## First Off—Exec Reform CP

#### The Executive branch of the United States establish an independent,nonpartisan investigatory commission on indefinite detention vested with the authority to access to classified information.

#### De Facto and De Jure self-binding create accountability from the courts and risk political alienation for going back on promises

Posner and Vermeule 2010 [Eric A. , Professor of Law at the University of Chicago Law School and Editor of The Journal of Legal Studies; Adrian , Harvard Law Professor, The Executive Unbound: After the Madisonian Republic, Oxford Press, p. 138-139//wyo-sc]

Many of our mechanisms are unproblematic from a legal perspective, as they involve presidential actions that are clearly lawful. But a few raise legal questions; in particular, those that involve self-binding.59 Can a president bind himself to respect particular first-order policies? With qualifications, the answer is "yes, at least to the same extent that a legislature can." Formally, a duly promulgated executive rule or order binds even the executive unless and until it is validly abrogated, thereby establishing a new legal status quo.60 The legal authority to establish a new status quo allows a president to create inertia or political constraints that will affect his own future choices. In a practical sense, presidents, like legislatures, have great de facto power to adopt policies that shape the legal landscape for the future. A president might commit himself to a long-term project of defense procurement or infrastructure or foreign policy, narrowing his own future choices and generating new political coalitions that will act to defend the new rules or policies. More schematically, we may speak of formal and informal means of selfbinding: 1. The president might use formal means to bind himself. This is possible in the sense that an executive order, if otherwise valid, legally binds the president while it is in effect and may be enforced by the courts. It is not possible in the sense that the president can always repeal the executive order if he can bear the political and reputational costs of doing so. 2. The president might use informal means to bind himself. This is not only possible but frequent and important. Issuing an executive rule providing for the appointment of special prosecutors, as Nixon did, is not a formal self-binding.61 However, there may be political costs to repealing the order. This effect does not depend on the courts' willingness to enforce the order, even against Nixon himself. Court enforcement makes the order legally binding while it is in place, but only political and reputational enforcement can protect it from repeal. Just as a dessert addict might announce to his friends that he is going on a no-dessert diet in order to raise the reputational costs of backsliding and thus commit himself, so too the repeal of an executive order may be seen as a breach of faith even if no other institution ever enforces it. In what follows, we will invoke both formal and informal mechanisms. For our purposes, the distinction between the authority to engage in de jure self-binding (legally limited and well-defined) and the power to engage in de facto self-binding (broad and amorphous) is secondary. So long as policies are deliberately chosen with a view to generating credibility, and do so by constraining the president’s own future choices in ways that impose greater costs on ill-motivated presidents than on well-motivated ones, it does not matter whether the constraint is formal or informal.

#### Obama can increase administration transparency- new commitment key

Tuuti 2013

[Camille Tuuti, journalist, March 10th, 2013, Transparency advocates give administration mixed marks, http://fcw.com/articles/2013/03/10/open-gov-advocates.aspx, uwyo//amp]

President Barack Obama vowed four years ago to make his administration the most open in history. But despite thousands of hours invested in laying the foundation for transparency, a new study finds actual agency adoption of policies has been uneven and occasionally weak. The Center for Effective Government’s March 10 report examines the Obama administration's progress on open government in three main areas: creating an environment supportive of transparency, improving the usability of government information, and reducing secrecy related to national security. “Overall, we found that the administration has taken a lot of positive steps on the policy side to strengthen open government,” Gavin Baker, open government policy analyst at the Center for Effective Government, told FCW. “The weakness has been that those policies are inconsistent in how they’re trickling down to agencies, so over the next four years we’re hoping to see reinvigorated approach to implementation and getting these new policies into practice.”

## Second Off—Prez Powers

#### CONGRESSIONAL ACTION CONCERNING ENEMY COMBATANTS IS UNCONSTITUTIONAL AND JACKS PRESIDENTIAL AUTHORITY. – GENDER MODIFIED

Working Group 04

[Working Group Report on Detainee Interrogations in The Global War on Terrorism: Assessment of Legal, Historical, Policy, and Operational Considerations. Published in The Modern Tribune, Full Text Available at www.themoderntribune.com/full\_text\_us\_torture\_policy\_memo\_gonzalez\_bush.htm#Administration%20Lawyers%20Ascribed%20Broad%20Power%20to%20Bush%20on%20Torture

Written 6 March 2003, De-Classified 10 June 2004 ]

One of the core functions of the Commander-in-Chief is that of capturing, detaining, and interrogating members of the enemy. It is well settled that the President may seize and detain enemy combatants, at least for the duration of the conflict, and the laws of war make clear that prisoners-may be interrogated for information concerning the enemy, its strength, and its plans. Numerous Presidents have ordered the capture, detention, and questioning of enemy combatants during virtually every major conflict in the Nation's history, including recent conflicts in Korea, Vietnam, and the Persian Gulf. Recognizing this authority, Congress has never attempted to restrict or interfere with the President's authority on this score. Any effort by Congress to regulate the interrogation of unlawful combatants would violate the Constitution's sole vesting of the Commander-in-Chief authority in the President. There can be little doubt that intelligence operations, such as the detention and interrogation of enemy combatants and leaders, are both necessary and proper for the effective conduct of a military campaign. Indeed, such operations may be of more importance in a war with an international terrorist organization than one with conventional armed forces of a nation-state, due to the former's emphasis on secret operations and surprise attacks against civilians. It may be the case that only successful interrogations can provide the information necessary to prevent the success of covert terrorist attacks upon the United States and its citizens. Congress can no more interfere with the President's conduct of the interrogation of enemy combatants than it can dictate strategy or tactical decisions on the battlefield. Just as statutes that order the president to conduct warfare in a certain manner or for specific goals would be unconstitutional, so too are laws that seek to prevent the President from gaining the intelligence he [or she] believes necessary to prevent attacks upon the United States. (U) As this authority is inherent in the President, exercise of it by subordinates would be best if it can be shown to have been derived from the President's authority through Presidential directive or other writing. --------(U) We note that this view is consistent with that of the Department of Justice

