy becomes a kind of "vanishing mediator" (Jameson 1988, 25-27), its energies redirected for exclusive and singular usage by the exceptional-charismatic sovereign. In the perpetual state of exception, the democratic paradox becomes subordinate to sovereign claims to total and indivisible control over the legitimate use of force. I conclude by outlining what I perceive as the best chances for stemming the growth of the national security bureaucracy, namely, relentless publicity. Violence and the State On September 30, 2011, the U.S. government assassinated Anwar al-Awlaki, an American-born citizen, in Khashef, Yemen. He was killed by one "hellfire" missile, delivered from a CIA-controlled unmanned aerial vehicle or "drone," operated remotely from a secret U.S. military base in the Arabian Peninsula (Mazetti, Schmitt, and Worth 2011). In a speech given later that day, U.S. President Barack Obama alleged that al-Awlaki was "a leader" of the terrorist group al Qaeda in the Arabian Peninsula, or AQAP, and thus responsible for mobilizing—whether through sermonic inspiration or direct influence—a number of terrorist attacks across the world. For the President, who five-months earlier oversaw the assassination of long-time Qaeda leader Osama bin Laden, al-Awlaki's death marked "another significant milestone in the broader effort to defeat al Qaeda and its affiliates" (Obama, 2011). [End Page 67] In contrast with his spectacular nine-minute speech announcing the death of bin Laden, Commander-in-Chief Obama's comments on al-Awlaki were restrained and un-broadcast, buried in the early part of a brief speech celebrating the appointment of a new Chairman of the Joint-Chiefs of Staff. No mention was made of al-Awlaki's standing U.S. citizenship. Days after al-Awlaki's assassination, and following minor but persistent public grumbling regarding the due-process-free execution of a U.S. citizen, anonymous government sources revealed that the decision to kill al-Awlaki was made by a small "secret panel" of White House officials, whose actions were supported by a secret legal opinion issued from the president's Office of Legal Counsel, or OLC (Savage 2011). Composed of members of the National Security Council and overseen by President Obama, the secret panel did not keep any "public record of [its] operations or decisions," nor did it convene according to "any law establishing its existence or setting out the rules by which it is supposed to operate" (Hosenball 2011). A clandestine and extra-legal deliberative body, the panel was not open to judicial review or congressional oversight. Further, both the evidence the panel considered prior to condemning al-Awlaki to death, and the secret OLC memo offered in support of the assassination, were to be shielded from public scrutiny by the occultic stonewall of "state secrets" (Hsu 2011; Conley and Saas 2010, 342-46). Nor was this the first convocation of the secret White House panel: beginning as early as December 2009, the CIA, in collusion with the Yemeni government and at the command of the president, directed numerous failed missile attacks against al-Awlaki (Priest 2010a). Undeterred by one such failed strike in Ma'Jalah, Yemen on December 17, 2009—which missed its target but killed 41 civilians, among them 14 women and 21 children—the White House and its covert intelligence/military arm simply redoubled efforts to "remove" the alleged terrorist leader ("Wikileaks" 2010). The successful strike on September 30 thus represented the culmination of nearly two years of intelligence gathering, secret meetings, and murderous folly—a protracted and tragic representative anecdote for the blunt instrument that is U.S. executive power in the post-9/11 world. The extra-legal condemnation and execution of al-Awlaki is only one of the more recent cases of unilateral violence carried out by the White House throughout the so-called war against terrorism. Viewed from even a slight remove, the secret panel-drone attack becomes an expression of a broader executive-bureaucratic pathology, a set of proximal coordinates immanent to a more expansive and ominous cartography of executive power. Like the photographs of torture at Abu Ghraib, evidence of detainee deaths at Bagram prison in Afghanistan, Red Cross reports on detainee abuse at Guantanamo Bay, evidence of so-called "extraordinary rendition" and international torture, acknowledgment of CIA "black sites" used to imprison "enemy combatants" indefinitely, video footage from a U.S. Apache helicopter gunning down journalists, leaked "torture memos," and so on, news of the secret White House [End Page 68] panel is merely one node for controversy among many in the recent history of unilateral executive violence. Controversial primarily among critics of U.S. foreign policy, the Obama administration's expansive interpretations and extensions of executive power and concomitant expansion of the national security bureaucracy are not sources of substantive lay-public outcry. Priest's and Arkin's July, 2010 exposé of the vast post-9/11 expansion of the national security bureaucracy, which became the subject of a PBS Frontline episode in late 2011, did not reach far beyond a relatively small (if also strident) readership. Neither has increasingly widespread news of the use of drone attacks—and the significant number of civilian deaths they have caused—spurred much popular debate. A February, 2012 poll in the Washington Post showed that a vast majority of the American electorate supports the Obama administration's "counter-terrorism" policies (Wilson and Cohen 2012), with "83 percent of Americans" and "fully 77 percent of liberal Democrats" endorsing the use of drone strikes for assassinations, leading the pollsters to conclude that "Obama is unlikely to suffer any political consequences as a result of his policy in this election year." What was divisive along party-lines under the second Bush administration has now become a site of unusually strong bi-partisan consensus: the Post poll also found that "53 percent of self-identified liberal Democrats—and 67 percent of moderate or conservative Democrats—support keeping Guantanamo Bay open." Where candidate Obama campaigned on a promise to reverse these policies, President Obama may be re-elected in part because he has in fact enhanced them. Paying attention to organization structures is a way to pay attention to relationship between violence and language. Your anti-statist politics refuses to act like a spy within the government’s organization structure. In The Language of War: Literature and Culture in the U.S. From the Civil War Through World War II (2005), James Dawes posits a possible critical

