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#### “Statutory restrictions” can mandate judicial review, but are *enacted* by congress

Mortenson 11 (Julian Davis Assistant Professor, University of Michigan Law School, “Review: Executive Power and the Discipline of History Crisis and Command: The History of Executive Power from George Washington to George W. Bush John Yoo. Kaplan, 2009. Pp vii, 524,” Winter 2011, University of Chicago Law Review 78 U. Chi. L. Rev. 377)

At least two of Yoo's main examples of presidential power are actually instances of presidential deference to statutory restrictions during times of great national peril. The earliest is Washington's military suppression of the Whiskey Rebellion (III, pp 66-72), a domestic disturbance that Americans viewed as implicating adventurism by European powers and threatening to dismember the new nation. n60 The Calling Forth Act of 1792 n61 allowed the President to mobilize state militias under federal control, but included a series of mandatory procedural checks--including judicial [\*399] approval--that restricted his ability to do so. n62 Far from defying these comprehensive restrictions at a moment of grave crisis, Washington satisfied their every requirement in scrupulous detail. He issued a proclamation ordering the Whiskey Rebels to disperse. n63 When they refused to do so, he submitted a statement to Justice James Wilson of the Supreme Court describing the situation in Pennsylvania and requesting statutory certification. n64 Only when Wilson issued a letter precisely reciting the requisite statutory language (after first requiring the President to come back with authentication of underlying reports and verification of their handwriting n65) did Washington muster the troops. n66 Washington's compliance with statutory restrictions on his use of force continued even after his forces were in the field. Because Congress was not in session when he issued the call-up order, Washington was authorized by statute to mobilize militias from other states besides Pennsylvania--but only "until the expiration of thirty days after the commencement of the ensuing [congressional] session." n67 When it became clear that the Pennsylvania campaign would take longer than that, Washington went back to Congress to petition for extension of the statutory time limit that would otherwise have required him to [\*400] disband his troops. n68 Far from serving as an archetypal example of presidential defiance, the Whiskey Rebellion demonstrates exactly the opposite. FDR's efforts to supply the United Kingdom's war effort before Pearl Harbor teach a similar lesson. During the run-up to America's entry into the war, Congress passed a series of Neutrality Acts that supplemented longstanding statutory restrictions on providing assistance to foreign belligerents. Despite these restrictions, FDR sent a range of military assistance to the future Allies. n69 Yoo makes two important claims about the administration's actions during this period. First, he claims the administration asserted that "[a]ny statutory effort by Congress to prevent the President from transferring military equipment to help American national security would be of 'questionable constitutionality'" (III, p 300). Second, he suggests that American military assistance in fact violated the neutrality statutes (III, pp 295-301, 310, 327-28).

#### And, Restrictions are legal limitations on activities

Law.Com 9

(“restriction”, The People's Law Dictionary by Gerald and Kathleen Hill (legal writers), <http://dictionary.law.com/Default.aspx?selected=1835&bold=restrict>, accessed 9-9-9)

restriction

n. any limitation on activity, by statute, regulation or contract provision. In multi-unit real estate developments, condominium and cooperative housing projects managed by homeowners' associations or similar organizations, such organizations are usually required by state law to impose restrictions on use. Thus, the restrictions are part of the "covenants, conditions and restrictions" intended to enhance the use of common facilities and property

#### 4. And, their interpretation is terrible and arbitrary Restrictions and regulations can both be prohibitions or limitations—no brightline to their interp

Supreme Court of Delaware 83 (THE MAYOR AND COUNCIL OF NEW CASTLE, a municipal corporation of the State of Delaware, Plaintiff Below, Appellant, v. ROLLINS OUTDOOR ADVERTISING, INC., Defendant Below, Appellee, No. 155, 1983, 475 A.2d 355; 1984 Del. LEXIS 324, November 21, 1983, Submitted, April 2, 1984, Decided)