#### Presidential power is zero-sum- the branches compete

Barilleaux and Kelley 2010 [Ryan J. , Professor of Political Science at Miami, OH; and Christopher S. , Lecturer (Political Science) at Miami, OH, The Unitary Executive and the Modern Presidency, Texas A&M Press, p. P 196-197, 2010// wyo-sc]

In their book *The Broken Branch,* Mann and Ornstein paint a different view. They discuss a wider range of public policy areas than just uses of force. Their argument is that although party is important as a conditioning factor for times when Congress might try to restrain an aggressive or noncompliant executive, there has also been a broader degrading of institutional power that has allowed, in a zero-sum context, the president to expand executive power at the expense of Congress. Mann and Ornstein thus posit that congressional willingness to subordinate its collective power to that of the president has occurred across domestic politics and foreign affairs. They argue that a variety of factors are at fault for this trend, including the loss of institutional identity, the willingness to abdicate responsibility to the president, the demise of "regular order," and most importantly that Congress has lost its one key advantage as a legislative body—the decay of the deliberative process. Thus, they do recognize that party politics has played an important role in the degrading of congressional power, but they see a larger dynamic at work, one that reaches beyond partisanship. While we agree with Howell and Pevehouse that Congress retains important mechanisms for constraining the president, we tend to agree with the Mann and Ornstein view that there has been a significant and sustained decline in Congress's willingness to use these mechanisms to challenge presidential power. This tendency has been more prevalent in foreign affairs but has occurred noticeably across the spectrum of public policy issues. Building from both of those perspectives, and others, we argue that it is helpful to understand the pattern of congressional complicity in the rise of presidential power by viewing Congress's aiding and abetting as the logical outcomes of a collective action problem.31 By constitutional design, the legislative branch is in competition with the president for institutional power, yet Congress is less than ideally suited for such a political conflict. Congress's comparative disadvantage begins with its 535 "interests" that are very rarely aligned, and if so, only momentarily. Because individual reelection overshadows all other goals, members of Congress naturally seek to take as much credit and avoid as much blame from their constituencies as possible.32 The dilemma this creates for members is how to use or delegate its collective powers in order to maximize credit and minimize blame in the making of public policy. Congress can choose to delegate power internally to committees and party leaders or externally to the executive branch. One can conceptualize the strategic situation of members of Congress in terms of a prisoner's dilemma.33 If members cooperate (that is, in Mann and Ornstein's parlance, if members identify with the institution), they could maintain and advance Congress's institutional power. But they would have to bypass some potential individual payoffs that could come from defection, such as "running against Congress" as an electoral strategy. A stronger institution should make all members of Congress better off, but it also makes them responsible for policymaking. If members defect from the institution, they thus seek to maximize constituency interests either by simply allowing power to fall by the wayside or by simply delegating it to the president. As more and more members choose to defect over time, the "public good" of a strong Congress is not provided for or maintained—and Congress's institutional authority erodes and presidential power fills in the gap. Why, in other words, is congressional activism so often "less than meets the eye," as Barbara Hinckley maintained in her book by that title? Or why has the ''culture of deference" that Stephen Weissman identified developed as it has?34 We argue that the collective action problem that exists in Congress leads to the development of these trends away from meaningful congressional stewardship of foreign policy and spending.

#### Strong executive key to solve climate change-lack of congressional action prevents solvency in the squo and executive negotiating power key to check environmental and economic collapse

Wold 2012

[Chris Wold, Professor of Law & Director, International Environmental Law Project

(IELP), 2012, Lewis & Clark Law School, 2012, CASE WESTERN RESERVE JOURNAL OF INTERNATIONAL LAW·VOL. 45·2012, uwyo//amp]

In 2007, then-Senator Barack Obama wrote, “As the world’s largest producer of greenhouse gases, America has the responsibility to lead.”1 As President, he has led. At the domestic level, working primarily through the Environmental Protection Agency, President Obama has increased fuel economy standards,2 imposed new limits ongreenhouse gas emissions from “major emitting facilities,”3 and imposed limits on emissions relating to the development of oil and gas,4 among many other things.5 As he has said, he must use his executive power because “We Can’t Wait” for Congress to act on climate change.6 Nonetheless, he must do more. President Obama has pledged to the international community that the United States will reduce its greenhouse gases by 17% of 2005 levels by 2020 and by 83% by 2050.7The President has also set a goal of ensuring that “[b]y 2035 we will generate 80 percent of our electricity from a diverse set of clean energy sources—including renewable energy sources like wind, solar, biomass, and hydropower; nuclear power; efficient natural gas; and clean coal.”8 None of his actions come close to meeting these goals. Moreover, he must do more to help the international community reach its goal of keeping average global temperatures from increasing 2°C above pre-industrial levels.9 Many scientists argue that the 2°C goal can be met, and the worst impacts of climate change avoided, if we keep carbon dioxide concentrations below 350 parts per million (ppm).10 As of July 2012, atmospheric concentrations of carbon dioxide exceeded 394 ppm.11 The United States is by far the largest historic contributor to these high levels of atmospheric carbon dioxide, having contributed 28.52% of carbon dioxide from energy.12 As such, the United States must do much more to ensure that the world’s largest historic emitter of greenhouse gases fulfills its moral and perhaps legal obligation to reduce greenhouse gases before we reach climate change tipping points beyond which climate change will be irreversible for millennia to come.And indeed, President Obama can do much more. As described below, the president can use his foreign affairs power to take a more positive role on the international stage, whether that stage is the climate change negotiations, the negotiations concerning other international treaties, or within the World Trade Organization. He can also do more with his executive power, not only by increasing existing standards but also by applying them to existing sources of greenhouse gases, not just new sources. Further, President Obama has so far failed to take advantage of strategies to mitigate emissions of short-term climate forcers such as black carbon that could provide significant climate benefits. Lastly, the approaches adopted so far have not pushed regulated entities or others to develop the transformative technologies that will be needed to deliver sufficient climate change benefits to avert the environmental and economic crisis that lies ahead if we fail to take more aggressive action.

