# 1NC

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***Restrictions are prohibitions***

**Northglenn 11** (City of Northglenn Zoning Ordinance, “Rules of Construction – Definitions”, http://www.northglenn.org/municode/ch11/content\_11-5.html)

Section 11-5-3. Restrictions. As used in this Chapter 11 of the Municipal Code, the **term "restriction**" shall mean a prohibitive regulation. Any use, activity, operation, building, structure or thing which is the subject of a restriction is prohibited, and ***no*** such use, ***activity***, operation, building, structure or thing shall be **authorized by any permit or license**.

***They don’t prohibit – there are still circumstances that allow indefinite detention***

***Voting issue –***

***1) Ground – all DAs and CPs like self-restraint, flexibility, and politics compete based off restrictions on the presidential decision-making process – skews the topic in favor of the aff.***

***2) Limits – they allow infinite modifications to detention—undermines our ability to research and prepare for all debates***

**K**

***Their focus on subjective flashpoints of violence creates a stop-gap in thought which distracts us from attempts to solve the root cause of all violence - Capital***

**Zizek, ’08** (Slavoj, senior researcher at the Institute of Sociology, University of Ljubljana, Slovenia and a professor at the European Graduate School, Violence, p. 1-4)

If there is a unifying thesis that runs through the bric-a-brac of reflections on violence that follow, it is that a similar paradox holds true for violence. At the forefront of our minds, the obvious signals of violence are acts of crime and ***terror, civil unrest, international conflict***. But we should learn to ***step back*,** to disentangle ourselves from the fascinating lure of this directly visible “subjective” violence, violence performed by a clearly identifiable agent. We need to perceive the contours of the background which generates such outbursts. A step back enables us to identify a violence that sustains our very efforts to fight violence and to promote tolerance. This is the starting point, perhaps even the axiom, of the present book: subjective violence is just the most visible portion of a triumvirate that also includes two objective kinds of violence. First, there is a “symbolic” violence embodied in language and its forms, what Heidegger would call “our house of being.” As we shall see later, this violence is not only at work in the obvious—and extensively studied—cases of incitement and of the relations of social domination reproduced in our habitual speech forms: there is a more fundamental form of violence still that pertains to language as such, to its imposition of a certain universe of meaning. Second, there is what I call “systemic” violence, or the often catastrophic consequences of the smooth functioning of our ***economic and political systems***. The catch is that subjective and objective violence ***cannot be perceived from the same standpoint*:** subjective violence is experienced as such against the background of a non-violent zero level. It is seen as a perturbation of the “normal,” peaceful state of things. However, objective violence is precisely the violence inherent to this “normal” state of things. Objective violence is invisible since it sustains the very zero-level standard against which we perceive something as subjectively violent. Systemic violence is thus something like the notorious “dark matter” of physics, the counterpart to an all-too- visible subjective violence. It may be invisible, but it has to be taken into account if one is to make sense of what otherwise seem to be “irrational” explosions of subjective violence. When the media bombard us with those “humanitarian crises” which seem constantly to pop up all over the world, one should always bear in mind that a particular crisis only explodes into media visibility as the result of a complex struggle. Properly humanitarian considerations as a rule play a less important role here than cultural, ideologico-political, and economic considerations. The cover story of Time magazine on 5 June 2006, for example, was “The Deadliest War in the World.” This offered detailed documentation on how around 4 million people died in the Democratic Republic of Congo as the result of political violence over the last decade. None of the usual humanitarian uproar followed, just a couple of readers’ letters—as if some kind of filtering mechanism blocked this news from achieving its full impact in our symbolic space. To put it cynically, Time picked the wrong victim in the struggle for hegemony in suffering. It should have stuck to the list of usual suspects: Muslim women and their plight, or the families of 9/11 victims and how they have coped with their losses. The Congo today has effectively re-emerged as a Conradean “heart of darkness.” No one dares to confront it head on. The death of a West Bank Palestinian child, not to mention an Israeli or an American, is mediatically worth thousands of times more than the death of a nameless Congolese. Do we need further proof that the humanitarian sense of urgency is mediated, indeed overdetermined, by clear political considerations? And what are these considerations? To answer this, we need to step back and take a look from a different position. When the U.S. media reproached the public in foreign countries for not displaying enough sympathy for the victims of the 9/11 attacks, one was tempted to answer them in the words Robespierre addressed to those who complained about the innocent victims of revolutionary terror: “Stop shaking the tyrant’s bloody robe in my face, or I will believe that you wish to put Rome in chains.”1 Instead of confronting violence directly, the present book casts six sideways glances. There are reasons for looking at the problem of violence awry. My underlying premise is that there is something inherently mystifying in a direct confrontation with it: the overpowering horror of violent acts and empathy with the victims inexorably function as a lure which ***prevents us from thinking***. A dispassionate conceptual development of the typology of violence must by definition ignore its traumatic impact. Yet there is a sense in which a cold analysis of violence somehow reproduces and participates in its horror. A distinction needs to be made, as well, between (factual) truth and truthfulness: what renders a report of a raped woman (or any other narrative of a trauma) truthful is its very factual unreliability, its confusion, its inconsistency. If the victim were able to report on her painful and humiliating experience in a clear manner, with all the data arranged in a consistent order, this very quality would make us suspicious of its truth. The problem here is part of the solution: the very factual deficiencies of the traumatised subject’s report on her experience bear witness to the truthfulness of her report, since they signal that the reported content “contaminated” the manner of reporting it. The same holds, of course, for the so-called unreliability of the verbal reports of Holocaust survivors: the witness able to offer a clear narrative of his camp experience would disqualify himself by virtue of that clarity.2 The only appropriate approach to my subject thus seems to be one which permits variations on violence kept at a distance out of respect towards its victims.

***The aff is wasted energy – fighting particular battles without changing the way the economy works means nothing really changes – the aff just obscures the logic of capitalism***

**Zizek, ’99** (Slavoj, Senior Researcher and professor at the Institute for Social Studies, Ljubljana, The Ticklish Subject, page 352-355)

The big news of today’s post-political age of the ‘end of ideology’ is thus the radical depoliticization of the sphere of the economy: the way the economy functions (the need to cut social welfare, etc.) is accepted as a simple insight into the objective state of things. However, as long as this fundamental depoliticization of the economic sphere is accepted, all the talk about active citizenship, about public discussion leading to responsible collective decisions, and so on, will remain limited to the ‘cultural’ issues of religious, sexual, ethnic and other way-of-life differences, without actually encroaching upon the level at which long-term decisions that affect us all are made. In short, the only way effectively to bring about a society in which risky long-term decisions would ensue from public debate involving all concerned is some kind of radical limitation of Capital’s freedom, the subordinated of the process of production to social control – the radical ***repoliticization of the economy***. That is to say: if **the problem with today’s post-politics** (‘administration of social affairs’) **is that it increasingly undermines the possibility of a proper political act, this undermining is directly due to the depoliticization of economics, to the common acceptance of Capital and market mechanisms as neutral tools/ procedures to be exploited**. We can now see why today’s post-politics cannot attain the properly political dimension of universality; because it silently precludes the sphere of economy from politicization. The domain of global capitalist market relations in the Other Scene of the so-called repoliticization of civil society advocated by the partisans of ‘identity politics’ and other postmodern forms of politicization: all the talk about new forms of politics bursting out all over, focused on particular issues (gay rights, ecology, ethnic minorities…), all this incessant activity of fluid, shifting identities, of building multiple ***ad hoc*** coalitions, and so on, has something inauthentic about it, and ultimately resembles the obsessional neurotic who talks all the time and is otherwise frantically active precisely in order to ensure that something – what ***really matters*** – will *not* be disturbed, that it will remain immobilized. 35 So, instead of celebrating the new freedoms and responsibilities brought about by the ‘second modernity’, it is much more crucial to focus on what ***remains the same*** in this global fluidity and reflexivity, on what serves as the very motor of this fluidity: the inexorable logic of Capital. The spectral presence of Capital is the figure of the big Other which not only remains operative when all the traditional embodiments of the symbolic big Other disintegrate, but even directly causes this disintegration: far from being confronted with the abyss of their freedom – that is, laden with the burden of responsibility that cannot be alleviated by the helping hand of Tradition or Nature – today’s subject is perhaps more than ever caught in an inexorable compulsion that effectively runs his life.

***Vote neg on ethics - resisting this reliance on economic evaluation is the ultimate ethical responsibility***

**Zizek and Daly** 20**04**

(Slavoj, professor of philosophy at the Institute for Sociology, Ljubljana, and Glyn, Senior Lecturer in Politics in the Faculty of Arts and Social Sciences at University College, Northampton, Conversations with Zizek, page 14-16)

For Zizek it is imperative that we cut through this Gordian knot of postmodern protocol and recognize that our ethico-political responsibility is to confront the constitutive violence of today’s global capitalism and its obscene naturalization / anonymization of the millions who are subjugated by it throughout the world. Against the standardized positions of postmodern culture – with all its pieties concerning ‘multiculturalist’ etiquette – Zizek is arguing for a politics that might be called ‘radically incorrect’ in the sense that it break with these types of positions 7 and focuses instead on the very organizing principles of today’s social reality: the principles of global liberal capitalism. This requires some care and subtlety. For far too long, Marxism has been bedeviled by an almost fetishistic economism that has tended towards political morbidity. With the likes of Hilferding and Gramsci, and more recently Laclau and Mouffee, crucial theoretical advances have been made that enable the transcendence of all forms of economism. In this new context, however, Zizek argues that the problem that now presents itself is almost that of the opposite fetish. That is to say, the prohibitive anxieties surrounding the taboo of economism can function as a way of not engaging with economic reality and as a way of implicitly accepting the latter as a basic horizon of existence. In an ironic Freudian-Lacanian twist, the fear of economism can end up reinforcing a de facto economic necessity in respect of contemporary capitalism (i.e. the initial prohibition conjures up the very thing it fears). This is not to endorse any kind of retrograde return to economism. Zizek’s point is rather that in rejecting economism we should not lose sight of the systemic power of capital in shaping the lives and destinies of humanity and our very sense of the possible. In particular we should not overlook Marx’s central insight that in order to create a universal global system the forces of capitalism seek to conceal the politico-discursive violence of its construction through a kind of gentrification of that system. What is persistently denied by neo-liberals such as Rorty (1989) and Fukuyama (1992) is that the gentrification of global liberal capitalism is one whose ‘universalism’ fundamentally reproduces and depends upon a disavowed violence that excludes vast sectors of the world’s populations. In this way, neo-liberal ideology attempts to naturalize capitalism by presenting its outcomes of winning and losing as if they were simply a matter of chance and sound judgment in a neutral market place. Capitalism does indeed create a space for a certain diversity, at least for the central capitalist regions, but it is neither neutral nor ideal and its price in terms of social exclusion is exorbitant. That is to say, the human cost in terms of inherent global poverty and degraded ‘life-chances’ cannot be calculated within the existing economic rationale and, in consequence, social exclusion remains mystified and nameless (viz. the patronizing reference to the ‘developing world’). And Zizek’s point is that this mystification is magnified through capitalism’s profound capacity to ingest its own excesses and negativity: to redirect (or misdirect) social antagonisms and to absorb them within a culture of differential affirmation. Instead of Bolshevism, the tendency today is towards a kind of political boutiquism that is readily sustained by postmodern forms of consumerism and lifestyle. Against this Zizek argues for ***a new universalism*** whose ***primary ethical directive*** is to confront the fact that our forms of social existence are founded on exclusion on a global scale. While it is perfectly true that universalism can never become Universal (it will always require a hegemonic-particular embodiment in order to have any meaning), what is novel about Zizek’s universalism is that it would not attempt to conceal this fact or reduce the status of the abject Other to that of a ‘glitch’ in an otherwise sound matrix.

***This is not a meaningless question – the structures of capitalism are driving multiple large-scale processes that are increasingly out of the control of individuals living their lives. Global warming, multiple wars of accumulation, loss of land and income stratification: all of these are making life unlivable.***

**Parr ’13** (Adrian, Assoc. Prof. of Philosophy and Environmental Studies @ U. of Cincinnati, *THE WRATH OF CAPITAL: Neoliberalism and Climate Change Politics*, pp. 145-147)

A quick snapshot of the twenty-first century so far: **an economic meltdown; a frantic sell-off of public land to the energy business** as President George W Bush exited the White House; **a prolonged, costly, and unjustified war in Iraq**; the **Greek economy in ruins**; an **escalation of global food prices**; **bee colonies in global extinction**; **925 million hungry** reported **in 2010**; as of 2005, **the world's five hundred richest individuals with a combined income greater than that of the poorest 416 million people**, the richest 10 percent accounting for 54 percent of global income; **a planet on the verge of boiling point; melting ice caps; increases in extreme weather conditions; and the list goes on and on** and on.2 **Sounds like a ticking time bomb**, doesn't it? Well **it is.**

It is shameful to think that **massive die-outs of future generations will put to pale comparison the 6 million murdered during the Holocaust; the millions killed in two world wars; the genocides in the former Yugoslavia, Rwanda, and Darfur; the 1 million left homeless and the 316,000 killed by the 2010 earthquake in Haiti.** The time has come to wake up to the warning signs.3

The real issue climate change poses is that **we do not enjoy the luxury of incremental change anymore.** **We are in the last decade where we can do something** about the situation. Paul **Gilding**, the former head of Greenpeace International and a core faculty member of Cambridge University's Programme for Sustainability, **explains that "two degrees of warming is an inadequate goal and a plan for failure**;' adding that "returning to below one degree of warming . . . is the solution to the problem:'4 **Once we move higher than 2°C of warming,** which is what is **projected to occur by 2050, positive feedback mechanisms will** begin to **kick in, and then we will be at the point of no return. We therefore need to start thinking very differently right now.**

**We do not see the crisis for what it is; we only see it as an isolated symptom that we need to make a few minor changes to deal with.** This was the message that Venezuela's president Hugo Chavez delivered at the COP15 United Nations Climate Summit in Copenhagen on December 16, 2009, when he declared: "Let's talk about the cause. We should not avoid responsibilities, we should not avoid the depth of this problem. And I'll bring it up again, **the cause of this disastrous panorama is the metabolic, destructive system of the capital and its model: capitalism.**”5

The structural conditions in which we operate are advanced capitalism. Given this fact, **a few adjustments here and there to that system are not enough to solve the problems that climate change and environmental degradation pose.**6 **Adaptability, modifications, and displacement**, as I have consistently shown throughout this book, **constitute the very essence of capitalism. Capitalism adapts without doing away with the threat.** Under capitalism, **one deals with threat not by challenging it, but by buying favors from it**, as in voluntary carbon-offset schemes. **In the process, one gives up on one's autonomy and reverts to being a child. Voluntarily offsetting a bit of carbon** here and there, eating vegan, or recycling our waste, **although well intended, are not solutions to the problem, but a symptom of the free market's ineffectiveness.** By casting a scathing look at the neoliberal options on display, I have tried to show how **all these options are ineffective. We are not buying indulgences because we have a choice; choices abound, and yet they all lead us down one path and through the golden gates of capitalist heaven.**

For these reasons, I have underscored everyone's implication in this structure – myself included. If anything, the book has been an act of outrage – **outrage at the deceit and the double bind that the "choices" under capitalism present, for there is no choice when everything is expendable. There is nothing substantial about the future when all you can do is survive by facing the absence of your own future and by sharing strength**, stamina, and courage **with the people around you. All the rest is false hope.**

In many respects, writing this book has been an anxious exercise because I am fully aware that reducing the issues of environmental degradation and climate change to the domain of analysis can stave off the institution of useful solutions. But in my defense I would also like to propose that **each and every one of us has certain skills that can contribute to making the solutions that we introduce in response to climate change and environmental degradation more effective and more realistic.** In light of that view, I close with the following proposition, which I mean in the most optimistic sense possible: **our politics must start from the point that after 2050 it may all be over.**

***Reliance on capitalist rationality guarantees circumvention and destruction of the liberal legal order***

**Brown** 20**05** – Class of 1936 First Professor of Political Science at the University of California, Berkeley (Wendy, Edgework : Critical Essays on Knowledge and Politics, p. 46-48)

**Liberal democracy cannot be submitted to neoliberal political governmentality and survive**. **There is nothing in liberal democracy’s basic institutions or values— from free elections, representative democracy, and individual liberties equally distributed to modest power-sharing or even more substantive political participation— that inherently meets the test of serving *economic competitiveness* or inherently withstands a cost-benefit analysis.** And **it is liberal democracy that is going under in the present moment, even as the flag of American “democracy” is being planted everywhere it can find or create soft ground**. (That “democracy” is the rubric under which so much antidemocratic imperial and domestic policy is enacted suggests that we are in an interregnum— or, more precisely, that neoliberalism borrows extensively from the old regime to legitimate itself even as it also develops and disseminates new codes of legitimacy. More about this below.) Nor is liberal democracy a temporary casualty of recent events or of a neoconservative agenda. As the foregoing account of neoliberal governmentality suggests, **while post-9/11 international and domestic policy may have both hastened and highlighted the erosion of liberal democratic institutions and principles, this erosion is not simply the result of a national security strategy** or even of the Bush administration’s unprecedented indifference to the plight of the poor, civil liberties, law valued as principle rather than tactic, or conventional liberal democratic criteria for legitimate foreign policy. 10 My argument here is twofold. First, ***neoliberal rationality*** has not caused but rather **has facilitated the dismantling of democracy during the current national security crisis**. **Democratic values and institutions are trumped by a cost-benefit and efficiency rationale for practices ranging from government secrecy** (even government lying) **to the curtailment of civil liberties**. Second, the post-9/11 period has brought the ramifications of neoliberal rationality into sharp focus, largely through practices and policies that progressives assail as hypocrisies, lies, or contradictions but that may be better understood as neoliberal policies and actions taking shape under the legitimating cloth of a liberal democratic discourse increasingly void of substance. **The Bush administration’s imperial adventures in Afghanistan and Iraq clearly borrowed extensively from the legitimating rhetoric of democracy.** **Not only were both wars undertaken as battles for “our way of life”** against regimes said to harbor enemies (terrorists) or dangers (weapons of mass destruction) to that way of life, but both violations of national sovereignty were justified by the argument that democracy could and ought to take shape in those places— each nation is said to need liberation from brutal and despotic rule. The standard left criticism of the first justification is that “our way of life” is more seriously threatened by a politics of imperialism and by certain policies of homeland security than by these small nations. But this criticism ignores the extent to which “**our way of life” is being figured not in a classically liberal democratic but in a neoliberal idiom: that is, as the ability of the entrepreneurial subject and state to rationally plot means and ends and the ability of the state to secure the conditions, at home and abroad, for a market rationality and subjectivity by removing their impediments (whether Islamic fundamentalism or excessive and arbitrary state sovereignty in the figure of Saddam Hussein**). **Civil liberties are perfectly expendable within this conception of “our way of life”; unlike property rights, they are largely irrelevant to homo oeconomicus. Their attenuation or elimination does not falsify the project of protecting democracy in its neoliberal mode.**