The term "restrict" is defined as: To restrain within bounds; to limit; [\*\*9] to confine. Id. at 1182. The Supreme Court of the United States has recognized that HN5the term "regulate" necessarily entails a possible prohibition of some kind. That Court has stated: "It is an oft-repeated truism that every regulation necessarily speaks as a prohibition." Goldblatt v. Hempstead, 369 U.S. 590, 592, 8 L. Ed. 2d 130, 82 S. Ct. 987 (1962). The Supreme Court of Massachusetts in reviewing a statute containing language similar to that found in 22 Del.C. § 301 (which empowered municipalities to "regulate and restrict" outdoor advertising on public ways, in public places, and on private property within public view) held that the statute in question authorized a town to provide, through amortization, for the elimination of nonconforming off-site signs five years from the time the ordinance was enacted. The court held that the Massachusetts enabling act: Conferred on the Legislature plenary power to regulate and restrict outdoor advertising . . . . Although the word "prohibit" was omitted from [the enabling act], it was recognized that the unlimited and unqualified power to regulate and restrict can be, for practical purposes, the power to prohibit [\*\*10] "because under such power the thing may be so far restricted that there is nothing left of of it." (Citations omitted.) The court continued its discussions of the two terms by stating: The distinction between regulation and outright prohibition is often considered to be a narrow one: "that regulation may take the character of prohibition, in proper cases, is well established by the decisions of this court" . . . quoting from United States v. Hill, 248 U.S. 420, 425, 63 L. Ed. 337, 39 S. Ct. 143 (1919). John Donnelly and Sons, Inc. v. Outdoor Advertising Board, Mass. Supr., 369 Mass. 206, 339 N.E.2d 709 (1975). We hold that, through Article II, Section 25 of the Delaware Constitution and 22 Del.C. § 301, the General Assembly has authorized New Castle to terminate nonconforming off-site signs upon reasonable notice, that is, by what has come to be known as amortization. We hold that the power to "regulate and restrict" as such term applies to zoning matters includes the power, upon reasonable notice, to prohibit some of those uses already in existence.

## Terror DA

#### And, Terror threat high and getting stronger

Boerma, 8-11-13

[Lindsay, CBS news, U.S. still on terror alert as embassies reopen, http://www.cbsnews.com/8301-3460\_162-57598021/u.s-still-on-terror-alert-as-embassies-reopen/] /Wyo-MB

The U.S. government was "absolutely not" overreacting by closing 19 embassies and consulates last week amid signs of an al Qaeda plot against U.S. diplomatic posts in the Middle East and other Muslim countries, lawmakers on the House Intelligence Committee argued Sunday on "Face the Nation."¶ "We can't be critical of Benghazi because there was not enough protection and now be critical because there's too much," Rep. Peter King, R-N.Y., said. "It's best to opt to secure American lives, especially in this situation. This was really out of the ordinary. In an extraordinary world, this was the most extraordinary I've seen in at least the last seven years."¶ Rep. Dutch Ruppersberger, D-Md., the top Democrat on the House Intelligence Committee, agreed there was "strong" information, "especially in Yemen," picked up by U.S. intelligence last weekend. The threat emanated from Al Qaeda of the Arabian Peninsula (AQAP) - one of the most active terrorist groups within the al Qaeda network - which Ruppersberger observed is "getting stronger, and their focus has been the United States."¶ "Any time an American is put at risk in the world or in our homeland, we have to deal with it; we have to be cautious," he said. "It wasn't just one incident - there's corroboration that's occurring." King agreed: "This was not a case of connecting the dots - this was clear, explicit intelligence and evidence."

#### And, the turns outweigh the links—only the plan creates an effective targeted killing framework that is essential to counterterrorism

Guiora, 2012

[Amos, Professor of Law, S.J. Quinney College of Law, University of Utah, Targeted killing: when proportionality gets all out of proportion, Case Western Reserve Journal of International Law. 45.1-2 (Fall 2012): p235., Academic onefile] /Wyo-MB

Targeted killing sits at the intersection of law, morality, strategy, and policy. For the very reasons that lawful and effective targeted killing enables the state to engage in its core function of self-defense and defense of its nationals, I am a proponent of targeted killing. However, my support for targeted killing is conditioned upon it being subject to rigorous standards, criteria, and guidelines. My advocacy of both targeted killing and criteria-based decision-making rests largely on my twenty years of experience with a "seat at the table" of operational counterterrorism. The dangers inherent in the use of state power are enormous. On the opposite side of the equation, however, is the terrible cost of terrorism because terrorists, in deliberately targeting innocent civilians, disregard both legality and morality.¶ At present, new conceptions of threat and new technological capabilities are drastically affecting the implementation of targeted killing and the application of core legal and moral principles. High-level decision makers have begun to seemingly place a disproportionate level of importance on tactical and strategic gain over respect for a narrow definition of criteria-based legal and moral framework. (1) Given the realities of collateral damage and other inevitable consequences, such an emphasis on tactical and strategic gain is troublesome. Nonetheless, an effective targeted killing provides the nation state with significant advantages in the context of counterterrorism.