**O7opn mStudies show warming is human caused and will cause extinction\**

**Ahmed 2010**

(Nafeez Ahmed, Executive Director of the Institute for Policy Research and Development, professor of International Relations and globalization at Brunel University and the University of Sussex, Spring/Summer 2010, “Globalizing Insecurity: The Convergence of Interdependent Ecological, Energy, and Economic Crises,” Spotlight on Security, Volume 5, Issue 2, online)

Perhaps **the most notorious indicator is anthropogenic global warming**. **The landmark** 2007 Fourth **Assessment** Report of the UN Intergovernmental Panel **on Climate Change** (IPCC) – which **warned that at then-current rates of increase of fossil fuel emissions, the earth’s global average temperature would likely rise by 6°C by the end of the 21st century** **creating a** largely **uninhabitable planet** – was a wake-up call to the international community.[v] **Despite the pretensions of ‘climate sceptics,’ the peer-reviewed scientific literature has continued to produce evidence that the IPCC’s original scenarios were wrong – not because they were too alarmist**, but on the contrary, **because they were far too conservative**. According to a paper in the Proceedings of the National Academy of Sciences, **current CO2 emissions are worse than all six scenarios contemplated by the IPCC. This implies that the IPCC’s worst-case six-degree scenario severely underestimates the most probable climate trajectory** under current rates of emissions.[vi] It is often presumed that a 2°C rise in global average temperatures under an atmospheric concentration of greenhouse gasses at 400 parts per million (ppm) constitutes a safe upper limit – **beyond which further global warming could trigger rapid and abrupt climate changes that, in turn, could tip the whole earth climate system into a process of irreversible, runaway warming.[**vii] Unfortunately, we are already well past this limit, with the level of greenhouse gasses as of mid-2005 constituting 445 ppm.[viii] Worse still, cutting-edge scientific data suggests that the safe upper limit is in fact far lower**. James Hansen**, director of the NASA Goddard Institute for Space Studies, **argues that the absolute upper limit for CO2 emissions is 350 ppm: “If the present overshoot of this target CO2 is not brief, there is a possibility of seeding irreversible catastrophic effects.**”[ix] A wealth of **scientific studies** has **attempted to explor**e the role of **positive-feedback mechanisms between different climate sub-systems**, the operation of which could intensify the warming process. **Emissions beyond 350 ppm over decades are likely to lead to the total loss of Arctic sea-ice** in the summer **triggering magnified absorption** of sun radiation, **accelerating warming**; the melting of Arctic permafrost triggering **massive methane injections** into the atmosphere, accelerating warming; the **loss of half the Amazon rainforest** triggering the momentous release of billions of tonnes of stored carbon, accelerating warming; and **increased microbial activity in the earth’s soi**l leading to further huge releases of stored carbon, accelerating warming; to name just a few. **Each of these feedback sub-systems alone is sufficient by itself to lead to irreversible, catastrophic effects that could tip the whole earth climate system over the edge**.[x] Recent studies now estimate that the **continuation of business-as-usual would lead to global warming of three to four degrees Celsius before 2060 with multiple irreversible, catastrophic impacts; and six, even as high as eight, degrees by the end of the century – a situation endangering the survival of all life on earth.[**xi]

## Third Off—K

#### LINK—THE AFF FETISHIZES THE LAW AND ITS ABILITY TO RESOLVE PRESIDENTIAL POWERS, THEIR CALL RESULTS IN A RETURN TO LAW THAT DESTROYS THE POSSIBILITY FOR RADICAL POLITICS

NEOCLEOUS 2006

(Mark Neocleous, Politics & History @ Brunel University, “the Problem with Normality”, Alternatives, no. 31 //wyo-tjc)

To criticize the use of emergency powers in terms of a suspension of the law, then, is to make the mistake of counterpoising normality and emergency, law and violence. In separating “normal” from “emergency,” with the latter deemed “exceptional,” this approach parrots the conventional wisdom that posits normalcy and emergency as two discrete and separable phenomena. This essentially liberal paradigm assumes that there is such a thing as “normal” order governed by rules, and that the emergency constitutes an “exception” to this normality. “Normal” here equates with the separation of powers, entrenched civil liberties, an ongoing debate about public policy and law, and the rule of law, while “emergencies” are thought to require strong executive rule, little time for discussion, and are premised on the supposedly necessary suspension of the law and thus the discretion to suspend key liberties and rights. But this rests on two deeply ideological assumptions: first, the assumption that emergency rule is aberrational; and, second, an equation of the emergency/nonemergency dichotomy with a distinction between constitutional and nonconstitutional action. Thus liberalism seeks to separate emergency rule from the normal constitutional order, thereby preserving the Constitution in its pristine form while providing the executive with the power to act in an emergency.47 But the historical evidence suggests that emergency powers are far from exceptional; rather, they are an ongoing aspect of normal political rule. Emergency, in this sense, is what emerges from the rule of law when violence needs to be exercised and the limits of the rule of law overcome. The genealogy of “emergency” is instructive here. “Emergency” has its roots in the idea of “emerge.” The Oxford English Dictionary suggests that “emerge” connotes “the rising of a submerged body out of the water” and “the process of coming forth, issuing from concealment, obscurity, or confinement.” Both these meanings of “emerge” were once part of the meaning of “emergency,” but the first is now rare and the second obsolete. Instead, the modern meaning of “emergency” has come to the fore, namely a sudden or unexpected occurrence demanding urgent action and, politically speaking, the term used to describe a condition close to war in which the normal constitution might be suspended. But what this tells us is that in “emergency” lies the idea of something coming out of concealment or issuing from confinement by certain events. This is why “emergency” is a better category than exception: Where “emergency” has this sense of “emergent,” exception instead implies a sense of ex capere, that is, of being taken outside. Far from being outside the rule of law, emergency powers emerge from within it. They are thus as important as the rule of law to the political management of the modern state. There is, however, an even wider argument to be made. The idea that the permanent emergency involves a suspension of the law encourages the idea that resistance must involve a return to legality, a return to the normal mode of governing through the rule of law. But this involves a serious misjudgment in which it is simply assumed that legal procedures, both international and domestic, are designed to protect human rights from state violence. Law itself comes to appear largely unproblematic. What this amounts to is what I have elsewhere called a form of legal fetishism, in which law becomes a universal answer to the problems posed by power. Law is treated as an independent or autonomous reality, explained according to its own dynamics. This produces the illusion that law has a life of its own, abstracting the rule of law from its origins in class domination and oppression and obscuring the ideological mystification of these processes in the liberal trumpeting of the rule of law.48 To demand the return to the “rule of law” is to seriously misread the history of the relation between the rule of law and emergency powers and, consequently, to get sucked into a less-than-radical politics in dealing with state violence. Part of what I am suggesting is that emergency measures, as state violence, are part of the everyday exercise of powers, working alongside and from within rather than against the rule of law, as part of a unified political strategy in the fabrication of social order.