**sequencing disad---alt key to come before the plan otherwise movements get *sapped***

Nagin 5 Tomiko Brown, Visiting Associate Professor, University of Virginia School of Law, “ELITES, SOCIAL MOVEMENTS, AND THE LAW: THE CASE OF AFFIRMATIVE ACTION,” Columbia Law Review, 105 Colum. L. Rev. 1436

Those seeking to have an impact on the political and legal orders should not root a mass movement in the courts;instead, affirmative litigation about constitutional rights should be anchored upon and preceded by a mass movement.Efforts to achieve fundamental change **should** begin with the target constituency and be waged initially outside of the confines of institutionalized politics.Law should be understood as a tactic in an ongoing political struggle, where the struggle is the main event and favorable legal outcomes are its byproducts. There is **a crucially important temporal component** to this view. Legal claims can be tactically useful in a political strategy for achieving change - **but** only after social movements lay the groundwork **for legal change**. Social movements **must first create political pressure that frames issues in a favorable manner**, creates cultural norm shifts, and affects public opinion; these norm shifts then increase the likelihood that courts will reach outcomes favored by lawyers. [437](http://www.lexis.com/research/retrieve?_m=b1b76c3bff33e7c7527182cc42568c87&docnum=11&_fmtstr=FULL&_startdoc=1&wchp=dGLbVzz-zSkAl&_md5=b4841fe459fa752b47486b13d84385b6&focBudTerms=milliken%20w/150%20hispanic%20or%20latino&focBudSel=all#n437) Again, my claims find support in the history of the mid-twentieth-century civil rights movement. This narrative posits an intimate relationship between the sociopolitical dynamics within black client communities and the success (or failure) of civil rights lawyers' litigation campaigns for rights. The postwar civil rights movement confirms that the moral suasion of participatory democratic groups of nonlawyers, and typically nonelites, was integral to law's movement from a Jim Crow regime to a [\*1523] constitutional order in which formal equality was the norm. During the past three decades, historians who have analyzed social change have discovered that small groups of inexpert individuals can be the leading edge of a social movement, especially when they work in coalition with those who traditionally wield influence in society. [438](http://www.lexis.com/research/retrieve?_m=b1b76c3bff33e7c7527182cc42568c87&docnum=11&_fmtstr=FULL&_startdoc=1&wchp=dGLbVzz-zSkAl&_md5=b4841fe459fa752b47486b13d84385b6&focBudTerms=milliken%20w/150%20hispanic%20or%20latino&focBudSel=all#n438)Through their commitment to a social cause, ordinary people with no insider knowledge of the technical aspects of the broad issue on which they are mobilizing can create circumstances in which those with actual power (political, economic, and, ultimately, legal power) are persuaded to act in their favor.

# 2NC Link

#### Playing with the law is too dangerous. The aff’s fidelity to the law via criticism of the law only creates more converts into legalistic thinking. Their simultaneous critical embrace channels activists into acceptance and absorption of the law.

Garth 12 \*Bryant G. Bryant G. Garth is Dean and Professor of Law at Southwestern Law School. Southwestern Law Review, 41 Sw. L. Rev. 211

At the risk of overdoing the sociological analysis, one might say also that the attraction of idealists into the legal field serves to perpetuate this. Each generation of scholars makes the law more relevant to actors seeking social change by denouncing efforts to make social change narrowly through law. In this way, social movements and activists will be more likely to ally with legal actors who recognize the limits of the law - but still cannot avoid them. Movements in this way are channeled more effectively into law than they would if legal scholars pretended that rights solved all problems. This account may appear to be an expression of cynicism about social change through law. I do not think that is the case. In fact, the constant criticism of the limits of law moves the law to absorb the criticism and in the process change - even if much more slowly than activists want.