***Our alternative is to completely withdraw from the ideology of capital - this opens up the space for authentic politics***

**Johnston ’04** (Adrian, interdisciplinary research fellow in psychoanalysis at Emory, The Cynic’s Fetish: Slavoj Zizek and the Dynamics of Belief, Psychoanalysis, Culture and Society)

Perhaps the absence of a detailed political roadmap in Žižek’s recent writings isn’t a major shortcoming. Maybe, at least for the time being, the most important task is simply the negativity of the critical struggle, the effort to cure an intellectual constipation resulting from capitalist ideology and thereby to truly open up the space for imagining authentic alternatives to the prevailing state of the situation. Another definition of materialism offered by Žižek is that it amounts to accepting the internal inherence of what fantasmatically appears as an external deadlock or hindrance ( Žižek, 2001d, pp 22–23) (with fantasy itself being defined as the false externalization of something within the subject, namely, the illusory projection of an inner obstacle, Žižek, 2000a, p 16). From this perspective, seeing through ideological fantasies by learning how to think again outside the confines of current restrictions has, in and of itself, the potential to operate as a form of real revolutionary practice (rather than remaining merely an instance of negative/critical intellectual reflection). Why is this the case? Recalling the analysis of commodity fetishism, the social efficacy of money as the universal medium of exchange (and the entire political economy grounded upon it) ultimately relies upon nothing more than a kind of ‘‘magic,’’ that is, the belief in money’s social efficacy by those using it in the processes of exchange. Since the value of currency is, at bottom, reducible to the belief that it has the value attributed to it (and that everyone believes that everyone else believes this as well), derailing capitalism by destroying its essential financial substance is, in a certain respect, as easy as dissolving the mere belief in this substance’s powers. The ‘‘external’’ obstacle of the capitalist system exists exclusively on the condition that subjects, whether consciously or unconsciously, ‘‘internally’’ believe in it – capitalism’s life-blood, money, is simply a fetishistic crystallization of a belief in others’ belief in the socio-performative force emanating from this same material. And yet, this point of capitalism’s frail vulnerability is simultaneously the source of its enormous strength: its vampiric symbiosis with individual human desire, and the fact that the late-capitalist cynic’s fetishism enables the disavowal of his/her de facto belief in capitalism, makes it highly unlikely that people can simply be persuaded to stop believing and start thinking (especially since, as Žižek claims, many of these people are convinced that they already have ceased believing). Or, the more disquieting possibility to entertain is that some people today, even if one succeeds in exposing them to the underlying logic of their position, might respond in a manner resembling that of the Judas-like character Cypher in the film The Matrix (Cypher opts to embrace enslavement by illusion rather than cope with the discomfort of dwelling in the ‘‘desert of the real’’): faced with the choice between living the capitalist lie or wrestling with certain unpleasant truths, many individuals might very well deliberately decide to accept what they know full well to be a false pseudo-reality, a deceptively comforting fiction (‘‘Capitalist commodity fetishism or the truth? I choose fetishism’’).

**Solvency**

***Restrictions like the Aff function within the lexicon of exceptional violence – voting aff only serves to make the sovereign more charismatic and mask its bureaucratic liberal governmentality.***

**Saas ‘12** (William O. Saas, Pennsylvania State University, “Critique of Charismatic Violence,” symploke, Vol. 20, Nos. 1-2 (2012), p. 65-67, Project Muse, Access Provided by Wayne State University at 02/28/13) [m leap]

**The September 11**, 2001 **terrorist attacks** in New York, Pennsylvania, and Virginia **precipitated the development of a *new lexicon for exceptional violence***. **“Enemy combatant,” “indefinite detention,” “enhanced interrogation,” “high value targets,” “black sites,” “extraordinary rendition,” “predator drones,” and “hellfire missiles” are but a small representative sample of the novel phraseology invented in the wake of the attacks to describe the bellicose praxis of the U.S.’ “war on terror.”** Though this novel lexicon early comprised the avant-garde of the Bush administration’s rhetoric of retaliation, **little work was required to integrate the language and its attendant practices into the more *overt grammar of “preemptive” warfare*** codified in the United States National Security Strategy of 2002 (colloquially, the “Bush Doctrine”) and executed in Iraq. One decade and several extralegal “limited kinetic operations” later, President Barack ***Obama***—**who campaigned on a pledge to dissolve the regime of secrecy and coercion represented by Bush-era “counterterrorism”**—***routinely supplements the new war lexicon* with ever more expansive interpretations of executive prerogative**. Continuation of the most far-reaching of these new extensions of power—the until recently secret drone-assassination program that resulted in the targeted killing of a U.S. citizen in Yemen in September of 2011—is all but assured now by the confluence of enhanced measures against transparency and bi-partisan political approval (Wilson and Cohen 2012). Meanwhile, the next stage in the evolution of “post-9/11” warfare threatens to be of the “preventive” kind with Iran (Greenwald 2012).¶ The new war lexicon is one symptom of the unprecedented expansion of executive power following the attacks of September 11. **Such executive power was accompanied immediately by the development of a new vehicle for its manufacture and delivery, a sprawling executive bureaucracy** that, early on, Vice President Dick Cheney referred to as the “dark side” of the new war and which journalists Dana Priest and William Arkin have called “Top Secret America” (2010). According to Priest and Arkin, Top Secret America comprises some 1,271 government agencies and 1,931 private companies that individually work on “programs related to counterterrorism, homeland security and intelligence in about 10,000 locations across the United States.” This massive bureaucracy is populated by a workforce of over 854,000 civil servants with top-secret security clearances, inclusive of janitorial staff. Its agency locations occupy a total of over 17 million square feet of U.S. real estate, in spaces ranging from a three billion dollar techno-fortress in Maryland to commercial suites in small-town industrial malls across the suburban U.S. Its activities include domestic wiretapping, international e-mail monitoring, and myriad other forms of cultivating “intelligence” under the aegis of “national security.” The whole of this sprawling apparatus—close to one million personnel, Yottabytes1 [1One Yottabyte equals roughly “a septillion (1,000,000,000,000,000,000,000,000) pages of text.” The National Security Agency estimates that it will need Yottabytes of server space by 2015 (Bamford 2009).] of server space for storing endless streams of domestic and international “intelligence,” and the paramilitary technologies required to mobilize these elements against those deemed the enemy—falls within the administrative purview of the executive branch of U.S. government.¶ ***Hidden in plain sight: a sprawling bureaucracy designed to justify and deliver military violence—clothed in the new war lexicon—to the world***. **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” 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.

***Restricting executive war powers is merely the next step in the state bureaucracy’s violent scheme to permanently institute its own hegemony through charismatic exception – a world post aff makes oppression, violence and catastrophe become worse and more routine***

**Saas ‘12** (William O. Saas, Pennsylvania State University, “Critique of Charismatic Violence,” symploke, Vol. 20, Nos. 1-2 (2012), p. 79-80, Project Muse, Access Provided by Wayne State University at 02/28/13) [m leap]

I have argued above that **bureaucracy effectively functions as the hyphen in the pairing of “liberal-democracy.”** **It is both the means through which the state**, in relatively stable conditions, ***administers its monopoly on violence*,** and the means of mediating the tensions inherent to the liberal-democratic paradox. It ensures the ability of the state to secure the liberty of the individual, and facilitates a leveling of the demos to “equality before the law.” **When the authority of the state is called into question by an extraordinary event, the bureaucracy is mobilized in service of the would-be charismatic leader. Rationalization and Enlightenment reason thus give way to irrational force, sovereign decree**, and kadi justice. Over time, **the charismatic authority**, whose only limits are its vision of history, **become institutionalized through rendering an office of charisma**. ***Once this final stage is reached*,** ***the charismatic regime* of the new history *achieves hegemony, and turns once again to a form of bureaucratic rule—only this time, with a greater presumption of executive authority.*** ***Charisma is the exception, the condition of the ideal sovereign decision***. **Under extra-ordinary conditions, the ideal sovereign of the liberal constitutional state will also be possessed of a charisma appropriate to the task of** ***framing the exception in thoughtful and ethical ways***. **Eventual popular dissatisfaction with President** George W. **Bush’s actions** after 9/11 **reflected recognition of his inability to embody a charisma coequal to or greater than the exceptional event. President Bush proved incapable of *rebirthing the exception* in sufficiently convincing ways, of effectively convincing his audience that he was suited to the task he himself marked out**. Importantly, President Bush’s rhetorical failures did not reverse the policies he had brought to bear under the charismatic/exceptional conditions following 9/11. Publicity is the enemy of the charismatic leader in the state of exception. Secrecy and suppression are the main tools for his success.¶ **Under President Bush, the executive branch capitalized on** the disaster of **9/11 in two important ways: first, through the attempt to clear space in the Middle East for market expansion, to be facilitated by erecting “democratic” governments pliable to market manipulation; second**, and related, **through the creation of a massive bureaucratic-military apparatus *immune to traditional democratic safeguards* against the concentration and abuse of state power.** **Under the pretense of the defense of the U.S. state, Congress authorized the Bush administration to invent and mobilize a national security bureaucracy that functions effectively as *a state of its own*, complete with its own restricted alternative geography and enclosed discourses**. **The purpose of this extreme bureaucratic apparatus is,** purportedly, the defense of the U.S. from threats against its interests. What it does in fact is **[to] underwrite the exceptional violence called for by its president and his administration.**¶ The continuation of President Bush’s legacy of mass-violations of international human rights law was not a foregone conclusion in 2008. **The election of Barack Obama reflected collective American desire for “change” to an adequately charismatic sovereign up to the task of *absorbing the exception*** (which had, over the previous eight years, been seriously compounded). ***That this hope was never realized is not surprising*, especially when considered against** what Weber called **the** ***“charisma of office.”*** Since at least the Reagan administration, **the U.S.’ executive-sovereign apparatus had not been oriented to normalizing the exception; instead, it became premised on the anticipation of opportunities for** what Naomi Klein has called **“disaster capitalism,” a mode of governance premised on literally *capitalizing on (and***, in several cases, ***facilitating) mass trauma and catastrophe***. **Who will save us from our charismatic leaders?**

***Expansion of habeas corpus is a slick PR move that merely perpetuates the illusion of American fidelity to the rule of law—it numbs us to the ongoing violence of mass incarceration and mystifies power relations***

**Gregory, 13** (Anthony Gregory, Gilbert I. Collins Fellow at the Independent Institute, “The power of habeas corpus in America [electronic resource] : from the King's Prerogative to the War on Terror” The Independent Institute, Oakland, Cambridge University Press, 2013, accessed via Wayne State Ebooks, online, pg 279-282, jj)

**If it is a “mere absurdity” to think that the king should check the Commons and yet the Commons should check the king – if this notion betrays a simultaneous mistrust in both executive and legislative authority as well as a naïve faith in the constituent parts of the system as a whole – this mistrust could apply as well to a constitutional system of government, such as that of the United States**. If Americans can trust Congress, why do they need a president? If they can have faith in the president, what’s the need for Congress? **Regarding habeas corpus, if the people cannot trust the executive to detain prisoners without a judge’s approval, why would they trust the executive to detain anyone in the first place?**

One could easily respond that the people do not trust their government, hence the power of habeas corpus. But ***insofar as the existence of the judicial remedy calms fears about an out-of-control executive, an illusion might be under way***. **Most Guantanamo prisoners were freed without any traditional habeas corpus remedy**. Tens of thousands were released from prison camps in Iraq without any judicial protection. John Walker Lindh, the “American Taliban,” enjoyed civil process and found himself sentenced to twenty years, whereas Yaser Hamdi, captured in nearly identical circumstances, was initially deprived of habeas corpus but set free much more quickly. Furthermore, **the United States had at the beginning of the twenty-first century two million domestic prisoners, many convicted of crimes that were not seen as crimes only a few decades before. The existence of habeas corpus**, though itself not an evil, **may *numb* the concerns that great evils have been committed by the executive and criminal justice system.**

Federman roots a significant part of his analysis in the method of philosopher Michel Foucault, who has deconstructed many social institutions, including the prison system, and found that **power relations have as much to do with *the way people discuss matters* at they do with the sheer use of physical force**.22 Indeed, force alone cannot sustain governmental structures. **Political institutions rest on a foundation of ideas**. Not only post-modern theorists have studied the role of public ideology in sustaining state power. Many others, including Robert Higgs, Murray Rothbard, and Franz Oppenheimer, have focused on the key function of public opinion.23

If the goal is to ensure a free society that does not imprison people without a minimum standard of justice, another paradox arises. Given this goal, the people must see due process and the rule of law as prerequisites, so that a government unbound by such mechanisms as habeas corpus loses some of its legitimacy. **The people must** also, however, **recognize that the existence of habeas alone does not ensure legitimacy and justice**. The state loses its moral high ground insofar as it compromises habeas corpus, yet ***it is dangerous to give the state too much credit merely for formally respecting the writ.***

Foucault himself recognized that a social attitude toward an institution could yield consequences opposite of what is expected. **Condemning repression can actually enhance a culture’s repressiveness**. **Applying this principle to Federman’s analysis reveals the paradoxical way in which adopting habeas corpus as part of societal discourse may undermine social vigilance in guaranteeing individual liberty.**

In particular, Federman finds that the nationalization of habeas corpus was crucial in its development into a discursive and mechanical tool on the individual’s side – “By accusing the state of acting illegally, the habeas petitioned aligns himself with the national over the local, with reason over prejudice, with law over vengeance.”24 However, **this view neglects the way that** the nationalization of **habeas accompanied an expansion of the criminal justice system**, the courts’ failure to provide as effective a remedy to state detentions in the bulk of cases,25 **and the federal government’s use of the language of habeas corpus going back to the Suspension Clause’s adoption to pervert the writ’s meaning, betray its purpose, and *obscure society’s power relations***. Was expanding federal habeas corpus over state detentions with the goal of enforcing federal taxation in the 1830s, and then using that law to enforce the Fugitive Slave Act, for example, really an example of law and reason superseding prejudice and vengeance?

The presence of the U.S. Constitution, which purportedly guarantees liberty, may in fact allow the U.S. government to behave in ways totally destructive of this document’s principles, using it as a cover. Just as Great Britain’s unwritten constitution has become part of that state’s civic region, so too has the U.S. Constitution become a fig leaf for the U.S. government’s violations of individual rights. **The idea that the government follows a “rule of law” can lead people to tolerate its lawlessness.**

George W. **Bush**, as president, repeatedly **stressed that his administration’s detention policy followed the rule of law**, the Geneva Conventions, and the Constitution, even though this policy by most reasonable interpretations ran counter to all three. Had he announced to the world that he was making up the law as he was going along, perhaps his lawbreaking would have been easier to identify and rein in. Similarly, Barack **Obama**, standing in front of the National Archives in May 2009, **spoke highly of the Constitution sitting behind him and stressed the importance of the rule of law, all while unveiling his new program of extraconstitutional “prolonged detention.”**

The many technical developments in habeas corpus law feature strong opinions on all sides of every imaginable controversy. For hundreds of years, scholars have argued on multiple sides about what the Great Writ has “always meant,” what its limits “always were,” and how its more technical elements should clearly be interpreted in light of real-world circumstances, statues, and court decisions going back centuries. **On the basis of technical arguments alone, all sides have valid points**. **Enough precedent exists to make a colorable case for liberal habeas corpus activism or for a restrained federal judiciary on virtually any specific question**. **But of this Great Writ of liberty, which emerged amid power struggles and evolved into one of the most enviable features of the Western legal tradition, perhaps a moral principle might emerge that *goes beyond all the legal jargon and case law***. If habeas corpus is as meaningful as everyone claims, then perhaps it can take a life of its own that not only reaches the foundations of our legal systems but transcends it. Perhaps what is lost in much of the discourse over habeas corpus – discourse that both undermines and paradoxically bolsters social faith in the state – is its essence, a meaning whose radical implications even many devotees of the Great Writ are so far unprepared to consider.

***1) Circumvention:***

***A) The Executive***

**Umansky, 5** – senior editor at ProPublica (Eric, 6/17. “Closing Guantanamo prison may not be the best option.” http://onlineathens.com/stories/061805/opi\_20050618001.shtml)

Closing the U.S. prison at Guantanamo Bay has suddenly become a hot topic. Since Sen. Joseph R. Biden Jr., D-Del., broached the idea, the notion has been gaining steam. Last weekend, Sen. Mel Martinez, R-Fla., added the first Republican voice to the chorus, and there were Senate hearings Wednesday on detainee issues. Even President Bush seems to be hinting that he's game. Asked during a television interview whether Gitmo should be shut, the president said, "We're exploring all alternatives as to how best to do the main objective, which is to protect America." Gitmo has come to represent the lack of accountability and the extralegal aspects of the war on terrorism. Shuttering it would be a grand gesture. The symbolism would be important and could help improve the U.S. image. But if that is all that is done, a closure risks obscuring a more important issue and could even be counterproductive: If the U.S. is to really regain its standing as a defender of human rights, it needs to do more than mothball a single jail; it needs to change its policies. **If the prison were to close, what would happen to the detainees? Most of them were judged by former commanders at Guantanamo to be merely Taliban foot soldiers. Some, presumably, would simply be released. Others might face military tribunals, and some would most likely be shipped off, to be held by other countries. The last two possibilities are not a welcome scenario from either a moral or public relations perspective.** Consider the tribunals. Heavily stacked against defendants, they've been condemned by such groups as the American Bar Association and military defense lawyers, who actually sued the government over the lack of prisoners' rights. **Shipping terror suspects to other countries, even their own countries, could be worse. The U.S. has been practicing** a form of this: "**extraordinary rendition," in which prisoners are picked up in one locale - "snatched" in CIA parlance - and find themselves incarcerated elsewhere, in countries such as Syria or Uzbekistan.** A United States military boat patrols in front of Camp Delta in this 2002 file photo, in Guantanamo Bay, Cuba. The legal process in such cases isn't just flawed, it doesn't exist. Detainees get no trials or hearings before a judge. **The U.S. gets pro forma promises that prisoners won't be tortured, but there is no known monitoring. And Uzbekistan, for instance, has gained some renown for reports of political prisoners being boiled alive**. Rendition hasn't generated the headlines or the level of outrage as Guantanamo Bay. But **stories from rendered detainees have made it out, and they do little for the U.S. image. One Australian citizen who was rendered to Egypt was reportedly hung from a wall and given electric shock. In something of a reprieve, he was transferred to Guantanamo Bay. He arrived without most of his fingernails**. There's also a perverse possibility intrinsic in **closing Gitmo**: It **could end up making the U.S. less accountable. With the visible symbol of unfair treatment swept away, pressure for wider change might dissipate**. It's important to remember that Gitmo is only one of a group of U.S. prisons around the globe set up to hold "enemy combatants" captured in the war on terrorism. Far less is known about the other jails, which are reportedly run by the CIA. There's one at Bagram Air Base in Afghanistan, called the Salt Pits. As The New York Times reported, two detainees have been killed at Bagram. More obscure is the reported facility at a base in Diego Garcia in the Indian Ocean. Unlike at Guantanamo Bay, no reporters have been allowed to visit these jails.