#### Your Discourse on indefinite detention is only affirming the state can arbitrarily take away human rights- We must abandon the legal subjectivity rationality

Zevnik 11

[Andreja Zevnik, Department of International Politics, “Becoming-Animal, Becoming-Detainee: Encountering Human Rights Discourse in Guantanamo”, 25 March 2011, Springer, \\wyo-bb]

Similar is the example of Guantanamo. The Guantanamo detention facility has¶ been from its early days, rightly or not, seen as an emblem for human rights abuses.¶ If one thinks of the history of the western world, however, this situation is not¶ exceptional; in fact, it is, as perhaps Agamben (2005) would point out, symptomatic¶ of the very nature of the predominant liberal democratic system and of the liberal¶ notion of human rights. Within this discourse, Guantanamo represents only one¶ space where legal subjectivity of detainees is contested or even suspended. A¶ degrading treatment of the detainees had foundations in legal and political¶ discourse, in the way the detainees were perceived and talked about. Moreover, the¶ treatment corresponds to the above-described reasoning and practices constituting¶ and determining legal subjectivity. For example, the detainees released from¶ Guantanamo and their lawyers commonly refer to the treatment as being¶ ‘animalistic’ or ‘worse’. Jamal Al-Harith remembers that the detainees stopped¶ asking for human rights and instead pleaded for ‘animal rights’ (Committee on¶ Legal Affairs 2004). The discourse of de-personification (or de-humanisation¶ mentioned above) was central to the treatment in Guantanamo. The detainees were¶ referred to as packages, as animals, as Bob or by numbers (Howell 2007, p. 36).2¶ Such treatment is of course not symptomatic of Guantanamo alone; rather, it is¶ present in most facilities of the kind.¶ Aside from this more political aspect there is another; a theoretical or a¶ philosophical aspect of the human rights discourse. It concerns the above¶ observation that it is by virtue of the recognition that one becomes the subject of¶ human rights. On the one side the statement of course implies that legal subjectivity¶ can be given or taken away arbitrarily as there is no ‘material essence’ on which the¶ possession of it rests. On the other side, however, the statement uncovers the¶ philosophical reasoning determining legal subjectivity, which is that the legal¶ subject is at the same time constitutive and constituted by the law. In other words,¶ the legal subject is an embodiment of the negotiation between the subjectum and the¶ subjectus. The subjectum is the holder of rights and the bearer of duties and¶ responsibilities; it is also a modern subject, an agent of freedom and morality. The¶ subjectum is Kantian and Cartesian autonomous subject following the moral law¶ (Douzinas 2000, p. 216); arguably it is a human or a thinking being (ibid. p. 204). In¶ contrast, subjectus refers to one’s subjection and submission to the legal and¶ political power; the term also implies hierarchy and domination (ibid.). Both¶ aspects, representing two sides of a spectrum on which the legal subjectivity is¶ negotiated, are to an extent limiting and exclusionary. On the one end, there is a¶ subjection to law and legal domination; on the other end there is the imaginary¶ notion of a free and a rational subject. The legal subjectivity is always constructed¶ on this spectrum.

#### SOCIETY HAS BEEN REPEATEDLY CONFOUNDED AT THE FAILURE OF LAW TO CONTAIN VIOLENCE—WE SEE LAW AS A ‘LESSER EVIL’ THAT IS NECESSARY TO HUMANIZE WAR. QUITE TO THE CONTRARY, THE LAWS OF WAR LEGITIMIZE AND PROTECT STATIST FORMS OF VIOLENCE AND CRUSH DISSENT

BERMAN (Prof of Law at Brooklyn Law School) 2004

[Nathaniel, “Privleging Combat?”, Columbia Journal of Transnational Law, p. ln //wyo-tjc]

**Through examining the legal doctrines crucial to defining the combatants' privilege**, in my view the key concept of jus in bello, **this Article seeks to undo the circumlocutions that often block frank discussion of the relationship of law to war. Contrary to conventional wisdom**, I argue that **it is misleading to see law's relationship to war as primarily one of the limitation of organized violence, and even more misleading to see the laws of war as historically progressing toward an ever-greater** **limitation of violence. n6 Instead**, I put forward three central propositions. First, **rather than standing in opposition to war, law has long been directly involved in the construction of war - the construction of war as a separate sphere of human activity in [\*5] which the "normal" rules of social life, codified, for example, in the domestic criminal law regulating violence, do not operate. n7 Rather than opposing violence, the legal construction of war n8 serves to channel violence into certain forms of activity engaged in by certain kinds of people, while excluding other forms** engaged in by other people. n9