#### Judicial oversight key to solve counterterror efforts- Guantanamo proves

O’Neil 11

(Robert, Houston Law Review, “The Price of Purity: Weakening the Executive Model of the United States’ Counter-Terror Legal System,” Winter 2011, Lexis//wyo-mm)

While providing for judicial review may not make sense in every anti-terror context, absent limitation, the executive may offend the Constitution in any number of ways, leaving those affected no recourse. n152 Further, the lack of judicial review compromises counter-terror activities by not requiring the President to provide plausible reasons for and explanations of his actions; n153 for example, "by failing to provide even perfunctory individualized hearings [to detainees at Guantanamo Bay], ... the U.S. government ... misspent our scarce interrogation capacities on individuals of minimal or no intelligence value." n154 Had the President's orders been subject to [\*1445] judicial oversight, he would have had to explain how the unilaterally implemented deprivations of due process were narrowly tailored to effect an important purpose, prompting a more thorough analysis of what was to be gained by the President's detention policies. n155

#### 5th, No Impact—Fast and flexible doesn’t mean effective, unilateral action doesn’t solve disad impacts

O’Neil 11

(Robert, Houston Law Review, “The Price of Purity: Weakening the Executive Model of the United States’ Counter-Terror Legal System,” Winter 2011, Lexis//wyo-mm)

Those opposed to enacting anti-terror policy through the regular bicameral process criticize the legislative method as being ill-suited for responding to threats to national security because of the time it requires before any plan of action may be [\*1446] implemented. n160 Unilateral executive action certainly permits greater speed in enacting policy decisions and may be preferable in urgent situations that call for swift action. n161 Under the pure form of the executive model, the executive is theoretically limited only by the time it takes him or her to divine the strategy, policy, or act. In contrast, the weak form of the executive model's preference for congressionally enacted counter-terror policy does tend to slow the pace at which new strategies are put in place. Fast action, however, even in exigent circumstances, does not necessarily equate effective action. n162 Feeling compelled to react immediately in a crisis situation can lead the executive to act impulsively, without considering potentially more effective alternatives. n163 For example, the violent interrogation sessions that followed the sudden executively authorized departure from longstanding international rules regarding the treatment of detainees caused great domestic and international controversy during the Bush Administration, and compromised the United States' credibility abroad. n164

## Agamben

#### Engaging the state is critical to the ability of citizens to break into the project of solving global challenges: Engagement relies on an existing internationalist state and refocuses its energies through citizen participation in national institutions that solve for war as well as environmental and social challenges

Sassen 2009

[ColumbiaUniversity, istheauthorof TheGlobalCity (2ndedn, Princeton, 2001), Territory, Authority, Rights: From Medieval to Global Assemblages (Princeton, 2008) and A Sociology of Globalisation (Norton,2007), among others, 2009, The Potential for a Progressive State?, uwyo//amp]

Using state power for a new global politics These post-1980s trends towards a greater interaction of national andglobal dynamics are not part of some unidirectional historical progres-sion. There have been times in the past when they may have been as strong in certain aspects as they are today (Sassen, 2008a: chapter 3). But the current positioning of national states is distinctive precisely because 270 Saskia Sassen the national state has become the most powerful complex organizational entity in the world, and because it is a resource that citizens, confined largely to the national, can aim at governing and using to develop novel political agendas. It is this mix of the national and the global that is so full of potential. The national state is one particular form of state: at the other end of this variable the state can be conceived of as a technical administrative capability that could escape the historic bounds of narrow nationalisms that have marked the state historically, or colonialism as the only form of internationalism that states have enacted. Stripping the state of the particularity of this historical legacy gives me more analytic freedom in conceptualising these processes and opens up the possibility of the denationalised state.As particular components of national states become the institutional home for the operation of some of the dynamics that are central to glob-alisation they undergo change that is difficult to register or name. In my own work I have found useful the notion of an incipient denation-alising of specific components of national states, i.e. components that function as such institutional homes. The question for research then becomes what is actually ‘national’ in some of the institutional compo-nents of states linked to the implementation and regulation of economic globalisation. The hypothesis here would be that some components of national institutions, even though formally national, are not national in the sense in which we have constructed the meaning of that term overthe last hundred years.This partial, often highly specialised or at least particularised, dena-tionalisation can also take place in domains other than that of economic globalisation, notably the more recent developments in the humanrights regime which allow national courts to sue foreign firms and dictators, or which grant undocumented immigrants certain rights. Denationalisation is, thus, multivalent: it endogenises global agendas of many different types of actors, not only corporate firms and financial markets, but also human rights and environmental objectives. Those confined to the national can use national state institutions as a bridge into global politics. This is one kind of radical politics, and only one kind, that would use the capacities of hopefully increasingly denationalized states. The existence and the strengthening of global civil society organ-isations becomes strategic in this context. In all of this lie the possibilities of moving towards new types of joint global action by denationalized states–coalitions of the willing focused not on war but on environmental and social justice projects.