***B) The DC Circuit Court***

Clive Stafford **Smith** is director of the charity Reprieve, “Federal Courts Reject Virtually All Habeas Petitions from Gitmo: Study”, March 13th 20**12**, http://www.thedailybeast.com/articles/2012/05/13/federal-courts-reject-virtually-all-habeas-petitions-from-gitmo-study.html

Upon taking office in 2009, President Barack Obama pledged to close the prison at Guantánamo Bay within the year. We all know how that turned out. Now, a decade into the sad experiment that is Guantánamo, we discover that **the United States**—supposedly a nation of laws—isn’t simply holding prisoners year after year without charge, but **is rejecting their habeas corpus petitions** ***almost out of hand.* A new study out of Seton Hall University School of Law finds that the federal district courts** in Washington, D.C., **granted 56 percent of the habeas petitions filed by detainees** after the Supreme Court permitted the petitions in 2008. But since July 2010, ***the courts have rejected all but one***. The turning point was a case called Al-Adahi v. Obama, decided by the D.C. Circuit Court of Appeals. The study’s authors, two law professors, say **this shows that the D.C. Circuit**—generally **considered the most powerful court in the country outside the Supreme Court**—**has made up its mind that** henceforth ***nobody in Guantánamo Bay should be considered innocent***. In Al-Adahi, **the court essentially said that an error rate of 56 percent is intolerable, but rather than eliminating errors by actually eliminating them, it simply decided they didn’t exist.** “After Al-Adahi, **the practice of careful judicial fact-finding was replaced by judicial deference to the government's allegations**,” the authors write. “Now the government wins every petition.” Let’s put this in context: Normally, when someone in America is charged with a crime, the first question the judicial system seeks to answer is not how to kill him. Rather, it is whether he has, in fact, committed the crime the government alleges. Back in 2003, Donald Rumsfeld purportedly said that the prisoners in Guantánamo Bay were all captured on the Afghanistan battlefield, and were the “worst of the worst” terrorists in the world. In a totalitarian dictatorship, we might accept this as true without question; in the United States, we generally require evidence. Over the months and years, that evidence began to seep out, calling Mr. Rumsfeld’s assertions into question. First, his good friend, the Pakistan dictator General Pervez Musharraf, penned an autobiography, In the Line of Fire, bragging that fully half of the Guantánamo prisoners had not been captured in Afghanistan, let alone on a battlefield. They were Arabs who had been seized in Pakistan and sold to the U.S. for a bounty. Next, the U.S. military started making their own assessment. To date, they have released 610 of the 779 prisoners from Guantánamo—in other words, almost four out of five (78%) were no threat to the United States. Thus did the military cull Rumsfeld’s “terrorists,” presumably into a rump who he would label the “worst of the worst of the worst.” **Only a very small number of the Gitmo prisoners have ever resorted to the courts for a writ of habeas corpus**, a legal remedy that tests the legality of someone’s detention. In the first 34 cases, a District Court judge ruled for the prisoner 56 percent of the time. In effect, the judges were saying that, even after several years spent trying to sort the terrorist wheat from the bystander chaff, and after winnowing out hundreds of the more obviously innocent, the probability that military intelligence had identified an enemy correctly was still less than a coin-toss. So in Al-Adahi, **the court set an impossible standard**. ***Now, the district courts routinely deny habeas petitions***, **and when they do grant them**, ***the circuit reverses them.*** The professors’ theory is that **this ruling was intended to intimidate the lower court judges** into curtailing their liberal nonsense. That is, the Guantánamo prisoners were getting too much justice. Unfortunately, I can attest to the correctness of the professors’ theory, as I was in court when a federal judge recently observed that he had been sent a message by his appellate brethren. It is important to understand that **the habeas hearings are not deciding anything so mundane as whether the men in Guantánamo actually committed a crime**. Indeed, **only five people out of the 779 Guantánamo detainees have been convicted of a criminal offense; more than 99% have not.** Rather, the question in a habeas proceeding is whether a prisoner has done anything that might—under a minimal burden of proof, with what is essentially a presumption of guilt supported by secret evidence—indicate an association with those who the government tars as terrorists.

***C) Congress***

Mark D. **Pezold**, Boston College Law Review “When to be a Court of Last Resort: The Search for

a Standard of Review for the Suspension Clause”, 1-1-20**10**, http://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=3108&context=bclr (BJN)

**Although the war on terror has not resulted in a suspension of habeas corpus, the conflict has presented the courts with increasingly complex issues regarding what level of due process should be granted to detainees**. The **judicial scrutiny of legislative acts** passed in the wake of the September 11, 2001 attacks, most notably the Military Commissions Act of 2006, ***creates the potential for Congress to suspend the writ of habeas corpus altogether*** in the event another terrorist attack occurs. This Note explores what level of scrutiny should be applied to such a suspension, assuming that the courts do not declare the issue a political question. Between a deferential standard focusing on an analogy to the war powers and a more searching form of judicial review focusing on the writ’s importance in individual liberty and due process, the courts would have a complex challenge in applying the correct standard. This Note ultimately concludes that the deciding factor in such a case would be the indefinite nature of the suspension itself, determined primarily by the length of detention a detainee had faced, the availability of judicial process, and the length of time that passed since an attack warranting suspension occurred. Introduction **The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it**. —United States Constitution1 When the founding fathers drafted the Suspension Clause in Philadelphia following the failure of the Articles of Confederation, there was fierce debate over whether the federal government should ever have the power to suspend habeas corpus.2 The drafters recognized the significance of the writ as a method of bringing a prisoner before a court, often to ensure that the prisoner’s imprisonment or detention is not illegal.3 The drafters themselves had lived through several suspensions of habeas corpus by Parliament throughout colonial times and during the American Revolution, which led to their view that suspension served as an “engine of oppression.”4 The suspension of the writ challenges us to examine whether it is ever appropriate to forgo the important right in an effort to protect the nation.5 The drafters thought it was appropriate in certain circumstances to suspend the writ, but remained silent about the level of judicial review that should apply to a suspension.6 Given this ambiguity, **the question of what is considered a “rebellion or invasion” pursuant to the Suspension Clause is increasingly complex**, especially amid a war on terrorism.7 This Note seeks to explore the standard of review and level of scrutiny that should be applied to the internal limitations of the Suspension Clause by the judicial branch in the event the writ of habeas corpus is suspended.8 The term “internal limitation” refers to the requirement of an invasion or rebellion, and ignores the possibility that external limitations could also be used to challenge a suspension.9 **The conventional notion has been that a suspension of habeas corpus would be a non-justiciable political question, but recent developments in the war on terror and commentary by modern legal scholars have challenged this idea**.10 **The concept of judicial review of suspension *is more than an academic exercise* given the recent unsuccessful attempts by Congress to circumvent the writ of habeas corpus by statute.**11 Additionally, Professor Amanda L. Tyler speculates there is “good reason to believe that another attack would be met with invocation of the suspension power by Congress.”12 The idea that suspension is not a political question suggests an important role for judicial review during tumultuous times in our nation, yet leaves unresolved the question of what level of review should be used.13

--Footnote 11--

\*11 See, e.g., Military Commissions Act of 2006, Pub. L. No. 109-366, 120 Stat. 2600 (codified at scattered sections of 10, 18, 28, and 42 U.S.C.) (“No court, justice, or judge shall have jurisdiction to hear or consider an application for a writ of habeas corpus filed by or on behalf of an alien detained by the United States who has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.”); Authorization for Use of Military Force, Pub. L. No. 107-30, 115 Stat. 224 (codified at 50 U.S.C. § 1541 (2006)) (declaring in the wake of September 11, 2001 terrorist attacks that “the President is authorized to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons”). **The Military Commissions Act** of 2006 **was recently challenged in Boumediene** v. Bush, **highlighting the difficulty the government has faced in circumventing the courts in the war on terror and** possibly **increasing the likelihood that a future attack would lead the government to suspend the writ of habeas corpus altogether**. 128 S. Ct. at 2263

**Leadership**

***Zero risk of solvency:***

1. ***Deference and circumvention inevitable – the best they can achieve is inconsistent application of precedent.***

**Posner and Vermeule, 10** - \*professor of law at the University of Chicago AND \*\*professor of law at Harvard (Eric and Adrian, The Executive Unbound, p. 52-54)

THE COURTS

We now turn from Congress to the courts, the other main hope of liberal legalism. In both economic and security crises, courts are marginal participants. Here **two Schmittian themes are relevant: that courts come too late to the crisis to make a real difference in many cases, and that courts have pragmatic and *political incentives* to defer to the executive**, whatever the nominal standard of review. The largest problem, underlying these mechanisms, is that ***courts possess legal authority but not robust political legitimacy***. Legality and legitimacy diverge in crisis conditions, and the divergence causes courts to assume a restrained role. We take up these points in turn.

The Timing of Review

A basic feature of judicial review in most Anglo-American legal systems is that courts rely upon the initiative of private parties to bring suits, which the courts then adjudicate as “cases and controversies” rather than as abstract legal questions. This means that **there is always a time lag, of greater or lesser duration, between the adoption of controversial government measures and the issuance of judicial opinions on their legal validity ensures that courts are *less likely to set precedents while crises are hot,*** **precedents** that ***will be warped by the emotions of the day* or by the political power of aroused majorities**.70

Delayed review has severe costs, however. For one thing, courts often face a fait accompli. Although it is sometimes possible to strangle new programs in the crib, once those measures are up and running, it is all the more difficult for courts to order that they be abolished. This may be because new measures create new constituencies or otherwise entrench themselves, creating a ratchet effect, but the simpler hypothesis is just that officials and the public believe that the measures have worked well enough. Most simply, returning to the pre-emergency status quo by judicial order seems unthinkable; doing so would just re-create the conditions that led the legislature and executive to take emergency measures in the first place.

For another thing, **even if courts could overturn or restrict emergency measures, by the time their review occurs, those measures will by their nature already have worked, or not**. **If they have worked,** or at least if there is a widespread sense that the crisis has passed, **then the legislators and public may not much care whether the courts invalidate the emergency measures after the fact**. By the time the courts issue a final pronouncement on any constitutional challenges to the EESA, the program will either have increased liquidity and stabilized financial markets, or not. In either case, **the legal challenges will interest constitutional lawyers, but will *lack practical significance***.

Intensity of Review

Another dimension of review is intensity rather than timing. At the level of constitutional law, **the overall record is that courts tend to defer heavily to the executive in times of crisis, only reasserting themselves once the public sense of imminent threat has passed**. As we will discuss in chapter 3, federal courts deciding administrative cases after 9/11 have tended to defer to the government’s assertion of security interests, although more large number work is necessary to understand the precise contours of the phenomenon. Schmitt occasionally argued that the administrative state would actually increase the power of judges, insofar as liberal legislatures would attempt to compensate for broad delegations to the executive by creating broad rights of judicial review; consider the Administrative Procedure Act (APA), which postdates Schmitt’s claim. It is entirely consistent with the broader tenor of Schmitt’s thought, however, to observe that **the very political forces that constrain legislatures to enact broad delegations in times of crisis also hamper judges**, including judges applying APA-style review. **While their nominal power of review may be vast, the judges cannot exercise it to the full in times of crisis.**

Legality and Legitimacy

At a higher level of abstraction, **the basic problem underlying judicial review of emergency measures is the divergence between the courts’ legal powers and their political legitimacy in times of perceived crisis**. **As Schmitt pointed out, emergency measures can be “exceptional” in the sense that although illegal**, or of dubious legality, **they may nonetheless be politically legitimate**, if they respond to the public’s sense of the necessities of the situation.71 Domesticating this point and applying it to the practical operation of the administrative state, courts reviewing emergency measures may be on strong legal ground, but will tend to lack the political legitimacy needed to invalidate emergency legislation or the executive’s emergency regulations. Anticipating this, courts pull in their horns.

**When the public sense of crisis passes, legality and legitimacy will once again pull in tandem; courts then have more freedom to invalidate emergency measures, but it is less important whether or not they do so,** as the emergency measure will in large part have already worked, or not. **The precedents set after the sense of crisis has passed may be calmer and more deliberative**, and thus of higher epistemic quality—this is the claim of the common lawyers, which resembles an application of the Madisonian vision to the courts—**but the public will *not take much notice of those precedents*, and they will have *little sticking power when the next crisis rolls around.***

1. ***Obama will disregard the Court. He is on record***

**Pyle 12**—Professor of constitutional law and civil liberties @ Mount Holyoke College [Christopher H. Pyle, “Barack Obama and Civil Liberties,” Presidential Studies Quarterly, Volume 42, Issue 4, December 2012, Pg. 867–880]

Preventive Detention

But this is not the only double standard that Obama's attorney general has endorsed. Like his predecessors, **Holder has chosen to deny some prisoners** **any trials at all**, either because the government lacks sufficient evidence to guarantee their convictions or because what “evidence” it does have is fatally tainted by torture and would deeply embarrass the United States if revealed in open court. At one point, **the president** considered asking Congress to pass a preventive detention law. Then he **decided to institute the policy** himself **and *defy the courts to overrule him*, thereby forcing judges to assume primary blame for** any **crimes** against the United States **committed by prisoners following a court-ordered release** (Serwer 2009).

**According to Holder, courts and commissions are “essential tools in our fight against terrorism**” (Holder 2009). ***If they will not serve that end, the administration will disregard them*. The *a*ttorney *g*eneral** also **assured senators that if any of the defendants are acquitted, the administration will still keep them behind bars. It is difficult to imagine a greater contempt** for the rule of **law than this refusal to abide by the judgment of a court.** Indeed, it is grounds for Holder's disbarment.

As a senator, Barack Obama denounced President Bush's detentions on the ground that a “perfectly innocent individual could be held and could not rebut the Government's case and has no way of proving his innocence” (Greenwald 2012). But, three years into his presidency, Obama signed just such a law. **The N**ational **D**efense **A**uthorization **A**ct of 2012 **authorized the military to** round up and **detain, indefinitely and without trial**, American citizens suspected of giving “material support” to alleged terrorists. **The law was patently unconstitutional, and has been so ruled by a court** (Hedges v. Obama 2012), **but** President **Obama's** only **objection was that its detention provisions were unnecessary, because he already had such powers as commander in chief**. He even said, when signing the law, that “my administration will not authorize the indefinite military detention without trial of American citizens,” but again, that remains policy, not law (Obama 2011). At the moment, the administration is detaining 40 innocent foreign citizens at Guantanamo whom the Bush administration cleared for release five years ago (Worthington 2012b).

Thus, **Obama's “accomplishments**” in the administration of justice “**are slight**,” as the president admitted in Oslo, **and not deserving of a Nobel Prize**. **What little he has done has more to do with appearances than substance**. Torture was an embarrassment, so he ordered it stopped, at least for the moment. Guantanamo remains an embarrassment, so he ordered it closed. He failed in that endeavor, but that was essentially a cosmetic directive to begin with, because a new and larger offshore prison was being built at Bagram Air Base in Afghanistan—one where habeas petitions could be more easily resisted. The president also decided that kidnapping can continue, if not in Europe, then in Ethiopia, Somalia, and Kenya, where it is less visible, and therefore less embarrassing (Scahill 2011). Meanwhile, his lawyers have labored mightily to shield kidnappers and torturers from civil suits and to run out the statute of limitations on criminal prosecutions. Most importantly, kidnapping and torture remain options, should al-Qaeda strike again. **By talking out of both sides of his mouth simultaneously, Obama keeps hope alive for liberals and libertarians who believe in equal justice under law, while reassuring conservatives that America's justice will continue to be laced with revenge**.

**It is** probably **naïve to expect much more** of an elected official. ***Few presidents willingly give up power or seek to leave their office “weaker” than they found it*. Few now have what it takes to stand up to the national security state** or to those in Congress and the corporations that profit from it. Moreover, were the president to revive the torture policy, there would be insufficient opposition in Congress to stop him. The Democrats are too busy stimulating the economies of their constituents and too timid to defend the rule of law. The Republicans are similarly preoccupied, but actually favor torture, provided it can be camouflaged with euphemisms like “enhanced interrogation techniques” (Editorial 2011b).