#### Playing with the law draws activists into the law’s hold

Garth 12 \*Bryant G. Bryant G. Garth is Dean and Professor of Law at Southwestern Law School. Southwestern Law Review, 41 Sw. L. Rev. 211

None of the articles provides a simple answer. From my more sociological perspective, the paradox is that what attracts people to the law is what limits their possibilities. Law in the United States contains the structures of power - in two senses. First, the power of law comes not from the law as such but from the power that is embedded in it over time. Absent some major social crisis, playing to the law in the United States is a way to craft a potentially winning strategy. It is hard to move ahead by severing the hold of law or stepping out of conventional categories (or rejecting conventional medical understandings). Second, law contains the structures by providing rules that limit the freedom of the powerful to do whatever they want but at the same time ensure that the powerful will not lose their position. Activists in the United States inside the law confront this dilemma, and activists from outside the law are also drawn to law (and the same dilemma) because they seek to gain the support of law (and what is embedded in it) to advance their agendas. The history of the rise and fall of [\*214] welfare rights is a perfect example of this situation. n1 In the absence of major crises that shake up the system and change the power structure, change is managed in this way.

#### The legal focus is too focused on institutions to disrupt biopower

Bloom 12 \*Anne, Professor of Law, the University of the Pacific/McGeorge School of Law. Southwestern Law Review, 41 Sw. L. Rev. 241

If contemporary power struggles increasingly involve the operations of biopower, n64 then the legal tactics of activist lawyers ought to reflect this change. Yet conventional tactics have changed little over the years; activist litigation today typically involves many of the same civil rights-based claims that were made several years ago, directed at the same institutional actors. n65 Because biopower operates more diffusely than can be captured by this institutional approach, n66 it is important to consider how attention to other types of claims and other types of defendants might offer opportunities to challenge the narratives of bodily "truths" that biopower purveys.

#### Their “historically the law works” argument dilutes social change – ignoring that it was social change not the law that made previous reforms successful

Garth 12 \*Bryant G. Bryant G. Garth is Dean and Professor of Law at Southwestern Law School. Southwestern Law Review, 41 Sw. L. Rev. 211

I am pleased to introduce this symposium on "Exploring Power, Agency & Action in a World of Moving Frontiers." The symposium represents a new take on issues that have haunted legal scholars and lawyers, especially those activists who moved into the legal field in order to be in a position to champion a progressive agenda. Legal institutions and indeed legal training lead such social change advocacy to proceed through efforts to create, extend, and support legal rights. To be sure, many historical accounts of social change in the United States draw on the purported successes of various "rights revolutions." For many reasons, however, as the authors point out, this legalized process of change waters down and puts limits on a social change agenda and constricts the social movements that idealistic legal scholars seek to champion. The symposium examines ways to confront and perhaps avoid this dilemma.

# 2NC AT: Alt Bad

**Huq 12** + Aziz Z. Assistant Professor of Law, University of Chicago Law School. University of Chicago Law Review, Spring, 79 U. Chi. L. Rev. 777

Credibility is the main mechanism of political control analyzed in The Executive Unbound. But PV hint at others. They point briefly to "a wealthy and highly educated population, whose elites continually scrutinize executive action and tighten the constraints of popularity and credibility" (p 14). Publicity is said to work through a "complex process by which the views of elites, interest groups, ordinary citizens, and others ultimately determine the de facto lines of political authority" (p 78). 47 To be sure, elections rely on informed voters (who may not always be available) and can be used only periodically (pp 114-16). And since the enactment of the Twenty-Second Amendment in 1947, 48 second-term Presidents have not faced reelection. Nevertheless, PV propose, even second-term Presidents worry about their "policy legacy and their place in history" (p 13). As a consequence, there is a public-regarding friction on even final-period Presidents' decisions. [\*789] To summarize, the strong law/politics dichotomy at the heart of The Executive Unbound rests on twin claims of law's fragility and the effective force of politics. Rejecting traditional legal scholarship's narrow focus on doctrine, PV's theory predicts that Presidents can and do act forcefully except to the extent they perceive a credibility or publicity benefit from holding back. 49 Congress, the courts, and ex ante legal constraints, by contrast, are epiphenomenal and play little or no role. The account also has a normative sheen. By implication, executive dominance is not merely inevitable but to be welcomed given the presidency's comparative advantage in policy making and in credibility-induced fidelity to democratic wishes.