#### And, the embedded in the law is the power to render the subject politically valueless, enabling state management

#### Agamben, 98 (Giorgio, philosopher and bad ass, “Homo Sacer: Sovereign Power and Bare Life.” 1998, Stanford University Press, MB)

It is not our intention here to take a position on the difficult ethical problem of euthanasia, which still today, in certain coun­tries, occupies a substantial position in medical debates and pro­vokes disagreement. Nor are we concerned with the radicality with which Binding declares himself in favor of the general admissibility of euthanasia. More interesting for our inquiry is the fact that the sovereignty of the living man over his own life has its immediate counterpart in the determination of a threshold beyond which life ceases to have any juridical value and can, therefore, be killed without the commission of a homicide. The new juridical category of "life devoid of value" (or "life unworthy of being lived") corre­sponds exactly—even if in an apparently different direction:---to the bare life of homo sacer and can easily be extended beyond the limits imagined by Binding. It is as if every valorization and every "politicization" of life (which, after all, is implicit in the sovereignty of the individual over his own existence) necessarily implies a new decision concerning the threshold beyond which life ceases to be politically relevant, becomes only "sacred life," and can as such be eliminated without punishment. Every society sets this limit; every society—even the most modern—decides who its "sacred men" will be. It is even pos­sible that this limit, on which the politicization and the exception of natural life in the juridical order of the state depends, has done nothing but extend itself in the history of the West and has now— in the new biopolitical horizon of states with national sovereignty—moved inside every human life and every citizen. Bare life is no longer confined to a particular place or a definite category. It now dwells in the biological body of every living being.

#### The Alternative is to write against the state.

#### Exposing the law as violence is necessary to create space for rethinking that makes social relations outside of statist violence possible

Neocleous 2003

[Mark, Teaches politics @ Brunel, Imagining the state, Philadelphia: Open University Press, 6-7/uwyo-ajl]

The last point should indicate to the reader that this is a polemical book about a polemical topic. As such, I should be clear about my intentions. If a hidden agenda seems nasty, then an exposed one looks downright impudent.13 Writers these days increasingly like to stand aside from the affray. This is nowhere more obvious than in books in which affray is a central issue-namely books on issues such as the state, power and capital. On the one hand, this is no doubt due to the fate of the academy in contemporary capitalism-academic research assessment exercises which seem to have knocked the political stuffing out of seemingly political writers (best not write anything too political about this political topic, in case it damages one's promotion prospects). On the other hand, it is also clearly connected to the demise of any coherence the Left once had. Writers on the Left appear to be happier to retreat into ever more exegetical work on text after text, with little sense as to the purpose of reading political writers in the first place. Or, worse, they have bought into the stunningly naive socio-political claim that we have moved into a world in which there is politics without enemies.4 (And if there are no enemies, then there is no ground for any fundamental disagreement and thus no real need to say anything interesting at all.) Too many intellectuals on the Left have thus developed an instrumental inability to think beyond the instructions and parameters provided for them by the state and one of its key ideological apparatuses - the university. So let me say that this book is written from outside the statist political imaginary (or at least as much as one can be outside it), and also against it. To write against the statist imaginary is thus intended as an act of resistance - though admittedly not the bravest act of resistance one might imagine, since the state aims to dominate the thought of even those who oppose it (indeed, one might say especially those who oppose it). Pierre Bourdieu has argued that `to endeavour to think the state is to risk either taking over, or being taken over by, the thought of the state','~ and as I argue in Chapter 2, as part of its administration of civil society the state aims to structure the way we view the world by generating the categories through which citizens come to imagine collective identity and thus their own political subjectivity. One of the implications of this is that the statist political imaginary has assisted the state in setting limits on the theoretical imagination, acting as a block on the possibility of conceiving of a society beyond the state.This is a book that tries to think the state without either taking over or being taken over by the thought of the state. It therefore rests on a different political imaginary, one which I mention here and return to only briefly at the very end of the book, which arises out of the tradition of the oppressed which teaches us that the `state of exception' in which we live is not the exception but the rule. As Walter Benjamin recognized, to write against the state of exception in this way is to aim to bring about a real state of emergency which imagines the end of the state, and thus an end to the possibility of fascism.

#### The affs politics guarantees the worst forms of tyranny, any permutation will fail. We should see politics as a struggle between the state and non-state actors for creating a society outside of state management of bodies—we must pick a side

Agamben, 2000 (Giorgio, philosopher and bad ass, “Means Without End: Notes on Politics.” University of Minnesota Press, 2000. MB)