***Retrenchment doesn’t cause conflict, lashout, or draw-in---all their studies are wrong***

Paul K. **MacDonald 11**, Assistant Professor of Political Science at Williams College, and Joseph M. Parent, Assistant Professor of Political Science at the University of Miami, Spring 2011, “Graceful Decline?: The Surprising Success of Great Power Retrenchment,” International Security, Vol. 35, No. 4, p. 7-44

How do great powers respond to acute decline? The erosion of the relative power of the United States has scholars and policymakers reexamining this question. **The** central **issue is whether** ***prompt retrenchment*** **is** **desirable** or probable. Some **pessimists counsel** that **retrenchment is** a **dangerous** policy, because it shows weakness and invites attack. Robert ***Kagan***, for example, **warns, "A reduction** in defense spending . . . **would unnerve** American **allies and undercut** efforts to gain greater **cooperation**. There is already a sense around the world, fed by irresponsible pundits here at home, that the United States is in terminal decline. Many fear that the economic crisis will cause the United States to pull back from overseas commitments. The announcement of a defense cutback would be taken by the world as evidence that the American retreat has begun."1 Robert **Kaplan** likewise **argues**, "Husbanding our power in an effort to slow America's decline in a post-Iraq and post-Afghanistan world would mean avoiding debilitating land entanglements and focusing instead on **being more of an offshore balancer**. . . . While this may be in America's interest, the very signaling of such an aloof intention **may encourage regional bullies**. . . . [L]essening our engagement with the world would have devastating consequences for humanity. The disruptions we witness today are but a taste of what is to come should our country flinch from its international responsibilities."2 The consequences of these views are clear: retrenchment should be avoided and forward defenses maintained into the indefinite future.3¶ Other observers advocate retrenchment policies, but they are pessimistic [End Page 7] about their prospects.4 Christopher Layne, for instance, predicts, "Even as the globe is being turned upside down by material factors, the foreign policies of individual states are shaped by the ideas leaders hold about their own nations' identity and place in world politics. More than most, America's foreign policy is the product of such ideas, and U.S. foreign-policy elites have constructed their own myths of empire to justify the United States' hegemonic role."5 Stephen Walt likewise advocates greater restraint in U.S. grand strategy, but cautions, "The United States . . . remains a remarkably immature great power, one whose rhetoric is frequently at odds with its conduct and one that tends to treat the management of foreign affairs largely as an adjunct to domestic politics. . . . [S]eemingly secure behind its nuclear deterrent and oceanic moats, and possessing unmatched economic and military power, the United States allowed its foreign policy to be distorted by partisan sniping, hijacked by foreign lobbyists and narrow domestic special interests, blinded by lofty but unrealistic rhetoric, and held hostage by irresponsible and xenophobic members of Congress."6 Although retrenchment is a preferable policy, these arguments suggest that great powers often cling to unprofitable foreign commitments for parochial reasons of national culture or domestic politics.7¶ **These arguments have** **grim implications for** contemporary **international politics**. With the rise of new powers, such as China, the international pecking order will be in increasing flux in the coming decades.8 Yet, ***if the pessimists are correct***, **politicians and interests groups in the U**nited **S**tates **will be** ***unwilling or unable to realign resources with overseas commitments***. **Perceptions of weakness and** ***declining U.S. credibility*** **will encourage policymakers to** ***hold on to burdensome overseas commitments***, **despite their high costs** in blood and treasure.9 **Policymakers** in Washington **will** ***struggle to retire*** **from profitless military engagements** and restrain ballooning current accounts and budget deficits.10 For some observers, the wars in Iraq and Afghanistan represent the ill-advised last gasps of a declining hegemon seeking to bolster its plummeting position.11¶ In this article, ***we question the logic and evidence of the retrenchment pessimists***. To date **there has been** ***neither a comprehensive study*** **of great power retrenchment** **nor a study that lays out the case** for retrenchment **as a practical or probable policy**. **This article fills these gaps by** ***systematically examining the relationship between acute relative decline and the responses of great powers***. We examine eighteen cases of acute relative decline since 1870 and advance three main arguments.¶ First, **we challenge the** retrenchment pessimists' **claim that** ***domestic or international constraints*** **inhibit the ability of declining great powers to retrench**. In fact, **when states fall in the hierarchy of great powers**, ***peaceful retrenchment is the most common response***, **even over short time spans**. Based on the empirical record, we find that great powers retrenched in no less than eleven and no more than fifteen of the eighteen cases, a range of 61-83 percent. **When international conditions demand it, states renounce risky ties, increase reliance on allies** or adversaries, **draw down** their military **obligations, and impose adjustments on domestic populations**.¶ Second, we find that the magnitude of relative decline helps explain the extent of great power retrenchment. Following the dictates of neorealist theory, **great powers retrench for the same reason they expand**: the rigors of ***great power politics compel them*** to do so.12 Retrenchment is by no means easy, but [End Page 9] necessity is the mother of invention, and **declining great powers face** **powerful incentives to contract their interests in a** **prompt and proportionate manner.** Knowing only a state's rate of relative economic decline explains its corresponding degree of retrenchment in as much as 61 percent of the cases we examined.¶ Third, we argue that the rate of decline helps explain what forms great power retrenchment will take. How fast great powers fall contributes to whether these retrenching states will internally reform, seek new allies or rely more heavily on old ones, and make diplomatic overtures to enemies. Further, our analysis suggests that **great powers facing acute decline are** ***less likely to initiate or escalate militarized interstate disputes***. **Faced with diminishing resources**, **great powers** ***moderate their foreign policy ambitions*** **and offer concessions in areas of lesser strategic value**. ***Contrary to the pessimistic conclusions*** **of critics,** ***retrenchment neither requires aggression nor invites predation***. **Great powers** are able to **rebalance their commitments through compromise, rather than conflict**. In these ways, states respond to penury the same way they do to plenty: they seek to adopt policies that maximize security given available means. Far from being a hazardous policy, **retrenchment can be successful**. **States that retrench** ***often regain their position in the hierarchy of great powers***. Of the fifteen great powers that adopted retrenchment in response to acute relative decline, 40 percent managed to recover their ordinal rank. In contrast, none of the declining powers that failed to retrench recovered their relative position.

**Iraq**

***No modeling***

**Law & Versteeg 12**—Professor of Comparative Constitutional Law @ Washington University & Professor of Comparative Constitutional Law @ University of Virginia [David S. Law & Mila Versteeg, “The Declining Influence of the United States Constitution,” New York University Law Review, Vol. 87, 2012

The appeal of American constitutionalism as a model for other countries appears to be waning in more ways than one. Scholarly attention has thus far focused on global judicial practice: There is a growing sense, backed by more than purely anecdotal observation, that ***foreign courts cite*** the constitutional jurisprudence of the U.S. Supreme Court less frequently than before.267 But the behavior of those who draft and revise actual constitutions exhibits a similar pattern. Our ***empirical analysis*** shows that the content of the U.S. Constitution is¶ becoming increasingly atypical by global standards. Over the last three decades, other countries have become ***less likely to model*** the rights-related provisions of¶ their own constitutions upon those found in the Constitution. Meanwhile, global adoption of key structural features of the Constitution, such as federalism, presidentialism, and a decentralized model of judicial review, is at best stable and at worst declining. In sum, rather than leading the way for global¶ constitutionalism, the U.S. Constitution appears instead to be losing its appeal as¶ a model for constitutional drafters elsewhere. The idea of adopting a constitution may still trace its inspiration to the United States, but the manner in which constitutions are written increasingly does not.

If the U.S. Constitution is indeed losing popularity as a model for other countries, what—or who—is to blame? At this point, one can only speculate as to the actual causes of this decline, but four possible hypotheses suggest themselves: (1) the advent of a superior or **more attractive competitor**; (2) a general decline in American hegemony; (3) judicial parochialism; (4) constitutional obsolescence; and (5) a creed of American exceptionalism.

With respect to the first hypothesis, there is little indication that the U.S. Constitution has been displaced by any specific competitor. Instead, the notion that a particular constitution can serve as a dominant model for other countries may itself be obsolete. There is an increasingly clear and broad consensus on the types of rights that a constitution should include, to the point that one can articulate the content of a generic bill of rights with considerable precision.269 Yet it is difficult to pinpoint a specific constitution—or regional or international human rights instrument—that is clearly the driving force behind this emerging paradigm. We find only limited evidence that global constitutionalism is following the lead of either newer national constitutions that are often cited as influential, such as those of Canada and South Africa, or leading international and regional human rights instruments such as the Universal Declaration of Human Rights and the European Convention on Human Rights. Although Canada in particular does appear to exercise a quantifiable degree of constitutional influence or leadership, that influence is not uniform and global but more likely reflects the emergence and evolution of a shared practice of constitutionalism among common law countries.270 Our findings suggest instead that the development of global constitutionalism is a polycentric and multipolar¶ process that is not dominated by any particular country.271 The result might be likened to a global language of constitutional rights, but one that has been collectively forged rather than modeled upon a specific constitution.

Another possibility is that America’s capacity for constitutional leadership is at least partly a ***function of American “soft power***” more generally.272 It is reasonable to suspect that the overall influence and appeal of the United States and its institutions have a powerful spillover effect into the constitutional arena. The popularity of American culture, the prestige of American universities, and the efficacy of American diplomacy can all be expected to affect the appeal of American constitutionalism, and vice versa. All are elements of an overall American brand, and the strength of that brand helps to determine the strength of each of its elements. Thus, any erosion of the American brand may also diminish the appeal of the Constitution for reasons that have little or nothing to do with the Constitution itself. Likewise, a decline in American constitutional influence of the type documented in this Article is potentially indicative of a broader decline in American soft power.

There are also factors specific to American constitutionalism that may be¶ reducing its appeal to foreign audiences. Critics suggest that the Supreme Court has ***undermined the global appeal of its own jurisprudence by failing to acknowledge the relevant intellectual contributions of foreign courts*** on questions of common concern,273 and by pursuing interpretive approaches that lack acceptance elsewhere.274 On this view, the Court may bear some responsibility for the declining influence of not only its own jurisprudence, but also the actual U.S. Constitution: one might argue that the Court’s approach to constitutional issues has undermined the appeal of American constitutionalism more generally, to the point that other countries have become unwilling to look either to American constitutional jurisprudence or to the U.S. Constitution itself for inspiration.275

It is equally plausible, however, that responsibility for the declining appeal of American constitutionalism lies with the idiosyncrasies of the Constitution itself rather than the proclivities of the Supreme Court. As the oldest formal constitution still in force, and one of the most rarely amended constitutions in the world,276 the U.S. Constitution contains relatively few of the rights that have become popular in recent decades,277 while some of the provisions that it does contain may appear increasingly problematic, unnecessary, or even undesirable with the benefit of two hundred years of hindsight.278 It should therefore come as little surprise if the U.S. Constitution¶ strikes those in other countries–or, indeed, members of the U.S. Supreme Court279–as ***out of date and out of line with global practice***.280 Moreover, even if the Court were committed to interpreting the Constitution in tune with global fashion, it would still lack the power to update the actual text of the document.

Indeed, efforts by the Court to update the Constitution via interpretation may actually reduce the likelihood of formal amendment by rendering such amendment unnecessary as a practical matter.281 As a result, there is only so much that the U.S. Supreme Court can do to make the U.S. Constitution an¶ attractive formal template for other countries. The obsolescence of the Constitution, in turn, may undermine the appeal of American constitutional jurisprudence: foreign courts have ***little reason to follow the Supreme Court***’s lead on constitutional issues if the Supreme Court is saddled with the interpretation of an unusual and obsolete constitution.282 No amount of ingenuity or solicitude for foreign law on the part of the Court can entirely divert attention from the fact that the Constitution itself is an increasingly atypical document.

One way to put a more positive spin upon the U.S. Constitution’s status as a global outlier is to emphasize its role in articulating and defining what is unique about American national identity. Many scholars have opined that formal constitutions serve an expressive function as statements of national identity.283 This view finds little support in our own empirical findings, which suggest instead that constitutions tend to contain relatively standardized packages of rights.284 Nevertheless, to the extent that constitutions do serve such a function, the distinctiveness of the U.S. Constitution may simply reflect the uniqueness of America’s national identity. In this vein, various scholars have argued that the U.S. Constitution lies at the very heart of an “American creed of exceptionalism,” which combines a belief that the United States occupies a unique position in the world with a commitment to the qualities that set the United States apart from other countries.285 From this perspective, the Supreme Court’s reluctance to make use of foreign and international law in constitutional cases amounts not to parochialism, but rather to respect for the exceptional character of the nation and its constitution.286

Unfortunately, it is clear that the reasons for the declining influence of American constitutionalism cannot be reduced to anything as simple or attractive as a longstanding American creed of exceptionalism. Historically, American exceptionalism has not prevented other countries from following the example set by American constitutionalism. The global turn away from the American model is a relatively recent development that postdates the Cold War. If the U.S. Constitution does in fact capture something profoundly unique about the United States, it has surely been doing so for longer than the last thirty years. A complete explanation of the declining influence of American constitutionalism in other countries must instead be sought in more recent history, such as the wave of constitution-making that followed the end of the Cold War.287 During this period, America’s newfound position as lone superpower might have been expected to create opportunities for the spread of American constitutionalism. But this did not come to pass.

Once global constitutionalism is understood as the product of a polycentric evolutionary process, it is not difficult to see why the U.S. Constitution is playing an ***increasingly peripheral*** role in that process. No evolutionary process favors a specimen that is frozen in time. At least some of the responsibility for the declining global appeal of American constitutionalism lies not with the Supreme Court, or with a broader penchant for exceptionalism, but rather with the static character of the Constitution itself. If the United States were to revise the Bill of Rights today—with the benefit of over two centuries of experience, and in a manner that addresses contemporary challenges while remaining faithful to the nation’s best traditions—there is no guarantee that other countries would follow its lead. But the world would surely pay close attention. Pg. 78-83

***Iraq’s resilient, no civil war***

**Stratfor, 13** (7/29, Civil War is Unlikely in Iraq Despite a Surge in Violence, <http://www.stratfor.com/video/civil-war-unlikely-iraq-despite-surge-violence>, jj)

This year's Ramadan has seen a spike of violence in Iraq that has reached numbers that are the highest since the height of the sectarian strife from 2006 to early 2008. These attacks and their subsequent mass casualties bolster the image and perceived operational capabilities of al Qaeda in Iraq, who often execute, or at least claim, some of the most spectacular attacks within the country. This is only part of the story, however, and **Iraq has demonstrated *resilience* to this ongoing violence in not allowing it to undo the delicate balance the major ethnic and sectarian stakeholders maintain**. As of now, **there are *no indicators* that would suggest that this current violence will plunge Iraq into full-fledged civil war**. **Iraq is *enormously complex* when it comes to its structure**. To put it simply, there is a Shia dominated center and south, a Sunni dominated west and a Kurdish dominated north. A majority of the violence occurring happens along the fault lines where these territories abut one another such as Baghdad, Tikrit and Mosul. It is in these seams that al Qaeda in Iraq has been able to hide, plan and execute its regular waves of coordinated insurgent-style attacks. Their competency was most recently demonstrated on the July 21, where a complex attack was able to free several hundred prisoners from Abu Ghraib prison. **It would be a mistake** however, **to think that al Qaeda in Iraq is the dominant actor. They are a relatively small insurgent group who are excellent at grabbing headlines** and have tactical competency, **but are just one group among many**. One of their main strategic goals is trying to reignite the sectarian strife within Iraq on the level of the Syrian conflict raging next door. While **Iraq** on its surface looks ripe for this type of rending, it actually **has several arrestors keeping it together**. First, Iraq has had lots of violence consistently ever since the 2011 U.S. pullout and it is not exclusive to al Qaeda and its spectacular attacks. There is an entire spectrum of militants, militias and organized crime groups working for a whole host of interests that have kept monthly casualties in the hundreds for the last year and a half. Despite this, ***Iraq has shown a remarkable capacity to continue to function***. Second, these attacks have been successfully creating horrific civilian casualties, thus grabbing media attention and bringing into question the security forces' effectiveness. These **attacks** have largely been executed against the plentiful soft targets available throughout any country, but they **have not been able to consistently disable critical infrastructure such as oil, whose revenues are one of the main bonding elements of Iraq**. **So while the Iraq security forces cannot prevent every attack, they have shown the ability to safe guard key components of it**. **Lastly, Iraq's major sectarian and ethnic groups have been able to maintain enough cohesiveness and control of their various security, militant, militia and tribal forces in order to maintain the overall security balance**. For example, **the much derided Iraqi army has shown no signs of fracturing or suffering desertions despite the constant absorption of casualties**. Additionally, **the Shia militias have avoided full-scale retaliation on Sunni targets that could drag the entirety of the Sunni tribal system into all-out conflict**. **Iraq** is in the grip of its worst violence in years, but it **is unlikely to go the way of Syria** in the near term. In some ways, it is the ongoing resource-consuming fight in Syria that is also constraining violence in Iraq as a majority of all available logistics and attention within the region are flowing next door. **This violence** is straining Iraq, but it **does not appear to be breaking the balance between the major groups**. **So for the immediate future we are likely to see more of the same low to mid-grade insurgent attacks while the balance of sectarian and ethnic power will remain.**

***Iraqi judicial independence impossible—de-Ba’athification***

**Pimentel, 13** (David Pimentel, Ohio Northern University, Brian Anderson, Ohio Northern University, Judicial Independence in Post-conflict Iraq: Establishing the Rule of Law in an Islamic Constitutional Democracy 46 Geo. Wash. Int'l L. Rev.\_\_\_ (2013), <http://works.bepress.com/cgi/viewcontent.cgi?article=1013&context=david_pimentel>, jj)

1. De-Ba’athification as a Threat to Judicial Independence

The process of lustration in post-conflict Iraq, known as **de- Ba’athification, involves legal and administrative measures to prevent the Ba’ath party from regaining political power after the fall of** Saddam **Hussein’s regime**.96 Introduced in April 2003, the Coalition Provisional Authority (CPA) was initially charged with implementing the process.97 At that time, **de-Ba’athification excluded top-ranking individuals from public administration positions based upon prior membership in the Ba’ath party**.98 When control shifted to the Iraqi Governing Council in August 2003, de- Ba’athification fell under the control of the newly established Higher National De-Ba’athification Commission (the Commission).99 The Commission quickly expanded the scope of de-Ba’athification by broadening the categories of covered persons under the law.100 The CPA, however, was critical of the Commission, which operated without the due process protections the CPA attempted to include when it created the process.101 In 2008, after a controversial vote, the new al-Maliki government reformed the de-Ba’athification process by creating the Higher National Commission for Accountability and Justice (HNCAJ) to take over the program.102 The reformed Commission included significant changes on paper, but continued to operate in much the same way.103

For example, in 2008 the HNCAJ called for all former Ba’ath party members still in government to re-apply under the new law.104 **The HNCAJ** became embroiled in controversy in 2010 when it **invalidated over 500 nominees for the upcoming parliamentary elections**.105 Based upon these and other actions, **some scholars have criticized de-Ba’athification as improperly emphasizing an individual’s status rather than an individual’s conduct**.106 In many cases, no assessment of specific criteria, such as one’s human rights record or one’s integrity, was made; rather, individuals were barred from public employment solely for prior Ba’ath party membership.107 Critics have also noted the inadequacy of oversight to review the actions of the Commission and the HNCAJ, allowing the potential for unfettered discretion in implementing de-Ba’athification.108 Complications like these implementing lustration—wide discretion to remove officials from office with little cause, and with scant attention to the individual’s procedural due process rights—can have significant implications on judicial independence.