# \*\*\*1NR

# 2NC CP

Their 1AC evidence concedes due process for those indefinitely detained solves.

Robertson 12 (Cassandra Burke Associate Professor, Case Western Reserve University School of Law, “DUE PROCESS IN THE AMERICAN IDENTITY”, Alabama Law Review 64 Ala. L. Rev. 255, Vance)

Procedural Mechanisms for Heightening Due Process¶ What would a heightened level of due process look like? First--and contrary to Liz Cheney's position--it would involve not just extending, but also expanding the due process protections offered to people suspected of terrorism. It may give the courts a greater role in determining the legality of targeted killing. n142 It may give civilian courts, in particular, a greater role in dealing with individuals who have been detained in the war on terror. n143 It would likely mean that evidence gained from torture would not be admissible in court. n144 Of course, many people have argued that these elements are already part of the baseline due process protection, and indeed they may be, but because the legalities are still uncertain, this Article recommends that policymakers consider whether due process should be heightened as a policy matter regardless of what the law may require.

# 2NC DA

#### Ethics must be feasible otherwise they are easily co-opted

Demenchonok 9 Institute of Philosophy of the Russian Academy of Sciences, Moscow, (Edward, The American Journal of Economics and Sociology, 68.1 (Jan): p9)

However, the further development of an ethical approach faces challenges that need to taken in consideration. Ethical criticism assumes a great burden, since it **must couch its challenges in terms that point to viable alternatives.** One of the many obstacles facing ethical criticism (and so another objection to the ethical project) is the weakened if not exhausted status of ethical language in contemporary public discourse. Ethical language is, after all, **regularly manipulated** by those who frame existing politics. When they function in the language of power, ethical appeals to the promotion of freedom and democracy become ritualized expressions that may be **ideologically useful to certain politicians**, but encourage public cynicism. Other historical factors have weakened the role of ethical language in public discourse as well (for example, the erosion of concerns with the public good in favor of the pursuit of private satisfactions). The cumulative effect is the difficulty of using ethical language in a way that will, or even should, be taken seriously.

#### Even your method should be feasible

Brown 3 Professor of philosophy @ Emporia State University and Toadvine Assistrant professor of Philosophy @ University of Oregon 2003 (Charles and Ted, “Eco-Phenomenology: Back to the Earth Itself” , New Yoork University Oress, DS)

The humanity-nature disorder is perhaps best conceived as a manifestation of the tendency toward alienation inherent in the human condition one that operates prior to any particular meaning system. This tendency toward alienation Leading to war and oppression in the past, has now been coupled with the technological power to sustain a massive homo centrus centrus population explosion, the by-products of which are poisoning and dismantling the¶, earth's bio-web. There is a certain irony here as the realization of massive, ecological destruction occurs just when we had thought that our science ,and technology would save us from the ravages of the organic world. lnstead we find ourselves hurtling toward or perhaps through an irrevocable tear in the fabric of the planetary biotic web (and perhaps beyond). l) Dreams of technological Utopia have been replaced overnight by nightmares of ecological holocaust. The existential philosophers remind us that the replacement of one conceptual system for another is not enough unless there occurs with it a corresponding shift or lifestyle change that , actually ushers in a new mode of being for humanity.

#### Pointing out oppression without caring about feasible solutions is irresponsible politics- it becomes addictive and makes us indifferent to suffering.

Isaac 2 New School for Social Research, (Jeffrey C., Social Research, Summer, p. EXAC)

More to the point, when such exposure becomes itself a political project, and **when it usurps the tasks of judgment, then it becomes insidious, for it lacks all nuance.** In a world of media manipulation and melodramatic sensationalism it may be clever, and may even be in a sense just, to **hoist politicians on their own moral petards**. But in a world of serious violence and injury, in which policies are not simply about rhetoric or appearances but about human consequences, **it is irresponsible** to make the exposure of official hypocrisy the ultimate public intellectual project. For this makes unnecessary, and cynical, concessions to a media culture that there is no reason to embrace and many reasons to resist. Even more significantly, to do so represents **a callous indifference** to real human suffering. For **it implies that the real issue is not what might be done to relieve the suffering**, but rather how certain (American) officials can be caught in their own verbal contradictions. To do so also ignores the important fact that politicians, try though they may, **do not control** moral symbols or political discourse. The discourse of human rights is **not a creation** of the Pentagon or the State Department. While these institutions may seek to use this discourse when it suits their purposes, **the discourse has a seriousness and a truth value independent** of these uses. Citizens, intellectuals, relief workers, and human rights activists who invoke this discourse to justify a range of actions, including but by no means reducible to military interventions in the name of humanitarian relief, are **not creatures of American propaganda**.