What does the scenario that world politics is setting up before us look like under the twilight of the Commentaries? The state of the integrated spectacle (or, spectacular-democratic state) is the final stage in the evolution of the state-form—the ruinous stage toward which monar¬chies and republics, tyrannies and democracies, racist regimes and progressive regimes are all rushing. Al-though it seems to bring national identities back to life, this global movement actually embodies a tendency toward the constitution of a kind of supranational police state, in which the norms of international law are tacitly abrogated one after the other. Not only has no war offi¬cially been declared in many years (confirming Carl Schmitt's prophecy, according to which every war in our time has become a civil war), but even the outright invasion of a sovereign state can now be presented as an act of internal jurisdiction. Under these circumstances, the secret services—which had always been used to act ignoring the boundaries of national sovereignties — become the model itself of real political organization and of real political action. For the first time in the history of our century, the two most important world powers are headed by two direct emanations of the secret services: Bush (former CIA head) and Gorbachev (Andropov's man); and the more they concentrate all the power in their own hands, the more all of this is hailed, in the new course of the spectacle, as a triumph of democracy. All appearances notwithstanding, the spectacular-dem¬ocratic world organization that is thus emerging actually runs the risk of being the worst tyranny that ever materialized in the history of humanity, against which resistance and dissent will be practically more and more difficult—and all the more so in that it is increasingly clear that such an organization will have the task of man¬aging the survival of humanity in an uninhabitable world. One cannot be sure, however, that the spectacle's at¬tempt to maintain control over the process it contributed to putting in motion in the first place will actually suc¬ceed. The state of the spectacle, after all, is still a state that bases itself (as Badiou has shown every state to base itself) not on social bonds, of which it purportedly is the expression, but rather on their dissolution, which it forbids. In the final analysis, the state can recognize any claim for identity—even that of a state identity within itself (and in our time, the history of the relations be¬tween the state and terrorism is an eloquent confirma¬tion of this fact). But what the state cannot tolerate in any way is that singularities form a community without claiming an identity, that human beings co-belong with¬out a representable condition of belonging (being Italian, working-class, Catholic, terrorist, etc.). And yet, the state of the spectacle — inasmuch as it empties and nullifies every real identity' and substitutes the public and public opinion for the people and the general will—is precisely what produces massively from within itself singularities that are no longer characterized either by any social identity or by any real condition of belonging: singularities that are truly whatever singularities. It is clear that the society of the spectacle is also one in which all social identities have dissolved and in which everything that for centuries represented the splendor and misery of the generations succeeding themselves on Earth has by now lost all its significance. The different identities that have marked the tragicomedy of universal history are exposed and gathered with a phantasmagorical vacuity in the global petite bourgeoisie — a petite bourgeoisie that constitutes the form in which the spectacle has realized parodistically the Marxian project of a classless society. For this reason — to risk advancing a prophecy here — the coming politics will no longer be a struggle to conquer or to control the state on the part of either new or old social subjects, but rather a struggle between the state and the nonstate (humanity), that is, an irresolvable disjunction between whatever singularities and the state organization. This has nothing to do with the mere demands of society against the state, which was for a long time the shared concern of the protest movements of our age. Whatever singularities cannot form a societies within a society of the spectacle because they do not possess any identity to vindicate or any social bond whereby to seek recognition. The struggle against the state, therefore, is all the more implacable, because this is a state that nullifies all real contents but that—all empty declarations about the sacredness of life and about human rights aside—would also declare any being radically lacking a representable identity to be simply nonexistent. This is the lesson that could have been learned from Tiananmen, if real attention had been paid to the facts of that event. What was most striking about the demonstrations of the Chinese May in fact, was the relative absence of specific contents in their demands. (The notions of democracy and freedom are too generic to constitute a real goal of struggle, and the only concrete demand, the rehabilitation of Hu Yaobang, was promptly granted.) It is for this reason that the violence of the state's reaction seems all the more inexplicable. It is likely, however, that this disproportion was only apparent and that the Chinese leaders acted, from their point of view, with perfect lucidity. In Tiananmen the state found itself facing something that could not and did not want to be represented, but that presented itself nonetheless as a community and as a common life (and this regardless of whether those who were in that square were actually aware of it). The threat the state is not willing to come to terms with is precisely the fact that the unrepresentable should exist and form a community without either presuppositions or conditions of belonging (just like Cantor's inconsistent multiplicity). The whatever singularity — this singularity that wants to take possession of belonging itself as well as of its own being-into-language, and that thus declines any identity and any condition of belonging—is the new, nonsubjective, and socially inconsistent protagonist of the com¬ing politics. Wherever these singularities peacefully manifest their being-in-common, there will be another Tiananmen and, sooner or later, the tanks will appear again.

### Torture

#### Reform solves- Obama has increased transparency and basic rights at Guantanamo

Reilly ‘13

[Ryan, .C.-based reporter who covers the Justice Department and the Supreme Court for The Huffington Post. He has covered federal law enforcement and legal news since 2009, previously reporting for Talking Points Memo and MainJustice.com, “Obama's Guantanamo Is Never Going To Close, So Everyone Might As Well Get Comfortable,” 02.16.2013. <<http://www.huffingtonpost.com/2013/02/16/obama-guantanamo_n_2618503.html>>//wyo-hdm]

Unable to close Guantanamo, Obama restarted the military commissions in March 2011. He did succeed, however, in reforming them to a certain extent, increasing transparency and bringing their policies and handling of evidence closer in line with U.S. courts. But the legality of the commissions is still being debated, and the detainees may appeal any verdicts in federal court, setting up a prolonged battle that will likely wind its way back to the Supreme Court. For now, Brig. Gen. Mark S. Martins is the man with the difficult task of selling the world on the legitimacy of the proceedings. Martins took the job of chief prosecutor in October 2011, and he is a staunch defender of trying the detainees in military commissions as opposed to federal courts. “There are narrow but important differences, and this often gets lost when I talk about federal courts, because someone will say, 'Hey, he should try to just mimic federal courts, why do you need [military commissions]?'" Martins said, sitting in a bare-bones office in the old court building at the top of the hill overlooking the new courthouse. "This just fuels the argument about how, why are they necessary? The differences are important." Miranda rights don’t apply in military commissions -- statements just need to be determined to be voluntary in order to be included as evidence. There are also looser rules on hearsay statements. Martins said the distinctions between U.S. courts and the military commissions could be "decisive in certain cases." The reformed military commissions are designed to address some of the concerns of both the U.S. government and human rights advocates. Any statements obtained as a result of torture or cruel or degrading treatment are prohibited. Detainees have greater access to classified information that might be relevant to building their defense cases. Journalists have increased standing before the court. “Anyone who was familiar with the process before and looks at it now, I think, is looking fairly at it, would say there's a significant proportion more of this proceeding that we can look at, understand, analyze,” Martins said.