These issues manifested themselves during the Dujail trial against Saddam Hussein.109 The Dujail trial was convened to investigate and try Saddam and others related to charges of crimes against humanity committed in the town of al-Dujail110 Although the Iraqi High Tribunal (IHT) had its own rules for dismissing judges based upon de-Ba’athification concerns, **the Commission intervened on three separate occasions to remove** administrative staff and **judges involved in that case**.111 **Reasons for this interference ranged from criticism over one judge’s liberal leanings, to ousting judges that were suspected of reluctance to apply capital punishment**.112 Similar allegations of interference were also made in the subsequent Anfal trial before the IHT, where the Commission supposedly implemented de-Ba’athification purges that impacted the composition and fairness of the Tribunal.113

***The potential threat to judicial independence persists even today***. In February 2013 the long-time Chief Justice of the Federal Supreme Court, Medhat al-Mahmoud, was deemed ineligible for public office, and removed from office, by the HNCAJ because of positions held during the Saddam Hussein regime.114 The allegations characterized Medhat a “Saddamist” who taught judges “to commit offenses against the Iraqi people,”115 although it has been suggested that the real motivation for seeking Medhat’s removal came from his controversial decision to strike down term-limits legislation, a ruling that purportedly insulates the Prime Minister from serious political challenge in years to come.116 While Medhat was later reinstated after appeal to the Court of Cassation, **his removal undoubtedly sent a message to judges throughout the system that any one of them could be targeted for removal in this way.**

**The interference of the de-Ba’athification Commission with the judicial process of the IHT raises serious issues with the Rule of Law and judicial independence in Iraq**. In other words, **it appears that de-Ba’athification proceedings were used to influence members of the judiciary in the outcome of these cases, and past patterns of abuse can easily intimidate sitting judges, undermining judicial independence in future cases.**

**Afghan**

***Afghanistan stable now and troops aren’t key—government has control***

**The World Outline 10/2**, Drones development and the drawdown: 3 keys to victory in Afghanistan, <http://theworldoutline.com/2013/10/drones-development-drawdown-3-keys-victory-afghanistan/>, jj

**It isn’t all doom and gloom**, though – **Afghanistan is *far more stable*** **than it was in the mid-2000’s**, when Washington’s focus on Iraq allowed a resurgent Taliban to regain critical mass. **Using** a refined counterinsurgency (**COIN**) strategy, the **kinetic action** of conventional warfare **is now tempered by an increased emphasis on relationship building, and has helped to reverse the Taliban’s grip on the country**. **A May report by General Allen reveals that nearly 50% of violence in Afghanistan is now limited to just 17 of the country’s 397 districts**, ***with firm government control over the rest***. While President Obama continues to liaise with Kabul in order to determine the arc of US involvement post-2014, there are 3 key areas that require close attention in order to maintain forward momentum.

***China stops escalation***

**China Daily 9/25**, Chen Weihua (China Daily), Can China and the US cooperate on fixing Afghanistan?, <http://usa.chinadaily.com.cn/opinion/2013-09/25/content_16993314.htm>, jj

Wang believes **China and the US have very important common interests in Afghanistan**. "We both hope Afghanistan will continue to maintain stability after next year, or the US troop pull-out," he said. "**We both hope to see the reconstruction of Afghanistan and we both don't want to see the resurgence of terrorism**." Noting widespread concern over the situation in Afghanistan post-2014, **Wang called for cooperation among China, the US and other countries linked to Afghanistan**. **He cited the joint China-US training program for Afghan diplomats as** a "small but **very good example**". A group of 15 Afghan diplomats just finished two weeks of training in the US last week and will go to China later this year for the second leg of the program. It is the second year for the training program, which was first unveiled in May of last year at the China Foreign Affairs University in Beijing. Ten days ago, **US special representative for Afghanistan and Pakistan James Dobbins described the training program as "only one of several areas in which the US and China are collaborating in this kind of advisory and capacity-building for the Afghans**". **Wang also expressed China's willingness to contribute to the economic recovery of Afghanistan.** He described the political reconciliation as a tough issue that involves different ethnicities and religions. "But," Wang said, "**I feel China and the US can still play a role, including joining hands with Pakistan and other neighbors of Afghanistan**. "Afghanistan is now in a phase of crucial transition. Whether the country can proceed smoothly with domestic reconciliation and reconstruction concerns the common interests of China, the US and other countries in the region," he added. Wang believes China-US cooperation on Afghanistan has just started and there is great potential and room for enhanced cooperation. "If our two countries can work with each other and bring out our respective strengths, we can turn the issue into a new highlight in our bilateral cooperation," Wang said. Dobbins said **the US has consulted regularly and closely with China on issues related to Afghanistan and Pakistan**. "We support greater Chinese involvement in the stabilization of Afghanistan and in the economic development of Afghanistan, including investments that China has made and investments that China might make in the future," he said. Acknowledging that China has a close relationship with Pakistan, Dobbins said that **Chinese and American interests in this respect are largely aligned**. "I think China, like the United States, is concerned about the growth of violent militancy in the region. **China, like the US, would like to see Afghanistan stabilized and no longer becoming a source for potential instability in the region**," said Dobbins, who was picked by Secretary of State John Kerry for the job on May 10 of this year and who also served as the George W. Bush administration's first special envoy to Afghanistan in the wake of the Sept 11, 2001 terrorists attacks. "The United States and China have collaboration," he said.

***Powers will work together to stabilize the region—security and economic incentives***

**Gresh 12** (Dr. Geoffrey F., Assistant Professor of International Security Studies at National Defense University, “Russia, China, and stabilizing South Asia”, 3/12, http://afpak.foreignpolicy.com/posts/2012/03/12/russia\_china\_and\_stabilizing\_south\_asia)

**As the U.S. begins to withdraw troops from Afghanistan, Russia and China have both declared a desire to increase their military presence throughout Central** and South **Asia. This new regional alignment**, however, **should not be viewed as a threat** to U.S. strategic national interests **but** seen rather **as concurrent with** strategic and regional **interests of the U**nited **S**tates: **regional peace, stability and the prevention of future terrorist safe havens** in ungoverned territories. **As China and Russia begin to flex their military muscles, the U.S. military should harness their expanded regional influence to promote proactively a new period of responsible multilateral support** for Afghanistan and Pakistan. **This past December it became clearer that Russia had begun to re-assert its regional presence when the** Collective Security Treaty Organization (**CSTO**) **granted Russia the veto power over any member state's future decision to host a foreign military.** CSTO members, including Kazakhstan, Kyrgyzstan, Tajikistan, and Uzbekistan, have become increasingly valuable U.S. partners in the Northern Distribution Network after Pakistan shut down U.S. military supply routes running from the south into Afghanistan when NATO troops killed 24 Pakistani soldiers last November in the border area of Salala. Though it appears the route may soon open again, the United States must still adopt a new strategy that works more closely with Russia and the CSTO to maintain the Northern Distribution Network long into the future, which currently accounts for about 60 percent of all cargo transiting Central Asia en route to Afghanistan. Certainly, the U.S. risks being unable to control many aspects of the Northern Distribution Network as it withdraws from the region, and this may in turn adversely affect Afghanistan's future success. However, if the United States remains concerned about leaving the region to a historically obdurate regional rival like Russia, it should also bear in mind that **Russia has a vital strategic interest in the future stability of the region.** Russia has approximately 15 million Muslims living within its borders, with an estimated 2 million Muslims in Moscow. **Russia is fearful of what occurs on its periphery and wants to minimize the spread of Muslim extremism** that may originate from an unstable Afghanistan or Pakistan. In addition, **Russia does not want regional instability that threatens its** oil and gas **investments**. In particular, **Russia wants to ensure that it continues to influence the planning and implementation of the potentially lucrative natural gas pipeline** that may one day traverse Turkmenistan, Afghanistan, Pakistan, and India. In a recent meeting with Pakistani Foreign Minister Hina Rabbani Khar, Russian Foreign Minister Sergey **Lavrov discussed Russia's commitment to preserving peace and stability throughout the** AfPak **region**, and rejected the use of violence by al-Qaeda and its affiliates that aim to undermine the current Afghan government. Furthermore, **he pledged to bolster bilateral ties and work cooperatively with Pakistan to achieve stability in Afghanistan.** A newly-elected President Vladimir Putin also recently wrote in a campaign brief that "Russia will help Afghanistan develop its economy and strengthen its military to fight terrorism and drug production." It is not lost on the U.S. government that Russia is proposing to succeed where the U.S. has struggled. However, if Russia does succeed in helping establish a secure Afghanistan and Pakistan that can prevent the spread of bases for terrorism then it is a victory for everyone. Aside from Pakistan, and in line with promoting security throughout the region, **Russia announced recently that it will provide $16 million to Kyrgyzstan to assist with border security** in the south. Russia also agreed recently to pay $15 million in back rent for its four military facilities across the country, including an air base, a torpedo test center on Lake Issyk-Kul, and a communications center in the south. Further, **Russia signed a security pact with Tajikistan** last fall **to extend its basing lease** for 49 years, **in addition to a bilateral agreement that will enable Russia to become more integrated into Tajikistan's border security forces** that oversee an 830-mile border with Afghanistan. Providing similar types of U.S. aid and security support will also help ensure that the valuable Northern Distribution Network remains open and secure for supply lines into Afghanistan. If the northern trade routes are shut down it would adversely affect aid arriving to Afghanistan and therefore jeopardize the stability of Afghanistan and the region. It would also be in opposition to Russia's regional interests. Rather than citing these examples in Kyrgyzstan and Tajikistan as a demonstration of how the U.S. will soon lose out in the region to a resurgent Russia, **policymakers can view them as an indication of how Russian interests align with the U.S. to help maintain regional security.** More importantly, if Russia wants to take a more active future role in Central Asia, the U.S. should address this shift and work directly with Russia and other CSTO members to ensure that the Northern Distribution Network remains operational in the distant future. Certainly, the U.S. should not be naïve to think that Russia will not at times oppose U.S. regional interests and that there will not be significant areas of conflict. In 2009, Russia tried to convince then President of Kyrgyzstan Kurmanbek Bakiyev to terminate the U.S. contract for its base in Manas. In this case, the U.S. fended off the threat of expulsion successfully through promises of increased U.S. military and economic aid. Continuing to maintain significant amounts of aid to the Central Asia Republics will therefore provide additional incentives to ensure the U.S. is less vulnerable to Russian whims, while at the same time remaining present and active for the benefit of regional security and the maintenance of the Northern Distribution Network. Another powerful regional player, **China, also has a vested interest in the stability of the** AfPak **region, and has already begun to play a more active security role.** It was reported this past January, for example, that **China intends to establish one or more bases in Pakistan**'s Federally Administered Tribal Areas. Subsequently, at the end of February, **Beijing played host to the first** China-Afghanistan-Pakistan **trilateral dialogue to discuss regional cooperation and stability. Due to China's shared borders and vibrant trade** with both Afghanistan and Pakistan -- **not to mention China's** estimated 8 million Turkic-speaking Muslim **Uyghurs** living in western Xinjiang Province -- **it has a direct interest in ensuring that both** Afghanistan and Pakistan **remain stable** long into the future. Bilateral trade between China and Pakistan, for example, increased 28 percent in the past year to approximately $8.7 billion. China also signed an oil agreement with Afghanistan in December that could be worth $7 billion over the next two decades. Additionally, China is concerned about the rise of its Uyghur separatist movement that maintains safe havens in both countries, in addition to the spread of radical Islam. The United States should push China to become more actively engaged in Pakistan's security affairs as China has a direct interest in moderating radicalism in Pakistan and keeping it stable. Indicative of Pakistan's strategic value to China, since 2002 China has financed the construction and development of Pakistan's Gwadar deep water port project. China has contributed more than $1.6 billion toward the port's development as a major shipping and soon-to-be naval hub, which is located just 250 miles from the opening of the Persian Gulf. A Pakistan Supreme Court decision in 2011 enabled China to take full control of Gwadar from a Singapore management company further establishing China's firm position in the Pakistani port city. The creation of a new Chinese military network in Pakistan between Gwadar and the FATA would enable China to oversee the transit and protection of Chinese goods and investments that travel from both the coast and interior through the Karakorum corridor to China's Xinjiang Province. China already has an estimated 4,000 troops in Gilgit Baltistan, part of the larger and disputed Kashmir, and just recently it was reported after a January 2012 trip by Pakistani Army Chief General Ashfaq Kayani to China that Pakistan is considering leasing Gilgit Baltistan to China for the next 50 years. Such a move would indeed escalate tensions with India to the south, but from a Pakistani perspective, China would be positioned better than it already is to assist with any future Pakistani national security concerns. And from a Chinese perspective, it would improve their ability to monitor any illicit Uyghur activities aimed at inciting further rebellion in western China. **With interest comes responsibility**, and in the wake of the recent reports predicting the establishment of a more robust Chinese military network across Pakistan, **it is time that China begins to supplement its increased involvement** in Pakistan by **helping to maintain peace and stability throughout the entire** AfPak **region**. Certainly after fighting two long wars, the United States can no longer be the sole world power responsible for the region, and both China and Russia have been U.S. security free-riders for too long. They have benefited financially while NATO continues to lose soldiers and accrue a massive war debt. **After 11 years of war, it is time the U**nited **S**tates **work more proactively with Russia, China, Pakistan and the Central Asian Republics to create solutions for the future stability and collective security of the region.** Indeed, we may not have a choice, and **the U**nited **S**tates **should embrace the transformation of a new era in Eurasia's heartland.**

# 2NC

**2NC Top Level Overview**

***The role of the ballot is to unconditionally resist economic systems of exclusion—your primary directive as an ethical actor must be to insist on universal resistance to capitalism. This is a prior question to the 1AC—traditional impact calculus is impossible because capitalism anonymizes and mystifies its violent contradictions. That outweighs the aff EVEN IF they win full weight of their impact and the root cause debate—capitalism subsumes the oppression they outline and externally results in invisible violence against billions globally. That’s Zizek and Daly. This question of self-orientation comes first***

**Johnston ’04** (Adrian, interdisciplinary research fellow in psychoanalysis at Emory, The Cynic’s Fetish: Slavoj Zizek and the Dynamics of Belief, Psychoanalysis, Culture and Society)

The height of Zizek's philosophical traditionalism, his fidelity to certain lasting truths too precious to cast away in a postmodern frenzy, is his conviction that no worthwhile praxis can emerge prior to the careful and deliberate formulation of a correct conceptual framework. His references to the Lacanian notion of the Act (qua agent-less occurrence not brought about by a subject) are especially strange in light of the fact that he seemingly endorses the view that theory must precede practice, namely, that deliberative reflection is, in a way, primary. For Zizek, the foremost "practical" task to be accomplished today isn't some kind of rebellious acting out, which would, in the end, amount to nothing more than a series of impotent, incoherent outbursts. Instead, **given the contemporary exhaustion of the socio-political imagination under the hegemony of liberal-democratic capitalism,** he sees **the liberation of thinking itself from its present constraints as the *first crucial step* that must be taken if anything is to be changed for the better.** In a lecture given in Vienna in 2001, Zizek suggests that **Marx's call to break out of the sterile closure of abstract intellectual ruminations through direct, concrete action** (thesis eleven on Feuerbach--"The philosophers have only interpreted the world in various ways; the point is to change it") **must be inverted given the new prevailing conditions of late-capitalism. Nowadays, one must resist succumbing to the temptation to short-circuit thinking in favor of acting, since all such rushes to action are doomed; they either fail to disrupt capitalism or are ideologically co-opted by it.**

**-Framework-**

***Policy fixes cannot resolve structural problems in the capitalist system—their framework and solvency claims actively exclude anti-capitalist discourses—ensures serial policy failure and turns case***

**Wolff 8** — Rick Wolff, Professor of Economics at University of Massachusetts at Amherst, 2008 (“Policies to "Avoid" Economic Crises,” MR Zine—a publication of The Monthly Review, November 6th, Available Online at http://mrzine.monthlyreview.org/wolff061108.html, Accessed 11-19-2008)

**The whole idea of policy is bizarre**. The "right policy" represents **an absurd claim** that this or that law or regulation can somehow undo the many different factors that cumulatively produced this crisis. Policies are "**magic potions**" offered to populations urgently demanding solutions to real problems. Whether cynically advocated for ulterior motives or actually believed by the politicians, promoters, and professors themselves, **policy is the secular cousin of religion**.¶ These days, the conservative policy amounts, as usual, to "let the private economy solve the problems" and "minimize state intervention because it only makes matters worse." Conservatives protect the freedoms of private enterprise, market transactions, and the wealthy from state regulations and controls and from taxes. The liberals' policy, also as usual, wants the state to limit corporate behavior, control and shape market transactions, and tilt the tax system more toward benefiting middle and lower income groups.¶ Both policies can no more overcome this economic crisis than they overcame past crises. Historically, both conservative and liberal policies fail at least as often as they succeed. Which outcome happens depends on all the factors shaping them and **not on the policy a government pursues**. Yet, both sides endlessly claim otherwise in desperate efforts at self-justification. Each side trots out its basic philosophy – dressed up as "a policy to achieve solutions." Conservatives and liberals keep debating. Today's crisis simply provides an urgent sort of context for the old debate to continue. Each side hopes to win converts by suggesting that its approach will "solve the economic crisis" while the other's approach will make it worse. Thus the liberals displaced the conservatives in the depths of the Great Depression, the reverse happened in the recession of the 1970s, and the liberals may now regain dominance. In no instance were adopted policies successful in solving the crises in any enduring way. The unevenness and instability of capitalism as a system soon brought another crisis crashing down on our economy and society.¶ The basic conservative message holds that the current economic crisis is NOT connected to the underlying economic system. The crisis does NOT emerge from the structure of the corporate system of production. It is NOT connected to the fact that corporate boards of directors, responsible to the minority that owns most of their shares, make all the key economic decisions while the enterprise's employees and the vast majority of the citizenry have to live with the consequences. The very undemocratic nature of the capitalist system of production is NOT related to crisis in the conservative view. The basic liberal message likewise disconnects today's crisis from the capitalist production system. Rather, each side insists that all crises would have been and would now be "avoidable" if only the right policy were in place.¶ Conservatives and liberals share more than a careful avoidance of connecting the crisis to the underlying capitalist system. They are also **complicit in blocking those who do argue for that connection from making their case in politics, the media, or the schools**. While conservative and liberal policies do little to solve crises, the debate between them has largely succeeded in **excluding anti-capitalist analyses of economic crises from public discussion**. Perhaps that exclusion – rather than solving crises – is the function of those endlessly rehashed policy debates between liberals and conservatives.