**Focusing on epistemology or ontology selfishly ignores real world problems**

**Jarvis, 2K** – Prof Philosophy @ U South Carolina (Darryl, Studies in International Relations, “International Relations and the Challenge of Postmodernism”, pg. 2)

While Hoffmann might well be correct, **these days one can neither begin nor conclude empirical research without first discussing epistemological orientations and ontological assumptions. Like a vortex, metatheory has engulfed us all and the question of "theory" which was once used as a guide to research is now the object of research.** Indeed, for a discipline whose purview is ostensibly outward looldng and international in scope, **and at a time of ever encroaching globalization and transnationalism, International Relations has become increasingly provincial and inward looking**. **Rather than grapple with the numerous issues that confront peoples** around the world, since the early 1980s the discipline has tended more and more toward obsessive self-examination.3 **These days the politics of famine, environmental degradation, underdevelopment, or ethnic cleansing**, let alone the cartographic machinations in Eastern Europe and the reconfiguration of the geo-global political-economy, **seem scarcely to concern theorists of international politics who define the urgent task of our time to be one of metaphysical reflection and epistemological investigation**. **Arguably, theory is no longer concerned with the study of international relations so much as the "manner in which international relations as a discipline, and international relations as a subject matter, have been constructed."4** To be concerned with the latter is to be "on the cutting edge," where novelty has itself become "an appropriate form of scholarship."5

#### Perm do both—the aff is key to solve arbitrary use of state power—solves their K impacts

Alford, 2011

[Ryan Patrick, Assistant Professor, Ave Maria School of Law, THE RULE OF LAW AT THE CROSSROADS: CONSEQUENCES OF TARGETED KILLING OF CITIZENS, UTAH LAW REVIEW, NO. 4, Online] /Wyo-MB

The Al-Aulaqi lawsuit makes it clear that the same arguments that the Plantagenet and Stuart kings used in attempts to weaken the Magna Carta and subsequent constitutional protections have been revived in a modern form. The complaint correctly asserts that “[t]he right to life is the most fundamental of all¶ rights.”25 However, the response to the Defendants’ motion to dismiss notes that “the upshot of its arguments is that the executive, [who] must obtain judicial approval to monitor a U.S. citizen’s communications or search his briefcase, may execute that citizen without any obligation to justify its actions to a court or to the public.”26 These arguments were of no avail in the District Court, which held that these allegations were indeed unreviewable in any court, because the executive had asserted, purportedly correctly, that addressing a violation of the right of life involves a nonjusticiable political question. Al-Awlaki was thus told that he was to have no day in court before being killed.27¶ Accordingly, seven hundred years after the executive death warrants issued by King Edward I (and four hundred years after a decisive rejection of King James I’s tentative attempts to revive the practice), we appear to be at a similar crossroads of history. However, it remains to be seen whether carrying out an executive order to kill an American citizen will lead to a backlash that reaffirms the importance of the bulwarks against this exercise of arbitrary power over life and death, or whether it leads to an implicit decision to abandon the rule of law and the constraints on executive power that have defined our constitutional tradition for centuries.¶ The early history of the resistance to arbitrary executive authority is important to the worldview and legal theory of the Framers of the Constitution. This Article argues that this history provides the best lens through which we might scrutinize the constitutionality of the targeted killing of American citizens. In doing so, this Article attempts to bring back to the forefront what is at stake in the Al-Aulaqi lawsuit: not merely the potential harm to the targeted individual, but the damage this might inflict on our constitutional tradition. Specifically, this Article will argue that if the courts uphold a decision declaring that the president’s powers are so broad as to preclude any judicial determination of whether the targeted killing program is prohibited by the Due Process Clause, we stand to lose the benefits of a seven-hundred year old tradition of resistance to arbitrary power.¶

#### And, Drones are inevitable

Henning, 2-20-12

[Job, NYT, Embracing the Drone, http://www.nytimes.com/2012/02/21/opinion/embracing-the-drone.html?pagewanted=all&\_r=0] /Wyo-MB