#### Status quo solves – conditions are now humanitarian

Pearlstein ‘12

[Deb, assistant professor of international and constitutional law at Cardozo Law School in New York. She was part of the first group of human rights monitors granted access in 2004 to observe military commission proceedings at Guantánamo Bay, “The Situation Is Better Than It Was,” NYT Room For Debate, 01.09.2012. <<http://www.nytimes.com/roomfordebate/2012/01/09/guantanamo-10-years-later/guantanamo-better-than-it-was>, accessed 7/23/13>//wyo-hdm]

For all that remains deplorable about the continuing operation of the Guantánamo prison, it is wrong to suggest, as some have, that the situation now is no different than it was a decade ago. But the reasons many of our most distinguished military leaders have called for the facility’s closure remain valid. In 2002, detention conditions at the base were often abusive, and for some, torturous. Today, prisoners are generally housed in conditions that meet international standards, and the prison operates under an executive order that appears to have succeeded in prohibiting torture and cruelty. In 2002, the U.S. president asserted exclusive control over the prison, denying the applicability of fundamental laws that would afford its residents even the most basic humanitarian and procedural protections, and rejecting the notion that the courts had any power to constrain executive discretion. Today, all three branches of government are engaged in applying the laws that recognize legal rights in the detainees. Guantánamo once housed close to 800 prisoners, and most outside observers were barred from the base. Today, it holds 171, and independent lawyers, among others, have met with most detainees many times.

#### Guantanamo Bay detainees have proper rights

Groves and Walsh, 07

([Steven Groves](http://www.heritage.org/about/staff/stevengroves.cfm) is Bernard and Barbara Lomas Fellow in the Margaret Thatcher Center for Freedom, a division of the Kathryn and Shelby Cullom Davis Institute for International Studies, and [Brian W. Walsh](http://www.heritage.org/about/staff/BrianWalsh.cfm)is Senior Legal Research Fellow in the Center for Legal and Judicial Studies, at The Heritage Foundation, "Dispelling Misconceptions: Guantanamo Bay Detainee ProceduresExceed the Requirements of the U.S. Constitution, U.S. Law, andCustomary International Law", July 13, [www.heritage.org/research/reports/2007/07/dispelling-misconceptions-guantanamo-bay-detainee-procedures-exceed-the-requirements-of-the-us-constitution-us-law-and-customary-international-law](http://www.heritage.org/research/reports/2007/07/dispelling-misconceptions-guantanamo-bay-detainee-procedures-exceed-the-requirements-of-the-us-constitution-us-law-and-customary-international-law) NL)

Misconception #2: The Guantanamo Bay detainees received inadequate due process when they were designated enemy combatants. In violation of the Geneva Conventions and the customary laws of war, Taliban and al-Qaeda fighters in Afghanistan wear no uniforms or insignia. Unlike the soldiers of every nation that seeks the protections of the Geneva Conventions and other laws of war, Taliban and al-Qaeda fighters refuse to carry their arms openly. Such choices drastically increase the dangers of war to the civilians among whom Taliban and al-Qaeda forces hide. These choices also make it more difficult for U.S. military personnel to determine whether, upon a combatant's capture, the combatant is in fact a member of the enemy force. To address the problem, the U.S. military established a system to screen each detainee to determine whether he is an enemy combatant. The result is that detainees at Guantanamo Bay have received more procedural protections ensuring the fairness of their detention than any foreign enemy combatant in any armed conflict in the history of warfare. Under the Geneva Conventions, enemy combatants who have committed a belligerent act but whose detainee status is in question are entitled to have their status determined by a "competent tribunal."[[12]](http://www.heritage.org/research/reports/2007/07/dispelling-misconceptions-guantanamo-bay-detainee-procedures-exceed-the-requirements-of-the-us-constitution-us-law-and-customary-international-law#_ftn12)In accordance with that provision of the Geneva Conventions, prior to the September 11 attacks the U.S. military established Army Regulation 190-8, Section 1-6, setting forth procedures for the operation of tribunals to make such determinations-that is, whether a combatant may be held as a prisoner of war.[[13]](http://www.heritage.org/research/reports/2007/07/dispelling-misconceptions-guantanamo-bay-detainee-procedures-exceed-the-requirements-of-the-us-constitution-us-law-and-customary-international-law#_ftn13) The U.S. Supreme Court recently cited Army Regulation 190-8 as an example of a procedure which would satisfy the due process requirements for determining the status of the Guantanamo Bay detainees.[[14]](http://www.heritage.org/research/reports/2007/07/dispelling-misconceptions-guantanamo-bay-detainee-procedures-exceed-the-requirements-of-the-us-constitution-us-law-and-customary-international-law#_ftn14) In response, the Department of Defense established special tribunals modeled on Army Regulation 190-8-Combatant Status Review Tribunals (CSRTs)-to determine the status of detainees at Guantanamo Bay. Consistent with Army Regulation 190-8, the CSRT hearing provides each detainee with a hearing before a neutral panel composed of three commissioned military officers. The tribunals make their decisions on the detainee's status by majority vote, based on the preponderance of the evidence. The detainee has the right to attend all open portions of the CSRT proceedings, the opportunity to call witnesses on his behalf, the right to cross-examine witnesses called by the tribunal, and the right to testify on his own behalf.[[15]](http://www.heritage.org/research/reports/2007/07/dispelling-misconceptions-guantanamo-bay-detainee-procedures-exceed-the-requirements-of-the-us-constitution-us-law-and-customary-international-law#_ftn15) These procedures go far beyond what most nations provide and what the Geneva Conventions require. Because unlawful enemy combatants violate the laws of war by employing deception to hide or confuse their identities and affiliations, the CSRT hearings were designed not just to meet but to exceed the due process protections provided by hearings conducted pursuant to Army Regulation 190-8. Specifically, Guantanamo Bay detainees are given the following rights as part of their CSRT hearings: A military officer is appointed to serve as the detainee's personal representative and explains the CSRT process to the detainee, assists in the collection of relevant information, and helps prepare for the hearing. In advance of the hearing, the detainee is given a summary of the evidence supporting his designation as an enemy combatant. A member of the tribunal is required to search government files for any evidence suggesting the detainee is not an enemy combatant. The decision of every CSRT hearing is automatically reviewed by a higher authority in the Department of Defense who is empowered to order further proceedings.[[16]](http://www.heritage.org/research/reports/2007/07/dispelling-misconceptions-guantanamo-bay-detainee-procedures-exceed-the-requirements-of-the-us-constitution-us-law-and-customary-international-law#_ftn16) There would be little or no doubt whether detainees are members of the Taliban or al-Qaeda if such forces simply followed the Geneva Conventions and wore uniforms, displayed insignias, and carried their arms openly. The resulting irony is that unlawful enemy combatants detained at Guantanamo Bay have been given heightened due process despite, and as a direct result of, their repudiation of the laws of war.