**Cap Inev Backline --- A2: Biological**

***This argument is profoundly ignorant***

**Miller, ’99** (Will, Professor of Philosophy at Vermont University, “Social Change and Human Nature,” Monthly Review, 50(9), http://www.monthlyreview.org/299mill.htm)

It is not without reason that economics has come to be known as the dismal science. Mainstream **economists** since Adam Smith **have assumed** that **all human relations are** ultimately **those of the marketplace**, of buying and selling, of control and exploitation of the suffering, vulnerability and desperation of others. **The current dominance of private property relations**—where land, resources and tools are exclusively controlled by a small minority of individuals for their private perpetual reward—**is projected backward over the whole span of human history**. **However useful this projection may be for justifying existing market society, it is strikingly poor anthropology, dubious history, and third-rate psychology**. But it seems **actual human history has had a much different bent**. **For our first few hundred thousand years on this planet**—according to current evidence—**humans lived in small groups organized around mutually beneficial social relations, with resources held in common as social property. Social equality and voluntary divisions of labor endured for millennia as the basis for human communal life**. With essentially social incentives, **everyone who could contributed to the commonwealth for the use of all.** **In the long sweep of this history the emergence of dominant classes**—chiefs, kings, aristocracies of birth and wealth—**is a very recent event**, perhaps no more than 10,000 years ago, or less, depending on which culture is considered. **From time to time, small human communities organized in such communal ways continue to be 'discovered**,' communities that have been spared being "civilized" by conquest at the hands of more "advanced" class societies.

**2NC: A2: No Solvency**

***The 1AC represents the ultimate failure of political imagination. You should ask yourself why the aff can imagine spectacular scenarios for nuclear war and extinction but dismisses alternatives to capitalism as “impossible” or “unrealistic”—only the alt can create a political transformation***

Debaters find any number of ludicrous extinction scenarios plausible but can’t imagine a world beyond capitalism --- our K thinks that’s a problem and seeks to open up space for truly radical politics

**Carew 12** Joseph Stephen Carew, Europhilosophie, International Journal of Zizek Studies, Vol 6, No 3 (2012), Truth, Imagination, Act: The Methodology of Žižek's Sociopolitical Writings, <http://zizekstudies.org/index.php/ijzs/article/view/384/449>, jj

**What Žižek's critics often fail to not only critically investigate but even to recognize in his work is one of its underlying problematics: the apparent foreclosure of political imagination and, with it, the very vehicle for genuine change. We can picture the end of the world in a multitude of horrifying manners – biological warfare, nuclear holocaust, an asteroid destroying all life on the planet, a quickly spreading, incurable disease –, but we are astonishingly unable to envision any fundamental change within the fabric of the current socio-political order**. If “everyone seems to agree that today's post-political liberal-democratic global capitalist regime is the regime of the non-event (in Nietzsche's terms, of the Last Man)” (Žižek 2000: 209) then **there must be a deep-rooted link between the fact that we are unable to think a new beyond of the present state of affairs**, a future infinitely different from the one that we now know, **and the lack of radical political transformation that seems so typical on Žižek's account of our mode of politics**. The Žižekian wager is the following: If the current order has proven itself not only inadequate to respond to various deadlocks that we are facing, but also, and more disconcertingly, merely perpetuates them, then **how could we hope to abolish its internal limitations without such a capacity for imagination? How else could we plan an authentically revolutionary act capable of immanently reconfiguring it? And, more crucially, what prevents the insurmountable, devastating negativity at the core of our objective existence from being the dialectical spring board for a new phase of historical development?** **Žižek sets out to theorize this impasse in the hope of opening up a space within which the political**, in the sense Badiou and Rancière bestow upon it, **could become again possible for us, thereby completely bypassing the concerns of many of his critics.**

***A blueprint’s not key --- opening up the sociopolitical imagination is***

**Carew 12** Joseph Stephen Carew, Europhilosophie, International Journal of Zizek Studies, Vol 6, No 3 (2012), Truth, Imagination, Act: The Methodology of Žižek's Sociopolitical Writings, <http://zizekstudies.org/index.php/ijzs/article/view/384/449>, jj

**Although the bulk of Žižek's writings often give the impression of an intellectualist form of political essayism or cultural journalism, we should avoid the trap of seeing them merely as a kind of analysis or critique of the events occurring around him. The role that they play in the attempt to carve up the space from within which a genuine political transformation could be possible**, **and exactly how this role is first established by a theoretical evaluation of how such a carving up has to accomplished, must be kept in mind**, in light of which his writings take on a much more sophisticated form. In the first place, they understand themselves to be an intervention in a very strict and precise manner according to its original etymological sense of intervenire: “to come between,” “to interrupt.” Taking as their starting point the foreclosure of political imagination – of very the possibility of being able to invent radically new forms of life in response to various antagonisms that plague and threaten us either as material or social subjects –, **they aim to expose the wide array of structures which obstruct us from cultivating any such capacity of envisioning another future beyond the one automatically laid down in front of us according to the inner logistics of the symbolic order within which we live**. In this respect, **if Žižek's texts do not present us with a clearly stated position vis-à-vis what we should do, or what could await us if the communist struggle were successful, this is to be expected if we take into account their self-imposed methodological constraints: given that his work largely centers around opening up the possibility for a genuine usage of imagination and its emancipatory potential of social organization and experimentation**, it is only by means of a long labour that we could arrive there, if at all. The problem of political imagination is thus not limited to a mere utopia that we desire, but implies the capacity of envisaging something that could take hold as a structuring principle of action with transformative effects. Consequently, it is no accident that itis only in his recently published Living in the End Times, which was appeared some twenty three years after his first major theoretical publication The Sublime Object of Ideology, that Žižek finally gives a provisional answer to the question of what a communist society would look like – or that here, instead of supplying a program with exact details he is satisfied with mobilizing the power of artistic images (Žižek 2010: 365-383). What is important in the latter is their ability to escape the coordinates of the possible dictated by the regime within which we live– we must remember, art has the very ability to rewrite the Symbolic insofar as true art is an event v–, which means that **they can serve as a means to “schematize” sociopolitical reality and thereby supply a positive basis for a source of action**. **But this work cannot be done on its own: it is only after painstaking disclosing ideological obfuscation of political imagination and identifying possible sites of emancipation that such images** (for instance, that of a communist society) **could hope to effectuate change.**

In the second place, **the strict and precise manner of political intervention aimed at by Žižek's writings indicates that the “intellectualization” of politics is not the foreclosure of the political** (**the standard argument according to which writing on paper is not action: abstractions and words do not suffice, we need sweat and blood) and is even its condition of possibility if we understand “intellectualization” properly**. To exemplify this point, we may draw upon one of the great achievements that Žižek sees in Lenin as an implicit reference to the methodology of his own work. Firstly, Žižek cites Lenin from What Is to Be Done:

all worship of the spontaneity of the working class-movement, all belitting of the role of the “the conscious element,” of the role of Social Democracy, means, quite independently of whether he who belittles that role desires it or not, a strengthening of the influence of the bourgeois ideology upon workers. […] the only choice is – either bourgeois or socialist ideology. There is no middle course […] the spontaneousdevelopment of the working-class movement leads to subordination to bourgeois ideology […] for the spontaneous working class movement is trade unionism. (Lenin

1999: 40-41; quoted in Žižek 2002b: 183)

**\*\*\*2nc – Link/Perm Debate**

***No perm is possible because the 1AC is invested in the ideology of capital--the plan identifies the non-Western world as a space devoid of the rule of law---makes aggressive colonial and neoliberalism violence inevitable***

Ugo **Mattei 9**, Professor at Hastings College of the Law & University of Turin; and Marco de Morpurgo, M.Sc. Candidate, International University College of Turin, LL.M. Candidate, Harvard Law School, 2009, “GLOBAL LAW & PLUNDER: THE DARK SIDE OF THE RULE OF LAW,” online: <http://works.bepress.com/cgi/viewcontent.cgi?article=1014&context=bocconi_legal_papers>

Within this framework, **Western law has** constantly **enjoyed a** **dominant position** during the past centuries and today, **thus being in the position to** **shape and bend the evolution of other legal systems worldwide**. During the colonial era, continental-European powers have systematically exported their own legal systems to the colonized lands. During the past decades and today, **the U**nited **S**tates **have been** **dominating the international arena as the most powerful economic power**, ***exporting their own legal system to the ‘periphery’***, both **by itself and through a set of international institutions**, ***behaving as a neo-colonialist within the ideology known as neoliberalism***. ¶ **Western countries** **identify themselves as law-abiding and civilized no matter what their actual history reveals**. **Such identification is acquired by false knowledge** **and** ***false comparison with other peoples***, those **who were** ***said to ‘lack’ the rule of law***, **such as** **China, Japan, India, and the** ***Islamic world*** more generally. In a similar fashion today, **according to some leading economists,** ***Third World developing countries ‘lack’ the minimal institutional systems*** **necessary for the unfolding of a market economy**. ¶ **The** ***theory of ‘lack’*** **and the** ***rhetoric of the rule of law*** **have** ***justified aggressive interventions*** **from Western countries into non-Western ones.** The policy of **corporatization and open markets,** supported today globally by the so-called Washington consensus3, **was used by Western bankers and the business community in Latin America as the main vehicle to ‘open the veins’ of the continent**—to borrow Eduardo Galeano’s metaphor4—with no solution of continuity between colonial and post-colonial times. **Similar policy was used in** ***Africa*** to facilitate the forced transfer of slaves to America, and today **to facilitate the** **extraction of agricultural products, oil, minerals, ideas and cultural artefacts** in the same countries. The policy of opening markets for free trade, used today in Afghanistan and Iraq, was used in China during the nineteenth century Opium War, in which free trade was interpreted as an obligation to buy drugs from British dealers. The policy of forcing local industries to compete on open markets was used by the British empire in Bengal, as it is today by the WTO in Asia, Africa, and Latin America. ¶ ***Foreign-imposed privatization laws*** **that facilitate** **unconscionable bargains** ***at the expense of the people*** **have been** ***vehicles of plunder, not of legality***. In all these settings **the** ***tragic human suffering*** **produced by such plunder is** ***simply ignored***. In this context **law played a major role in legalizing such practices of powerful actors against the powerless.**5 **Yet**, ***this use of power is scarcely explored in the study of Western law***. ¶ **The** ***exportation of Western legal institutions*** **from the West to the ‘rest’ has** **systematically been justified through the** ***ideological use*** **of the extremely politically strong and** ***technically weak*** **concept of ‘rule of law’**. The notion of ‘rule of law’ is an extremely ambiguous one. Notwithstanding, within any public discussion **its positive connotations have always been taken for granted.** ***The dominant image*** **of the rule of law is** ***false*** both **historically and in the present**, **because it does not fully acknowledge its dark side**. **The** ***false representation*** **starts from the idea that good law** (***which others ‘lack’***) **is autonomous, separate from society and its institutions, technical,** non-political, **non-distributive and reactive rather than proactive**: more succinctly, ***a technological framework for an ‘efficient’ market.*** ¶ **The rule of law has** a bright and ***a dark side,*** **with the latter progressively** ***conquering new ground*** whenever the former is not empowered by a political soul. In the absence of such political life, ***the rule of law becomes a cold technology***. Moreover, **when large corporate actors dominate states** (affected by a declining regulatory role), **law becomes a product of the economy, and economy governs the law rather than being governed by it**.

***Perm fails—focus on particular violent acts is a lure that causes ideological mystification and means we only address symptoms not the root cause of violence***

**Žižek ’8** (Slavoj, *Violence: Six Sideways Reflections*, Big Ideas // Small Books, 2008, p. 3-8) [m leap]

Instead of confronting violence directly, the present book casts six sideways glances. There are reasons for ***looking at the problem of violence awry***. My underlying premise is that ***there is something inherently mystifying in a direct confrontation with it: the overpowering horror of violent acts and empathy with the victims inexorably function as a lure which prevents us from thinking***. A dispassionate conceptual development of the typology of violence must by definition ignore its traumatic impact. Yet there is a sense in which a cold analysis of violence somehow reproduces and participates in its horror. A distinction needs to be made, as well, between (factual) truth and truthfulness: what renders a report of a raped woman (or any other narrative of a trauma) truthful is its very factual unreliability, its confusion, its inconsistency. If the victim were able to report on her painful and humiliating experience in a clear manner, with all the data arranged in a consistent order, this very quality would make us suspicious of its truth. The problem here is part of the solution: the very factual deficiencies of the traumatised subject's report on her experience bear witness to the truthfulness of her report, since they signal that the reported content "contaminated" the manner of reporting it. The same holds, of course, for the so-called unreliability of the verbal reports of Holocaust survivors: the witness able to offer a clear narrative of his camp experience would disqualify himself by virtue of that clarity.2 **The only appropriate approach** to my subject thus **seems to be one which permits** variations on **violence *kept at a distance*** out of respect towards its victims. Adorno's famous saying, it seems, needs correction: it is not poetry that is impossible after Auschwitz, but rather prose.3 Realistic prose fails, where the poetic evocation of the unbearable atmosphere of a camp succeeds. That is to say, when Adorno declares poetry impossible (or, rather, barbaric) after Auschwitz, this impossibility is an enabling impossibility: poetry is always, by definition, "about" something that cannot be addressed directly, only alluded to. One shouldn't be afraid to take this a step further and refer to the old saying that music comes in when words fail. There may well be some truth in the common wisdom that, in a kind of historical premonition, the music of Schoenberg articulated the anxieties and nightmares of Auschwitz before the event took place. In her memoirs, Anna Akhmatova describes what happened to her when, at the height of the Stalinist purges, she was waiting in the long queue in front of the Leningrad prison to learn about her arrested son Lev: One day somebody in the crowd identified me. Standing behind me was a young woman, with lips blue from the cold, who had of course never heard me called by name before. Now she started out of the torpor common to us all and asked me in a whisper (everyone whispered there), "Can you describe this?" And I said, "I can." Then something like a smile passed fleetingly over what had once been her face.4 The key question, of course, is what kind of description is intended here? Surely it is not a realistic description of the situation, but what Wallace Stevens called "description without place," which is what is proper to art. This is not a description which locates its content in a historical space and time, but a description which creates, as the background of the phenomena it describes, an inexistent (virtual) space of its own, so that what appears in it is not an appearance sustained by the depth of reality behind it, but a decontextualised appearance, an appearance which fully coincides with real being. To quote Stevens again: "What it seems it is and in such seeming all things are." Such an artistic description "is not a sign for something that lies outside its form."5 Rather, it extracts from the confused reality its own inner form in the same way that Schoenberg "extracted" the inner form of totalitarian terror. He evoked the way this terror affects subjectivity. Does this recourse to artistic description imply that we are in danger of regressing to a contemplative attitude that somehow betrays the urgency to "do something" about the depicted horrors? ***Let's think about the fake sense of urgency that pervades the left-liberal humanitarian discourse on violence: in it, abstraction and graphic (pseudo)concreteness coexist in the staging of the scene of violence*** – against women, blacks, the homeless, gays... "A woman is raped every six seconds in this country" and "In the time it takes you to read this paragraph, ten children will die of hunger" are just two examples. Underlying all this is a hypocritical sentiment of moral outrage. Just this kind of pseudo-urgency was exploited by Starbucks a couple of years ago when, at store entrances, posters greeting customers pointed out that a portion of the chain's profits went into health-care for the children of Guatemala, the source of their coffee, the inference being that with every cup you drink, you save a child's life. ***There is a fundamental anti-theoretical edge to these urgent injunctions. There is no time to reflect: we have to act now. Through this fake sense of urgency, the post-industrial rich, living in their secluded virtual world, not only do not*** deny or ***ignore the harsh reality outside their area – they actively refer to it all the time***. As Bill Gates recently put it: "What do computers matter when millions are still unnecessarily dying of dysentery?" ***Against this fake urgency, we might want*** to place Marx's wonderful letter to Engels of 1870, when, for a brief moment, it seemed that a European revolution was again at the gates. Marx's letter conveys his sheer panic: can't the revolutionaries wait for a couple of years? He hasn't yet finished his Capital. ***A critical analysis of the present global constellation – one which offers no clear solution, no "practical" advice on what to do, and provides no light at the end of the tunnel, since one is well aware that this light might belong to a train crashing towards us – usually meets with reproach: "Do you mean we should do nothing? Just sit and wait?" One should gather the courage to answer: "YES, precisely that!"*** There are situations when ***the only truly "practical" thing to do is to resist the temptation to engage immediately and to "wait and see" by means of a patient, critical analysis***. Engagement seems to exert its pressure on us from all directions. In a well-known passage from his Existentialism and Humanism, Sartre deployed the dilemma of a young man in France in 1942, torn between the duty to help his lone, ill mother and the duty to enter the Resistance and fight the Germans; Sartre's point is, of course, that there is no a priori answer to this dilemma. The young man needs to make a decision grounded only in his own abyssal freedom and assume full responsibility for it.6 An obscene third way out of the dilemma would have been to advise the young man to tell his mother that he will join the Resistance, and to tell his Resistance friends that he will take care of his mother, while, in reality, withdrawing to a secluded place and studying... There is more than cheap cynicism in this advice. It brings to mind a well-known Soviet joke about Lenin. Under socialism, Lenin's advice to young people, his answer to what they should do, was "Learn, learn, and learn." This was evoked at all times and displayed on all school walls. The joke goes: Marx, Engels, and Lenin are asked whether they would prefer to have a wife or a mistress. As expected, Marx, rather conservative in private matters, answers, "A wife!" while Engels, more of a bon vivant, opts for a mistress. To everyone's surprise, Lenin says, "I'd like to have both!" Why? Is there a hidden stripe of decadent jouisseur behind his austere revolutionary image? No-he explains: "So that I can tell my wife that I am going to my mistress, and my mistress that I have to be with my wife..." "And then, what do you do?" "I go to a solitary place to learn, learn, and learn!" Is this not exactly what Lenin did after the catastrophe of 1914? He withdrew to a lonely place in Switzerland, where he "learned, learned, and learned," reading Hegel's logic. And ***this is what we should do today when we find ourselves bombarded with mediatic images of violence. We need to "learn, learn, and learn" what causes this violence***.