Drones — more formally armed Unmanned Aerial Vehicles, or UAVs — are “in.” Since a Predator strike in Yemen against Al Qaeda in November 2002 — the first known use of a drone attack outside a theater of war — the United States has made extensive use of drones. There were nearly four times as many drone strikes in Pakistan during the first two years of the Obama administration as there were during the entire Bush administration.¶ The United States is now conducting drone strikes in Somalia as well, and their use is expected to dramatically increase in Afghanistan over the next five years as NATO troops withdraw from there.¶ Armed drones are both inevitable, since they allow the fusing of a reconnaissance platform with a weapons system, and, in many respects, highly desirable. They can loiter, observe and strike, with a far more precise application of force. They eliminate risk to pilots and sharply reduce the financial costs of projecting power. Moreover, polls show that a vast majority of Americans support the use of drones.¶

#### And, Strict review of targeted killing operations is to maintain morality in war and undermine the video-game like effect of killing targets with drones

Guiora, 2012

[Amos, Professor of Law, S.J. Quinney College of Law, University of Utah, Targeted killing: when proportionality gets all out of proportion, Case Western Reserve Journal of International Law. 45.1-2 (Fall 2012): p235., Academic onefile] /Wyo-MB

One of the dominant, and admittedly controversial, arguments this essay advances is that states have an obligation to conduct themselves morally, including during armed conflict. Although some may find this notion inherently contradictory, "morality in armed conflict" is a term of art (and not an oxymoron) that lies at the core of the instant discussion. This concept imposes an absolute requirement that soldiers treat the civilian population of areas in which they are engaged in conflict with the utmost dignity and respect. This obligation holds true whether combat takes place "house-to-house" or using remotely piloted aircraft tens of thousands of feet up in the sky. This concept may be simple to articulate, yet it is difficult to implement; the operational reality of armed conflict short of war requires a soldier to make multiple decisions involving various factors, all of which have never-ending spin-off potential. After all, every decision is not only complicated in and of itself, but each operational situation has a number of "forks." The implication is that no decision is linear, and every decision leads to additional dilemmas and spurs further decision making.¶ Operational decision-making is thus predicated on a complicated triangle that must incorporate the rule of law, morality, and effectiveness. I have been asked repeatedly whether that triangle endangers soldiers while giving the "other side" an undue advantage. The concern is understandable; however, the essence of armed conflict is that innocent civilians are in the immediate vicinity of combatants, and there is a duty to protect them even at the risk of harm to soldiers. (12) The burden to distinguish between combatant and civilian is extraordinarily complicated and poses significant operational dilemmas for and burdens on soldiers.¶ For armed conflict conducted in accordance with the rule of law and morality, this burden of distinction can never be viewed as mere mantra. Distinction, (13) then, is integral to the discussion. It is as relevant and important to the soldier standing at a check-point, uncertain whether the person standing opposite him is a combatant or civilian, as it must be in any targeted killing dilemma. The decision whether to operationally engage must reflect a variety of criteria and guidelines. (14) Otherwise, the nation state conducts itself in the spirit of a video game where victims are not real and represent mere numbers, regardless of the degree of threat they pose.¶ At the most fundamental level, operational decision making in the context of counterterrorism involves the decision whether to kill an individual defined as a legitimate target. (15) Although some argue killing is inherently immoral, I argue that killing in the context of narrowly defined self-defense is both legal and moral provided that the decision to "pull the trigger" is made in the context of a highly circumscribed and criteria-based framework. If limits are not imposed in defining a legitimate target, then decisions take on the hue of both illegality and immorality.

#### Agamben precludes us from understanding violence and his theories trivialize the holocaust- reason to reject the affirmative

Mesnard 04

(Philippe, Totalitarian Movements and Political Religions, “The political philosophy of Giorgio Agamben: a critical evaluation,” 2004, Taylor and Francis//wyo-mm)

To decipher the meaning of Agamben's ‘muselmann’, it is necessary to look into the polysemic dimension of this word, which evidently transcends the concentration camp universe. From a purely lexical point of view, first of all, the word ‘muselmann’ is utterly foreign to the Polish language and to the numerous other languages that were spoken in Auschwitz. From a current affairs, contextual point of view (Remnants of Auschwitz was published in 1998), the Muslim, who is linked to political Islam and Palestine, can be seen as the antagonist of the Jew, who is conversely linked to modern Israel and Zionism.25 From an imaginary point of view, the ‘muselmann’ is reminiscent of the numerous texts and pictorial representation of the suffering body of Christ.26 Moreover, Agamben's theory neglects the complexity of the concentration camp reality, and the crucial differences between the functioning of camps on the one hand, and the extermination centres on the other. While Agamben can on no account whatsoever be linked to or accused of negationist views, he must be criticised for his abusive use of the victims’ representations, a trend which has become fairly general. Thus, the figure of the ‘muselmann’ is a faithful epitome of the ‘screen victim’ syndrome frequently found in media‐driven humanitarian operations: the figure tends to hide the real victims and blur our understanding of what actually happened.27