#### In-round-politics-FIRST is selfish. The question should be how to mobilize large groups of people and ensure the left survives.

Grossberg, 92 [Lawrence, “Professor of Communications Studies at the University of North Carolina, We Gotta Get Out of This Place: Popular Conservatism and Postmodern Culture, 1992 p. 388-390]

If the Left can give up its demand for purity, it may be able to make the compromises which may be necessary for effective political opposition in the contemporary world. It will act **strategically and tactically**, For example, it could use contemporary advertising to its own advantage ie.g., when Reagan came out in support of gun control, or in the "Big (keen" campaign in California, where effec¬tive advertising could have prepared people tor the corporate-spon¬sored media barage opposing the initiative). Politics is **always a strategic matter: one must decide where and how to struggle**, it has to be decided when identities, or ideologies or state politics **are appropriate and important sites of struggle**. And this will sometimes involve **the need to compare, evaluate and perhaps even prioritize the demands and claims of particular struggles,** based not soley on moral commitments or theoretical reductions (as in alliance;- of solidarity) but on the exigencies and possibilities of the context. Questions need to be raised about the effective mobilization and deployment of resources, about when different fractions have to come together under a common identity, and when one group should act on behalf of another group's interest, rather than its own immediate interest. Such decisions will have to be based on political calculations of importance and possibility, but also on calculations about **how best to mobilize people into the particular struggle and into a broader movement.** Sometimes that will mean having to bear defeats in one place, in order to win a victory somewhere else.

#### critical to allow us to care about people who we have nothing in common with and highlight sites of resistance.

Campbell 98 david professor of international politics at the university of newcastle, national deconstruction: violence, identity, and justice in bosnia, p. 236-239

The bond of which Derrida speaks is akin to that identified by Alphonso Lingis when he asks, "Is there not a growing conviction, clearer today among innumerable people, that the dying of people **with whom we have nothing in common-**no racial kinship, no language, no religion, no economic interests-concerns us?"99 It is a political bond, enabled **not by the absence or irrelevance of the nation/ state but by its continuing power and our agonistic relationship** with it. It is a political bond, therefore, that recognizes that we are connected by the practices of government, but that we struggle with the strategies of governmentality that try to contain our freedom.10° In this sense, the issues discussed in this chapter do not constitute a "utopian" response. Rather than proposing an avoidance of or escape from the deleterious consequences of the international community's problematizations of "Bosnia," they demand a contestation of and intervention in the political forms bequeathed to Bosnia, and they highlight the various ways and plural sites in which this disturbance can be effected and new options enacted.

#### Ethics must begin with finding a common ground with others with whom we have no relationship, otherwise you open the door for the Holocaust.

Meister 5 department of politics at UCSC, (Robert, " 'Never Again': The Ethics of the Neighbor and the Logic of Genocide," Postmodern Culture, p project muse)

Writing both after Auschwitz and during an era of anti-colonial revolutions, Lévinas argues that all totalizing projects are grounded in imagining the death of the other--that is, **murder**. He includes here even the totalizing project that grounds ethics, as Richard Rorty does, on the shared qualities of all homo sapiens (and perhaps companion species) capable of conscious suffering.15 The American philosopher Hilary Putnam restates Lévinas's concern as a concern about the vulnerability of the human rights culture to assertions of the "inhumanity" of other homo sapiens: "the danger in grounding ethics in the idea that we are all 'fundamentally the same' is that a door is opened for a Holocaust. One only has to believe that some people are not 'really' the same to destroy all the force of such a grounding" (35). At the pragmatic level, Rorty concedes "that everything turns on who counts as a fellow human being" (124)-- indeed he stresses it--but the more fundamental claim made by Lévinas (and Putnam) is against the ethical assumption that arguments appealing to our shared humanity could count at all in ethical justifications of human rights.16 The meaning of Auschwitz, they suggest, is that ethics must now be based, not on a common humanity that we share, but rather on the mere fact of **occupying common ground** with those with whom we do not presume any (other) affinity or relationship. Thus conceived, Auschwitz reveals the limits of the ethical project that teaches us to treat the other under the aspect of the same. Ethics--the ethics that is not subordinate to politics--must now begin with the damage that our mere presence causes to others whom we displace, and whom we must treat as genuinely exterior to the "other" who inhabits our own mind as an outward projection of the "self."