**2nc Frontline – A2: Cap Solves War**

***Capitalist growth makes war inevitable***

**Trainer, ’07** [Ted, Senior Lecturer in the School of Social Work at the University of New South Wales, “Renewable Energy Cannot Sustain A Consumer Society”, p. 125-159]

**If all nations go on trying to increase their wealth, production, consumption and "living standards" without limit in a world of limited resources, then we must expect increasing armed conflict.** **Rich-world affluent lifestyles require us to be heavily armed and aggressive, in order to guard the empire from which we draw more than our fair share of resources**. Many people within the Peace Movement fail to grasp that ***there is no possibility of a peaceful world while a few are taking far more than their fair share and the rest aspire to live as the rich few do***. **If we want to remain affluent we should remain heavily armed, so we can prevent others from taking "our" oil fields etc**. (For a detailed argument see Trainer, 2002.)

**2nc Frontline – A2: Alt = Transition War**

***Transition wars argument is liberal-democratic blackmail***

Be skeptical --- dismissing radical action like the alt by saying it will lead to transition wars and violence is a classic conservative tactic to shut down debate and lock in the status quo --- it creates a perverse politics where avoiding risk becomes the ultimate political goal --- even if the alt’s risky you should be willing to take a leap of faith and risk the impossible

**Johnston 04**

Adrian, Volume 1.0, Adrian Johnston Dept of Philosophy, University of New Mexico, The Cynic's Fetish: Slavoj Zizek and the Dynamics of Belief

**Žižek links liberal democracy’s employment of the threat of totalitarianism to a more fundamental rejection of the act itself** qua intervention whose consequences cannot safely be anticipated. In Žižek’s view, **contemporary democracy legitimates itself through a pathetic posture in which the avoidance of risk** (i.e., of extreme measures not covered by preexisting democratic consensuses, measures with no guarantee of status-quo-affirming success) **is elevated to the status of the highest political good**123—“**what the reference to democracy involves is the rejection of radical attempts to ‘step outside,’ to risk a radical break**.”124 **The refusal to risk a gesture of disruption because it might not turn out exactly the way one envisions it should is the surest bulwark against change:**

The standard critique concerns the Act’s allegedly ‘absolute’ character of a radical break, which renders impossible any clear distinction between a properly ‘ethical’ act and, say, a Nazi monstrosity: is it not that an Act is always embedded in a specific socio-symbolic context? The answer to this reproach is clear: of course—an Act is always a specific intervention within a socio-symbolic context; the same gesture can be an Act or a ridiculous empty posture, depending on the context… In what, then, resides the misunderstanding? Why this critique? There is something else which disturbs the critics of the Lacanian notion of Act: true, an Act is always situated in a concrete context—this, however, does not mean that it is fully determined by its context. ***An Act always involves a radical risk***… it is a step into the open, **with no guarantee about the final outcome— why? Because an Act retroactively changes the very co-ordinates onto which it intervenes.** **This lack of guarantee is what the critics cannot tolerate; they want an Act without risk**—not without empirical risks, but without the much more radical ‘transcendental risk’ that the Act will not only simply fail, but radically misfire… those who oppose he ‘absolute Act’ effectively oppose the Act as such, ***they want an Act without the Act***.125

**Leadership**

**Ext #4 – MacDonald**

***Prefer our evidence --- their authors overestimate the US’s ability to shape the international system***

Christopher **Layne** (Associate Professor in the Bush School of Government and Public Service at Texas A&M University) **2006** “The Peace of Illusions” p 176-7

A second contention advanced by proponents of American hegemony is that the United States cannot withdraw from Eurasia because a great power war there could shape the post conflict international system in ways harmful to U.S. interests. Hence, the United States "could suffer few economic losses during a war, or even benefit somewhat, and still find the postwar environment quite costly to its own trade and investment."sa This really is not an economic argument but rather an argument about the consequences of Eurasia's political and ideological, as well as economic, closure. Proponents of hegemony fear that if great power wars in Eurasia occur, they could bring to power militaristic or totalitarian regimes. Mere, several points need to be made. First, proponents of American hegemony overestimate the amount of influence that the United States has on the international system. There are numerous possible geopolitical rivalries in Eurasia. Most of these will not culminate in war, but it's a good bet that some will. But regardless of whether Eurasian great powers remain at peace, the outcomes are going to be caused more by those states' calculations of their interests than by the presence of U.S. forces in Eurasia. The United States has only limited power to affect the amount of war and peace in the international system, and whatever influence it does have is being eroded by the creeping multipolarization under way in Eurasia. Second, the possible benefits of "environment shaping" have to be weighed against the possible costs of U.S. involvement in a big Eurasian war. Finally, distilled to its essence, this argument is a restatement of the fear that U.S. security and interests inevitably will be jeopardized by a Eurasian hegemon. This threat is easily exaggerated, and manipulated, to disguise ulterior motives for U.S. military intervention in Eurasia.

**Iraq**

**--2NC – Iraq JI**

***It would take the whole debate to list the problems with Iraq’s judiciary—no risk of solvency***

**Pimentel, 13** (David Pimentel, Ohio Northern University, Brian Anderson, Ohio Northern University, Judicial Independence in Post-conflict Iraq: Establishing the Rule of Law in an Islamic Constitutional Democracy 46 Geo. Wash. Int'l L. Rev.\_\_\_ (2013), <http://works.bepress.com/cgi/viewcontent.cgi?article=1013&context=david_pimentel>, jj)

**The challenges for the Iraqi judiciary *are manifold*, and the promise of judicial independence and of**, more generally, **the Rule of Law is tenuous**. **Article 2 poses inherent challenges, as it blurs the delineation between church and state, casting doubt on the Supreme Court’s ability to protect religious minorities or to function independently of religious influence and pressure**. **The failure to pass implementing legislation for the Court**, as called for in Article 92, **further imperils the Court’s legitimacy and efficacy**. Indeed, **the Court is established and operating under statutes that pre-date, and that are inconsistent with the present-day Iraqi Constitution**.

**The absence of a law governing the Court raises a series of other concerns about specific aspects of judicial independence, including judicial qualifications, conditions of service, and security.** Moreover, **the actual political influence of the executive branch, and of the de-Ba’athification authorities, on Iraqi judges give them little hope of achieving the degree of independence** required to establish the Rule of Law in **a *deeply troubled* and conflictridden society**.

**Afghan**

**D**

***SCO checks instability***

Sergey **Markedonov 9/9**, visiting fellow at the Center for Strategic and International Studies, Russia and Eurasia Program, 2013-9-9, Global Times, SCO key foundation of stable Central Asia, <http://www.globaltimes.cn/content/809872.shtml#.UkyGt9Ksim4>, jj

Ultimately, **the SCO is a valuable regional organization because of its pragmatism**. **It is an effective channel of cooperation and interaction between East and West**. **The SCO has no real ideological platform and this neutrality is appealing even to NATO member states**. This is critical since after all, no matter how the West reacts to the future of Afghanistan, it will maintain an interest there. **As the US and NATO continue to reduce their military presence in Afghanistan, they will seek other means to establish stability in the region, likely by coordinating with the SCO, which is ready to play a role in the peace process and in Central Asia's security and development issues.**

***Great power cooperation is far more likely --- they will also prevent a civil war***

**Hadar 11—former prof of IR at American U and Mount Vernon-College. PhD in IR from American U (1 July 2011, Leon, Saving U.S. Mideast Policy, http://nationalinterest.org/commentary/saving-us-policy-the-mideast-5556)**

Indeed, contrary to the warning proponents of U.S. military intervention typically express, **the withdrawal of** American **troops from** Iraq and **Afghanistan would not** necessarily **lead to more chaos** and bloodshed in those countries. ***Russia, India and Iran—which supported the Northern Alliance that helped Washington topple the Taliban—and Pakistan*** (which once backed the Taliban) **all have close ties to various** ethnic and tribal **groups** in that country **and now have a common interest in stabilizing Afghanistan and containing the rivalries.**

# 1NR

**Saas - 2NC – Detention – Habeas**

***The aff is a mechanism to relieve liberal anxiety over the war on terror – this depoliticizes Guantanamo and guarantees circumvention***

**Gregory, 13** (Anthony Gregory, Gilbert I. Collins Fellow at the Independent Institute, “The power of habeas corpus in America [electronic resource] : from the King's Prerogative to the War on Terror” The Independent Institute, Oakland, Cambridge University Press, 2013, accessed via Wayne State Ebooks, online, pg 278-279, jj)

**This reliance on government power to check the government’s depredations**, however, **also spells a paradox**. Moreover, **the discursive use of habeas corpus in causing a revolution in thinking about legal affairs brings potential disadvantages**. As Jordan Steiker has pointed out, “***the very existence of federal habeas, even in its increasingly truncated form, unjustifiably alleviates anxiety about the accuracy of state court capital proceedings***.”18

Jeremy Bentham made a related point regarding the English experience and the power to suspend the writ:

**As for the habeas corpus act, better the statute book were rid of it**. Standing or lying as it does, up one day, down another, it serves but to swell the list of sharn securities, with which, to keep up the delusion, the pages of our law books are defiled. When no man has need of it, then it is that it stands; comes a time when it might be of use, and then it is suspended.19

**Concerning executive detention power**, Jonathan Hafetz has noted that [**H]abeas review can even legitimate the very abuses that it is meant to prevent by giving illegal executive action a judicial stamp of approval.** **We need only recall the Supreme Court challenges to the internment of 120,000 Japanese Americans during World War II to realize that judicial review does not necessarily ensure justice or vindicate constitutional rights**.20

***Focusing on legalistic technicalities prevents pursuit of fundamental justice—the aff is due process symbolism which perpetuates systemic inequality***

**Gregory, 13** (Anthony Gregory, Gilbert I. Collins Fellow at the Independent Institute, “The power of habeas corpus in America [electronic resource] : from the King's Prerogative to the War on Terror” The Independent Institute, Oakland, Cambridge University Press, 2013, accessed via Wayne State Ebooks, online, pg 262, jj)

***This underscored the degree to which legalistic technicalities and political postur— ing can obscure the fundamentals of justice***. The **Obama** administration **announced a civil trial of Mohammed to assert America’s respect for the rule of law while allowing other detainees to languish indefinitely and while reassuring the public that none of the substantive qualities of a trial — the possibility of acquittal, or the guarantee of freedom upon acquittal — would apply**. The arraignment of Khalid Sheik Mohammed and four alleged co—conspirators in the 9/11 attacks at a Guantanamo military commission took place on May 5, 2012. Criticisms arose in two directions, as some castigated the court for allowing the defendants to turn the arraignment into a thirteen—hour farce during which they refused to enter a plea and had three prayer breaks, and others criticized the process for denying the accused of basic due process rights. Critics questioned the presiding judge’s qualifications, as he had never practiced law or judged a civil trial, and complained of the taint of evidence obtained through torture and the commission’s procedures that some identified as more draconian than those of Bush’s military commissions.57 Commentators seemed to agree that it was virtually certain that Mohammed would ultimately be executed.

**In another example of *due process symbolism* trumping substance, the admin—istration** in 2009 and 2010 **formulated plan to transfer Guantanamo Detainees to a transformed federal prison** in Northern Indiana, **where they would presumably be housed indefinitely without trial**.58 Again, even putting aside Obama’s delays in fulfilling his promise to close Guantanamo, the significance of closing it would surely be undermined by continuing the same kind of detention policy within American borders. Indeed, the precedent here — military prisons and indefinite detention on U.S. soil — would pose troubling questions beyond even those raised by Bush’s policies.

***\*Guantanamo is politicized now—backlash is forcing Obama to capitulate—all our links and solvency args prove the aff locks in the status quo by creating the façade of procedural reform***

**Prasasouk 1/17/14** (Palina Prasasouk is an independent photojournalist, managing editor at CloseGitmo.net, and organizer with Witness Against Torture located in Brooklyn, New York, 1/17/2014, OpEd News, A Fast for Guantanamo: From Winter to Winter, <http://www.opednews.com/articles/3/A-Fast-for-Guantanamo-Fro-by-Palina-Prasasouk-Guantanamo_Guantanamo_Guantanamo-Naval-Base_Guantanamo-Prison-140117-394.html>, jj)

January 2013--From the Last Fast When we left DC in January 2013, we were in the mind-frame that Guantanamo would not be closing anytime soon with 0 releases from the prison in the previous year, excluding the death of Adnan Latif and the transfer of Omar Khadr to another prison in Canada. February 2013--A New Hunger Strike Then, **the game changed when military guards raided prison cells in February 2013, throwing the belongings of prisoners--Qurans, legal papers, and letters from their families.** **A new hunger strike grew, which has now become the largest and longest running protest inside the prison**. Government officials denied any such knowledge of a hunger strike. It was only known after Shaker Aamer reported to his attorneys that nearly all the men in GTMO were on a hunger strike. **The strike peaked in June at 106 men on hunger strike and 45 being force-fed**. **What has been forgotten on the minds of Americans, where most had assumed Guantanamo had been closed by Obama, *was now in the media headlines***. **Even mainstream comedy** such as the Colbert Report and the Daily Show **were talking about the protest**. Spring 2013--On Our Minds Again Witness Against Torture orchestrated a rolling fast, which called for people to fast for a day, write a letter to a detainee, and make phone calls to Southcom, the Department of Defense, and The White House. Over 250 people have signed up for the rolling fast. **Human rights organizations** such as Codepink, Reprieve, and Veterans for Peace also **organized a rolling fast**. **Over a thousand folks have signed on to the Codepink fast, including such names as Julian Assange and Deepak Chopra**. **Cities from the west, east, and in between began organizing weekly vigils and demonstrations**. **The London Guantanamo Campaign holds a monthly demo in front of the American Embassy**. **Latin America and Australia also staged protests**. **A coalition of over 20 groups who have been working to close Guantanamo came together to form CloseGitmo.net**. On April 14, 2013, The New York times published an op-ed by hunger-striking detainee Samir Naji al Hasan Moqbel, "Gitmo Is Killing Me." Witness Against Torture co-founder Matthew Daliosio, who has read almost every article that has come out about Guantanamo since 2005, described it as the most he art-breaking piece he has read. "I've been on a hunger strike since Feb. 10 and have lost well over 30 pounds. I will not eat until they restore my dignity. During one force-feeding the nurse pushed the tube about 18 inches into my stomach, hurting me more than usual, because she was doing things so hastily. **The only reason I am still here is that President Obama refuses to send any detainees back to Yemen**. This makes no sense. I am a human being, not a passport, and I deserve to be treated like one. I do not want to die here, but until President Obama and Yemen's president do something, that is what I risk every day." **Numerous letters from Guantanamo have been published.** A collection of them can be found at www.visiitorpictures.com. **Shaker Aamer's wife, Umm Johina, has also published letters through her facebook account**. Obama's Second Promise On May 23, 2013, Obama made a second promise to close the prison during a National Defense Speech, using much of the same language as he did during his first promise in 2009. 2009, Protecting Our System and Our Values speech by Obama: "So going forward, my administration will work with Congress to develop an appropriate legal regime" to handle such detainees "so that our efforts are consistent with our values and our Constitution." 2013, White House news conference when asked about the hunger strike: "I've asked my team to review everything that's currently being done in Guantanamo, everything that we can do administratively, and I'm going to re-engage with Congress to try to make the case that this is not something that's in the best interests of the American people." **Since Obama's second promise, the ban on releasing Yemeni prisoners was lifted, a State Department envoy and Pentagon envoy were appointed, and the Periodic Review Board (PRB) started closed meetings in November 2013**. **On January 10, 2014, Mahmoud Mujahid, a Yemeni national and "forever prisoner," was the first to be re-evaluated**. **He was an alleged former bodyguard of Osama and has been held without charge or evidence since 2002. He was unanimously cleared for release**. There is no indication that Mujahid will be be going home soon. Two Algerians, Nabil Hadjarab and Mutia Sadiq Ahmad Sayyab, were the first to be released from GTMO in September 2013. Two more Algerians, Djamel Ameziane and Belkacem Bensayah, were involuntarily sent back to Algeria. Djamel is a citizen of Algeria and fled the country during the Algerian Civil War where he became a chef in Canada. His family lives in Canada and wishes to return to them. Summer 2013 **By summer, the hunger strike surpassed 100 days. Activists across the country continued to bare hot summer days inside orange jumpsuits and black hoods**. **A small group of activists went on their own hunger strikes lasting upwards of 100 days**. **In one case, Andres Thomas Conteris has undergone live tube-feedings in both the U.S. and Latin America**. **On June 26, 2013, International Day in Support of Victims of Torture, hundreds of protesters gathered in front of The White House**. Diane Wilson, a solidarity hunger striker on her 57th day of hunger strike, scaled the White House fence in an attempt to deliver a message to the President. She was arrested and charged with unlawful entry and given 90 days' suspended prison and a $200 fine. The first Senate Hearing on Guantanamo since 2009 was held on July 24, 2013. In the hearing, ranking member Sen. Ted Cruz (R-Texas) suggested that President Obama thinks the United States should take a "holiday" from the war on terror. Cruz and others brought up the perceived threat of detainee recidivism several times during the hearing, which lasted one hour and 45 minutes. Witnesses at the hearing repeatedly mentioned that the federal court system has effectively tried over 500 terrorism-related cases. Though the figure is technically correct, journalist Trevor Aaronson has shown in his book The Terror Factory that many of those cases were in fact created and managed by the FBI through stings, and that the actual number of legitimate terrorist threats has been far lower. House Rep. Adam Smith (D-Washington) also testified before the committee about the need to close Guantanamo. While Smith stated that the Constitution applies fully at the prison because of the Supreme Court's 2008 ruling in Boumediene v. Bush, which determined detainees had habeas-corpus rights, this is not entirely accurate. Winter 2014 Eleven men have been released from Guantanamo, 8 of those in the past month, December 2013. **And so 155 men remain languishing behind prison walls, 77 of whom have been cleared for release since January 2010 by an inter-agency task force established by President Obama**. The hunger strike continues despite a media blackout. The last official report of hunger strikers released from the Department of Defense was 15 on December 2, 2013. **It has been reported from detainees to attorneys that there are at least 35 men on hunger strike with the numbers increasing daily**. It is now one year since Witness Against Torture last gathered in Washington, **DC. Every year we come together to fast and bring attention to the torture inside the prison camp.** According to Guantanamo Bay defense attorney Todd Pierce, the worst form of torture is sleep deprivation. I averaged three hours of sleep per night during the fast and could not tell whether or not I was hungry. I started hallucinating and thinking people were making expressions that weren't on their faces. I am often asked why I fast and ask myself that question as well--the only answer I can give is that while fasting won't directly close Guantanamo, it gives me motivation to work harder. ***The work that we all do might actually close the prison***. What the Obama administration has done in 2013 to close Guantanamo Bay: - Lifted the ban on releasing Yemeni prisoners - Appointed Department of Defense and Pentagon envoys - Released 11 prisoners What the Obama administration still needs to do to close Guantanamo Bay: - Release the 77 prisoners cleared for release - Review the remaining 71 cases - Return Nabil Hadjarab to Canada - Stop force-feeding - Lift the ban on sending prisoners to the US