#### no internal link- even if the law was originally founded on violence, it now operates in a non-violent way

Deranty 2004

[Jean-Philippe, Macquarie University, “Agamben’s challenge to normative theories of modern rights,” borderlands e-journal, Vol. 3, No. 1, www.borderlandsejournal.adelaide.edu.au/vol3no1\_2004/deranty\_agambnschall.htm, acc 1-7-05//uwyo-ajl]

29. The problem with this strategic use of the decisionistic tradition is that it does not do justice to the complex relationship that these authors establish between violence and normativity, that is, in the end the very normative nature of their theories. In brief, they are not saying that all law is violent, in essence or in its core, rather that law is dependent upon a form of violence for its foundation. Violence can found the law, without the law itself being violent. In Hobbes, the social contract, despite the absolute nature of the sovereign it creates, also enables individual rights to flourish on the basis of the inalienable right to life (see Barret-Kriegel 2003: 86). 30. In Schmitt, the decision over the exception is indeed "more interesting than the regular case", but only because it makes the regular case possible. The "normal situation" matters more than the power to create it since it is its end (Schmitt 1985: 13). What Schmitt has in mind is not the indistinction between fact and law, or their intimate cohesion, to wit, their secrete indistinguishability, but the origin of the law, in the name of the law. This explains why the primacy given by Schmitt to the decision is accompanied by the recognition of popular sovereignty, since the decision is only the expression of an organic community. Decisionism for Schmitt is only a way of asserting the political value of the community as homogeneous whole, against liberal parliamentarianism. Also, the evolution of Schmitt’s thought is marked by the retreat of the decisionistic element, in favour of a strong form of institutionalism. This is because, if indeed the juridical order is totally dependent on the sovereign decision, then the latter can revoke it at any moment. Decisionism, as a theory about the origin of the law, leads to its own contradiction unless it is reintegrated in a theory of institutions (Kervégan 1992). 31. In other words, Agamben sees these authors as establishing a circularity of law and violence, when they want to emphasise the extra-juridical origin of the law, for the law’s sake Equally, Savigny’s polemic against rationalism in legal theory, against Thibaut and his philosophical ally Hegel, does not amount to a recognition of the capture of life by the law, but aims at grounding the legal order in the very life of a people (Agamben 1998: 27). For Agamben, it seems, the origin and the essence of the law are synonymous, whereas the authors he relies on thought rather that the two were fundamentally different. 32. Agamben obviously knows all this. He argues that it is precisely this inability of the decisionists to hold on to their key insight, the anomic core of norms, which gives them the sad distinction of accurately describing an evil order. But this reading does not meet the objection to his problematic use of that tradition.

**Realism is inevitable—states will always seek to maximize power**

John **Mearsheimer**, Professor, University of Chicago, THE TRAGEDY OF GREAT POWER POLITICS, **2001**, p. 2.

The sad fact is that **international politics has always been a ruthless and dangerous business**, and **it is likely to remain that wa**y. Although the intensity of their competition waxes and wanes, **great powers fear each other and always compete with each other for power. The overriding goal of each state is to maximize its share of world power, which means gaining power at the expense of other states.** But **great powers** do not merely strive to be the strongest of all the great powers, although that is a welcome outcome. Their **ultimate aim is to be the hegemon**-that is, **the only great power in the system.**

Perm do the plan and then the alternative

#### We need a framework to avoid risk.

Cohen, 90

[Professor Emeritus Bernard L. Cohen at the University of Pittsburgh. Published by Plenum Press, 1990 “The Nuclear Energy Option”, http://www.phyast.pitt.edu/~blc/book/chapter7.html//uwyokb]

That doesn’t mean that we should not try to minimize our risks, but it is important to recognize that minimizing anything must be a quantitative procedure. We cannot minimize our risks by simply avoiding those we happen to think about. For example, if one thinks about the risk of driving to a destination, one might decide to walk, which in most cases would be much more dangerous. The problem with such an approach is that the risks we think about are those most publicized by the media, whose coverage is a very poor guide to actual dangers. The logical procedure for minimizing risks is to quantify all risks and then choose those that are smaller in preference to those that are larger. The main object here is to provide a framework for that process and to apply it to the risks in generating electric power. … **The failure of the American public to understand and quantify risk must rate as one of the most serious and tragic problems for our nation**. This chapter represents my attempt to contribute to its resolution.