**A2: Legal Reform Good**

***Improving liberal separation of powers and/or checks and balances makes control and domination in the state of exception easier***

**Bigo ‘6** Professor at King's College London Department of War studies & MCU Research Professor at Sciences-Po Paris (Didier, *Translation, Biopolitics, Colonial Difference,* ed. Naoki Sakai and Jon Solomon, p. 135)

**Liberalism has tried to legitimate its own domination through the idea of the separation of powers by which power is supposed to limit itself, particularly in the dimension of checks and balances, with the effect that the population actively consents finally to be accomplices of its own domination** and rely on "justice" and lawyers for its "freedom." Framed in that way, Liberalism is the contrary of Exceptionalism. Liberalism is seen as the opposite of a "sovereign" or "reason of the state" thinking. But between the definition of Exceptionalism as suspension of law or break in normality, there is room for other **visions of Exceptionalism** **that combine exception both with liberalism and with the *dispositif* of technologies of control and surveillance which is routinized**. **Exception works hand in hand with Liberalism and gives the key to understanding its normal functioning**, as soon as we avoid seeing exception as a matter of special laws only.

### A2: If they read Heg adv and Pinker

#### PINKER – who their ev is citing --- concludes NEG on hegemony

Pinker 2011 Steven, The Better Angels of Our Nature: Why Violence Has Declined, Google Books

In fact, the Democratic Peace theory did even better than its advocates hoped. Not only do democracies avoid disputes with each other, but there is a suggestion that they tend to stay out of disputes across the board. And the reason they don’t fight each other is not just that they are birds of a feather: there is no Autocratic Peace, a kind of honor among thieves in which autocracies also avoid disputes with each other. The Democratic Peace held not only over the entire 115 years spanned by the dataset but also in the subspans from 1900 to 1939 and from 1989 to 2001. That shows that the Democratic Peace is not a by-product of Pax Americana during the Cold War. In fact, there were never any signs of a Pax Americana or Pax Britannica: the years when one of these countries was the world’s dominant military power were no more peaceful than the years in which it was just one power among many. Nor was there any sign that new democracies are stroppy exceptions to the Democratic Peace---just think of the Baltic and Central European countries that embraced democracy after the Soviet Empire collapsed, and the South American countries that shook off their military juntas in the 1970s and 1980s, none of which subsequently went to war. Russet and Oneal found only one restriction on the Democratic Peace: it kicked in only around 1900 as one might have expected from the plethora of 19th-century counterexamples.

#### Structural violence is up – their definition of violence is messed up

Gil, ’12 (David G., emeritus professor of social policy at Brandeis University, “Sunday Dialogue: Do We Live in a Less Deadly Time, or Not?” 1/4, http://www.nytimes.com/2012/01/08/opinion/sunday/sunday-dialogue-do-we-live-in-a-less-deadly-time-or-not.html, bgm)

To judge whether the human species is more or less violent at different times in history, one requires a definition of violence. I have defined violence in my studies as acts and/or socially maintained conditions that inhibit human development by interfering with the fulfillment of universal human needs, including biological/material, social/psychological, productive/creative, security, self-actualization and spiritual needs. Using this concept of violence when examining global realities, one is forced to conclude that large segments of the global population of seven billion are victims of violent acts and conditions. They experience hunger, malnutrition, material and psychological poverty, widespread unemployment, lack of health care, including family planning, lack of meaningful education and adequate social supports, and lack of a sense of security. Moreover, they are subjected to economic and sexual exploitation. Their human development is consequently severely obstructed. These conditions, in addition to constant local and trans-local wars, suggest that the human species may be on a suicidal course rather than a course of declining violence.

***Violence up because of cap and growth***

**Hadley**, History Today editor, 20**11**

(Kathryn, “Alarming increase in wars”, 7-12, <http://www.historytoday.com/blog/2011/07/alarming-increase-wars>, jj)

**New research** **by Professors** Mark **Harrison** from the University of Warwick **and** Nikolaus **Wolf** from Humboldt University **has revealed** that between 1870 and 2001, **the frequency of wars between states increased steadily by 2% a year on average**. **Between 1870 and 1913, the frequency of ‘pairwise’ conflicts** (the numbers of pairs of countries involved in conflicts) **increased on average by 6% per year. The frequency of wars increased by 17% per year in the period of the First and Second World Wars, and by 31% per year during the Cold War. In the 1990s, the frequency of wars between states rose by 36% per year.**

Professor Mark Harrison explained how: ‘**The number of conflicts has been rising on a stable trend**. Because of two world wars, the pattern is obviously disturbed between 1914 and 1945 but remarkably, **after 1945 the frequency of wars resumed its upward course on pretty much the same path as before 1913.’**

The graph below illustrates this increase in pairwise conflicts. It only includes wars between states and does not include civil wars. Conflicts range from full-scale shooting wars and uses of military force to displays of force (sending warships and closing borders, for example). Although **Harrison and Wolf’s study** does not measure the intensity of violence, it **reflects the readiness of governments to settle disputes by force.**

According to Harrison and Wolf, ***this increase in the frequency of pairwise conflicts can be explained by*** two principal factors: ***economic growth*** and the proliferation of borders. The number of countries has thus almost quadrupled since 1870, rising from 47 countries in 1870 to 187 in 2001.

Harrison continued: ‘More pairs of countries have clashed because there have been more pairs. This is not reassuring: it shows that there is a close connection between wars and the creation of states and new borders.’

Looking specifically at the countries that have initiated disputes, the study shows that there is no tendency for richer countries (defined by a higher GDP per head) to make more frequent military interventions than others. The readiness to engage in war is spread relatively uniformly across the global income distribution.

**Thinkers of the Enlightenment believed, and many political scientists still believe today, that the political leaders of richer and more democratic countries have fewer incentives to go to war**. **Over the course of the twentieth century, on the whole, countries have become richer, more democratic and more interdependent. Yet, Harrison and Wolf’s study disproves the theory that as GDP increases countries are less likely to engage in warfare.**

In Harrison’s view, **political scientists have tended to focus too much on preferences for war (the ‘demand side’) and have ignored capabilities (the ‘supply side’**). **Although increased prosperity and democracy should have lessened the incentives for rulers to go to war, these same factors have also increased the capacity of countries to go to war**. **Economic growth has made destructive power cheaper**. It is also easier for modern states to acquire destructive power because they able to tax more easily and borrow more money than ever before.

Mark Harrison concluded that: ‘***The very things that should make politicians less likely to want war – productivity growth, democracy, and trading opportunities – have also made war cheaper. We have more wars, not because we want them, but because we can.’***

## Rest of solvency

### A2: o like plan

#### Obama has the motive to circumvent

Gregory, 13 (Anthony Gregory, Gilbert I. Collins Fellow at the Independent Institute, “The power of habeas corpus in America [electronic resource] : from the King's Prerogative to the War on Terror” The Independent Institute, Oakland, Cambridge University Press, 2013, accessed via Wayne State Ebooks, online, pg 243, jj)

The aftermath of Boumediene exposed the limits of habeas corpus. Bush’s shell game – finding ways to circumvention the spirit of habeas while seemingly obeying the letter of the Court’s demands – continued. Indeed, the game did not end with Bush. President Barack Obama, who campaigned in 2008 on the slogan of “hope” and “change” – including as it concerned with Bush’s anti-terror policies – soon took actions that gutted Boumediene’s impact, both in its narrow victory for Guantanamo prisoners and its broader meaning for detention policy. Soon Obama became the latest of history’s habeas champions who, once political expediency demanded it, became ardent defenders of a nearly unlimited prerogative detention power.

#### His support for Habeas is situational—he won’t enforce the plan

Gregory, 13 (Anthony Gregory, Gilbert I. Collins Fellow at the Independent Institute, “The power of habeas corpus in America [electronic resource] : from the King's Prerogative to the War on Terror” The Independent Institute, Oakland, Cambridge University Press, 2013, accessed via Wayne State Ebooks, online, pg 244, jj)

President Obama’s detention policies quickly revealed themselves as contrary to the lofty principles he espoused as 2008 presidential candidate, making yet one more example of habeas hypocrisy. Military commissions, Guantanamo, indefinite detention, renditioning, and most other extreme manifestations of Bush’s detention policy continued and in some cases expanded. Moreover, thanks partly to a deferential federal judiciary, the Supreme Court’s Boumediene decision failed to liberate as many Guantanamo prisoners as many hoped, and Obama’s extreme detention policy at Bagram and his assassination of an American citizen only underscored habeas’s sharp limitations in restraining executive power. With the Obama presidency, undertaken amidst considerable expectations of significant change to detention policy and greater respect for habeas corpus, the writ’s tendency to lean toward the interests of power once again became clear.

Of all the issues on which Barack Obama distanced himself from his opponent John McCain in the 2008 election, none excited civil libertarians more than his radically different position on habeas corpus. But soon after taking power, Obama became the latest in a long line of situational habeas champions. Aside from some changes that might have happened anyway, and some symbolic gestures in Obama’s first week of office – ordering Guantanamo shut within a year, putting a moratorium on military commissions – Obama’s legacy from 2009 through 2012 was to ratify and even amplify Bush’s claims of executive power.

### 2NC Solvency – Rendition Extension

#### All previous court rulings prove—circumvention is inevitable—the plan just forces Obama to be more creative

Gregory, 13 (Anthony Gregory, Gilbert I. Collins Fellow at the Independent Institute, “The power of habeas corpus in America [electronic resource] : from the King's Prerogative to the War on Terror” The Independent Institute, Oakland, Cambridge University Press, 2013, accessed via Wayne State Ebooks, online, pg 219-220, jj)

The first confrontations between the Bush administration and the Supreme Court over habeas corpus in the war on terror were seen as dramatic and Manichean struggles between light and darkness – both by those who considered the administration the protagonist and those who instead rooted for the Court. But in fact, the Court’s early repudiations of Bush’s policies tended to turn on relatively narrow questions, and even when they served as principled rejections of executive prerogative, they only encouraged the administration to find new ways to carry on with essentially the same policies. What is more, these early cases of the post-9/11 era imposed conditions on the administration that it later satisfied, forcing the Court to find other ways to strike down detention policy abuses, coming off as inconsistent in the process. At first, the Court found itself on the defensive, attempting to practice due deference to the presidency and only seeking official congressional approval for the executive’s actions. It also suggested procedural ways for the executive to comply with the law, serving to accommodate executive detention as much as challenging it. Later, the Court claimed broader powers over executive detentions, although the executive eventually circumvented those as well.

#### Tey don’t solve anything --- exec will just shift to proxy detention and drone strikes

Wittes ’11, Benjamin Wittes is a Senior Fellow in Governance Studies at the Brookings Institution, where he is the Research Director in Public Law, and Co-Director of the Harvard Law School - Brookings Project on Law and Security. Detention and Denial [electronic resource] : The Case for Candor after Guantanamo. Washington : Brookings Institution Press, 2011., ebook, accessed via Wayne State online library, pg 28-29, jj

That is the equilibrium toward which we have drifted, and it ¶ should surprise nobody, for it is an entirely foreseeable consequence of the incentive structure that we have created. Imagine ¶ for a moment that you had described the direction of our legal ¶ policy choices to a devotee of the law and economics movement—¶ a field based on the central insight that legal rules create behavioral incentives. Imagine telling, say, Richard Posner that we ¶ would suddenly make detention difficult and refuse for years to ¶ create a stable regime of known, clear rules. Imagine also that you ¶ had then asked this platonic Posner to identify the consequences. ¶ He probably would have replied that detention would grow less ¶ visible. We would release some people precipitously. We would ¶ rely on proxies more. We probably would kill some people that ¶ we might have captured before. Rarely does life comport with ¶ theory as well as detention policy has conformed to the predictions that law and economics would suggest. As the real Richard ¶ Posner wrote of the original decision to judicialize Guantánamo ¶ proceedings, it “seems like a sensible, ‘practical’ decision, but may ¶ not be. . . . [T]he decision may just encourage the government to ¶ hold more detainees abroad, say, in Afghanistan or Iraq, . . . and ¶ what would be gained by that?”8¶ None of what has happened was hard to predict. Water finds a ¶ path to the sea. Dam a river and it will flow around the dam. This ¶ metaphor, something of a cliché in discussing campaign finance ¶ law and attempts to regulate money in politics, applies with equal ¶ force in counterterrorism operations. The reason is simple, and ¶ we ignore it at considerable risk of intellectual blindness: The call ¶ to prevent terrorist events is so compelling politically that just as ¶ gravity operates on water, it will operate on politicians and other ¶ officials responsible for security. It will operate so strongly that ¶ new restrictions in one area will merely shift government energies ¶ to other areas. Encumber the use of one power, and authorities ¶ will just use another; throw a wrench in that one, and they’ll ¶ move on to something else. If prosecutions in federal court are ¶ too hard, you create incentives to use military commissions. If the ¶ commissions are too generous to the accused, detention without ¶ trial will see greater use. Make it too tough to use a particular ¶ form of detention and the government will shift to others. Make ¶ detention broadly problematic and you promote the use of proxies less fastidious than we are and the use of drones.¶ The government interests at stake are so powerful that the ¶ executive will deploy every lawful option available and will show ¶ enormous creativity in expanding the field of options—both by ¶ making novel legal arguments and by developing tactical innovations. The attempt to force counterterrorism operations to ¶ take place through conventional means of law enforcement will ¶ impede it and channel it to some degree. For the most part, however, it will redirect it to less visible, less attractive, and more ¶ violent exercises of government power.

### A2: Signal Solves/Sufficient

#### Compliance is key to check domestic and international backlash – otherwise the plan just creates rising expectations that inevitably falter.

Chesney, Professor in Law, University of Texas School of Law, 14

(Robert, January, “Postwar,” Harvard National Security Journal / Vol. 5, http://harvardnsj.org/wp-content/uploads/2014/01/Chesney-Final.pdf)

Three stand out as particularly important and likely to be impacted by a formal shift to a postwar model. First, consider the domestic political climate. This does not mean partisan politics as such, though this can matter, too. Rather, “domestic politics” simply refers to the influence of American public opinion on the calculations of legislators and Executive Branch officials. On that dimension, what impact might follow from a formal proclamation recognizing an end to the armed conflict with al Qaeda? Such a move would be widely publicized and endlessly discussed in the media, and for at least some members of the public, it would likely alter baseline assumptions regarding the sorts of activities they might expect to see the government engaging in for counterterrorism purposes going forward. The continued use of military detention would surely seem incongruous to many, for example, or at least it would begin to seem increasingly so as time passed. Likewise, the further use of armed attacks—whether using drones, manned aircraft, or some other weapons platform— would also be surprising to some under the postwar rubric.

Such incongruities would not necessarily spark a negative reaction in every quarter. Those who would prefer not to move to a postwar model, after all, might be pleasantly surprised by them. But there is little doubt that incongruous actions would generate a negative reaction in at least some quarters, and it is possible that the negative reaction would in fact be substantial—particularly if the surrounding circumstances contributed to a perception that the government must have been acting hypocritically all along in proclaiming an end to the armed conflict. Of course, insofar as incongruous actions are conducted in secret—a quite likely state of affairs for a postwar model, given the extensive reliance on the CIA and Joint Special Operations Command to conduct lethal operations on a covert or clandestine basis even while still under the armed-conflict model75—the constraining impact of public opinion would be substantially muted. Even then, though, the possibility of eventual public disclosure would remain, as the Snowden affair in the summer of 2013 reminds us. Government officials operating in the shadow of these considerations could be expected to take them into account, even if they would not be dispositive. In that sense, domestic political considerations would be more constraining in the postwar context than they are under the status-quo model of armed conflict.

Something similar can be said about the constraining impact of diplomatic considerations. “Diplomatic considerations” refers broadly to the full spectrum of actions other governments might take in order to express displeasure with American policy, whether out of actual disagreement or in response to their own domestic political considerations. There are many possibilities in addition to the easily belittled example in which a state merely expresses displeasure, privately or publicly. A given country may be in a position to decrease cooperation on security issues (decreased sharing of intelligence, for example, or withdrawal of personnel from a joint deployment), or it might reduce or refuse valuable cooperation on unrelated subjects. Two points follow from all this. First, proclaiming the end to the armed conflict with al Qaeda unquestionably will be very well-received in most foreign capitals and among most foreign populations. Second, if the U.S. government ended up persisting in the use of military detention or lethal force for counterterrorism purposes despite such a proclamation, it seems likely that the aforementioned diplomatic costs will be higher than is currently the case, for the same reasons of incongruity and surprise mentioned above in the context of domestic politics. This suggests that diplomatic pressure, too, will be more constraining postwar than currently.