#### Utility calculus allows action, moral dogmatism freezes us into inaction

Smart, 1973

(J.J.C prof. of philosophy, Australian riatibual university. Utilitarianism: For and Against uw//wej)

lf we are able to take account of probabilities in our ordinary prudential decisions it seems idle to say that in the field of ethics, the field of our universal and humane attitudes, we cannot do the same thing, but must rely on some dogmatic morality, in short on some set of rules or rigid criteria, Maybe sometimes we just will be unable to say whether we prefer for humanity an improbable great advantage or a probable small advantage, and in these cases perhaps we shall have to toss a penny to decide what to do. Maybe we have not any precise methods for deciding what to do, but then our imprecise methods must just serve their turn. We need not on that account be driven into authoritarianism, dogmatism or romanticism.

#### Rejecting the state and focusing on sphere discussions only lead to conservatives stopping state intervention policies

Lobel 07

[Orly Lobel, Assistant Professor of Law, University of San Diego, “THE PARADOX OF EXTRALEGAL ACTIVISM: CRITICAL LEGAL CONSCIOUSNESS AND TRANSFORMATIVE POLITICS”, 2007, http://www.harvardlawreview.org/media/pdf/lobel.pdf, \\wyo-bb]

In former eras, the claims about the legal cooptation of the transformative visions of workplace justice and racial equality suggested that through legal strategies the visions became stripped of their initial depth and fragmented and framed in ways that were narrow and often merely symbolic. This observation seems accurate in the contemporary political arena; the idea of civil society revivalism evoked by progressive activists has been reduced to symbolic acts with very little substance. On the left, progressive advocates envision decentralized activism in a third, nongovernmental sphere as a way of reviving democratic participation and rebuilding the state from the bottom up. By contrast, the idea of civil society has been embraced by conservative politicians as a means for replacing government-funded programs and steering away from state intervention. As a result, recent political uses of civil society have subverted the ideals of progressive social reform and replaced them with conservative agendas that reject egalitarian views of social provision. In particular, recent calls to strengthen civil society have been advanced by politicians interested in dismantling the modern welfare system. Conservative civil society revivalism often equates the idea of self-help through extralegal means with traditional family structures, and blames the breakdown of those structures (for example, the rise of the single parent family) for the increase in reliance and dependency on government aid.165 This recent depiction of the third sphere of civic life works against legal reform precisely because state intervention may support newer, nontraditional social structures. For conservative thinkers, legal reform also risks increasing dependency on social services by groups who have traditionally been marginalized, including disproportionate reliance on public funds by people of color and single mothers. Indeed, the end of welfare as we knew it,166 as well as the transformation of work as we knew it,167 is closely related to the quest of thinkers from all sides of the political spectrum for a third space that could replace the traditional functions of work and welfare. Strikingly, a range of liberal and conservative visions have thus converged into the same agenda, such as the recent welfare-to-work reforms, which rely on myriad non-governmental institutions and activities to support them.168 When analyzed from the perspective of the unbundled cooptation critique, it becomes evident that there are multiple limits to the contemporary extralegal current. First, there have been significant problems with resources and zero-sum energies in the recent campaigns promoting community development and welfare. For example, the initial vision of welfare-to-work supported by liberal reformers was a multifaceted, dynamic system that would reshape the roles and responsibilities of the welfare bureaucracy. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996169 (PRWORA), supported by President Clinton, was designed to convert various welfare programs, including Aid to Families with Dependent Children, into a single block grant program. The aim was to transform passive cash assistance into a more active welfare system, in which individuals would be better assisted, by both the government and the community, to return to the labor force and find opportunities to support themselves. Yet from the broad vision to actual implementation, the program quickly became limited in focus and in resources. Indeed, PRWORA placed new limits on welfare provision by eliminating eligibility categories and by placing rigid time limits on the provision of benefits.170

#### The state is necessary- non state actors get buried in bureaucracy while striving for change

Lobel 07

[Orly Lobel, Assistant Professor of Law, University of San Diego, “THE PARADOX OF EXTRALEGAL ACTIVISM: CRITICAL LEGAL CONSCIOUSNESS AND TRANSFORMATIVE POLITICS”, 2007, http://www.harvardlawreview.org/media/pdf/lobel.pdf, \\wyo-bb]

Moreover, the need to frame questions relating to work, welfare, and poverty in institutional arrangements and professional jargon and to comply with various funding block grants has made some issues, such as the statistical reduction of welfare recipients, more salient, whereas other issues, such as the quality of jobs offered, have been largely eliminated from policymakers’ consideration. Despite aspects of the reform that were hailed as empowering for those groups they were designed to help, such as individual private training vouchers, serious questions have been raised about the adequacy of the particular policy design because resources and institutional support have been found lacking.171 The reforms require individual choices and rely on the ability of private recipients to mine through a vast range of information. As in the areas of child care, health care, and educational vouchers, critics worry that the most disadvantaged workers in the new market will not be able to take advantage of the reforms.172 Under such conditions, the goal of eliminating poverty may be eroded and replaced by other goals, such as reducing public expenses. Thus, recalling the earlier cooptation critique, once reforms are envisioned, even when they need not be framed in legalistic terms, they in some ways become reduced to a handful of issues, while fragmenting, neglecting, and ultimately neutralizing other possibilities. At this point, the paradox of extralegal activism unfolds. While public interest thinkers increasingly embrace an axiomatic rejection of law as the primary form of progress, their preferred form of activism presents the very risks they seek to avoid. The rejected “myth of the law” is replaced by a “myth of activism” or a “myth of exit,” romanticizing a distinct sphere that can better solve social conflict. Yet these myths, like other myths, come complete with their own perpetual perils. The myth of exit exemplifies the myriad concerns of cooptation.

#### Their ontology first args are tautologies that stifle effective politics

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To state their positions more succinctly: ‘Heraclitus maintained that everything changes: Parmenides retorted that nothing changes’ (Russell 1946: 66). Between them, they delineated the dialectical extremes within which the “problem of the subject” has become manifest: in the extremes of questions about ontology, the nature of “Being”, or existence, or ‘Existenz’ (Adorno 1973: 110-25). Historically, such arguments tend towards internalist hocus pocus:

The popular success of ontology feeds on an illusion: that the state of the intentio recta might simply be chosen by a consciousness full of nominalist and subjective sediments, a consciousness which self-reflection alone has made what it is. But Heidegger, of course, saw through this illusion … beyond subject and object, beyond concept and entity. Being is the supreme concept –for on the lips of him who says “Being” is the word, not Being itself –and yet it is said to be privileged above all conceptuality, by virtue of moments which the thinker thinks along with the word “Being” and which the abstractly obtained significative unity of the concept does not exhaust. (Adorno 1973: 69)

Adorno’s (1973) thoroughgoing critique of Heidegger’s ontological metaphysics plays itself out back and forth through the Heideggerian concept of a universalised identity –an essentialist, universalised being and becoming of consciousness, elided from the constraints of the social world. Adorno’s argument can be summed up thus: there can be no universal theory of “being” in and of itself because what such a theory posits is, precisely, non-identity. It obscures the role of the social and promotes a specific kind of politics –identity politics (cf. also Kennedy 1998):

Devoid of its otherness, of what it renders extraneous, an existence which thus proclaims itself the criterion of thought will validate its decrees in authoritarian style, as in political practice a dictator validates the ideology of the day. The reduction of thought to the thinkers halts the progress of thought; it brings to a standstill would thought would need to be thought, and what subjectivity would need to live in. As the solid ground of truth, subjectivity is reified … Thinking becomes what the thinker has been from the start. It becomes tautology, a regressive form of consciousness. (Adorno 1973: 128).

Identity politics - the ontological imperative - is inherently authoritarian precisely because it promotes regression, internalism, subjectivism, and, most importantly, because it negates the role of society. It is simplistic because it focuses on the thingliness of people: race, gender, ethnicity. It tries to resolve the tension of the social-individual by smashing the problem into two irreconcilable parts. Identity politics’ current popularity in sociological thought, most wellevidenced by its use and popularity in “Third Way” politics, can be traced back to a cohort I have called Heidegger’s Hippies –the failed, half-hearted, would-be “revolutionaries” of the 60s, an incoherent collection of middle-class, neo-liberal malcontents who got caught up in their own hyperbole, and who are now the administrators of a ‘totally administered’ society in which hyperbole has become both lingua franca and world currency (Adorno 1964/1973 1973).