#### Torture is moral

Harris, 05

(Sam, PhD in neuroscience from UCLA and Co-Founder and Chairman of Project Reason, "In Defense of Torture", Oct 17, [www.huffingtonpost.com/sam-harris/in-defense-of-torture\_b\_8993.html](http://www.huffingtonpost.com/sam-harris/in-defense-of-torture_b_8993.html) NL)

Imagine that a known terrorist has planted a bomb in the heart of a nearby city. He now sits in your custody. Rather than conceal his guilt, he gloats about the forthcoming explosion and the magnitude of human suffering it will cause. Given this state of affairs--in particular, given that there is still time to prevent an imminent atrocity--it seems that subjecting this unpleasant fellow to torture may be justifiable. For those who make it their business to debate the ethics of torture this is known as the "ticking-bomb" case. While the most realistic version of the ticking bomb case may not persuade everyone that torture is ethically acceptable, adding further embellishments seems to awaken the Grand Inquisitor in most of us. If a conventional explosion doesn't move you, consider a nuclear bomb hidden in midtown Manhattan. If bombs seem too impersonal an evil, picture your seven-year-old daughter being slowly asphyxiated in a warehouse just five minutes away, while the man in your custody holds the keys to her release. If your daughter won't tip the scales, then add the daughters of every couple for a thousand miles--millions of little girls have, by some perverse negligence on the part of our government, come under the control of an evil genius who now sits before you in shackles. Clearly, the consequences of one person's uncooperativeness can be made so grave, and his malevolence and culpability so transparent, as to stir even a self-hating moral relativist from his dogmatic slumbers. I am one of the few people I know of who has argued in print that torture may be an ethical necessity in our war on terror. In the aftermath of Abu Ghraib, this is not a comfortable position to have publicly adopted. There is no question that Abu Ghraib was a travesty, and there is no question that it has done our country lasting harm. Indeed, the Abu Ghraib scandal may be one of the costliest foreign policy blunders to occur in the last century, given the degree to which it simultaneously inflamed the Muslim world and eroded the sympathies of our democratic allies. While we hold the moral high ground in our war on terror, we appear to hold it less and less. Our casual abuse of ordinary prisoners is largely responsible for this. Documented abuses at Abu Ghraib, Guantanamo Bay, and elsewhere have now inspired legislation prohibiting "cruel, inhuman or degrading" treatment of military prisoners. And yet, these developments do not shed much light on the ethics of torturing people like Osama bin Laden when we get them in custody.

### Solvency

#### First, Limiting presidential war power can’t solve indefinite detention—policies aren’t the executive’s fault

Hodgkinson ‘12

[Sandra L. Hodgkinson, former Chief of Staff for Deputy Secretary of Defense William J. Lynn, III and Deputy Assistant Secretary of Defense for Detainee Affairs and Distinguished Visiting Research Fellow at National Defense University, “Executive Power in a War Without End: Goldsmith, the Erosion of Executive Authority on Detention, and the End of the War on Terror,” CASE WESTERN RESERVE JOURNAL OF INTERNATIONAL LAW VOL. 45, Fall 2012, <[http://law.case.edu/journals/JIL/Documents/45CaseWResJIntlL1&2.pdf>//](http://law.case.edu/journals/JIL/Documents/45CaseWResJIntlL1%262.pdf%3E//) wyo-ch]

The National Security Staff (NSS) decision-making process on the detention issue, through its desire for consensus decisions, also contributed to a weakening of executive authority on detention issues during this critical period. The National Security Act of 1947 was the original impetus for today’s NSS and NSS decision-making process, which is an interagency coordination process.27 During both the Bush and Obama Administrations, this interagency coordination process was used to tackle the detainee issue.28 The National Security Act was originally designed to improve coordination among the various military services and the other arms of national security, such as the intelligence community,29 and continues to perform this function today, although it has broadened its scope to a relatively wide array of subjects. Today’s NSS decisionmaking process is comprised of three levels of authority.30 The first level of the process was known in the Bush Administration as the Policy Coordinating Committee (PCC)31 and now in the Obama Administration as the Interagency Policy Committee (IPC).32 During the Bush Administration, this interagency coordination process was increasingly used to address challenges of the detainee issue starting in 2004 and remained focused on this issue throughout the remainder of President Bush’s term and the Obama Administration. For each meeting, a select group of representatives from the National Security Council staff, the Defense, State, Justice, and Homeland Security Departments, and the intelligence community would meet regularly at the Assistant Secretary or Deputy Assistant Secretary level at the White House to address the detainee issue. The PCC and IPC participants would serve up key issues for resolution or approval at the second level, the Deputies Committee (DC),33 which was a group of delegated Deputy or Under Secretaries of the various departments, or their designees (often department General Counsels). The DC would consider the recommendations made by the PCC or IPC but struggled to reach consensus on any particular course of action. When this happened, there were three options: (1) the Deputy National Security Advisor could adjudicate or referee among the agencies to work out differences; (2) the DC could send the PCC or IPC back to “work the issue further” or develop new recommendations; or, (3) if the DC was satisfied that sufficient work had been done and the issue was ready, it would send it up to the third and final level, the Principals Committee (PC).34 Decisions could be taken at the PC or DC level based on consensus or if the nation+al security advisor or deputy national security advisor made the decision. Ultimately, there was recourse to the National Security Council, if needed, comprised of the president and his cabinet.35 Detainee issues made their way up and down the full range of meetings, but due to the contentious nature of the issue, rarely resulted in consensus decisions. The NSS decision-making process aims to achieve better “coordination” of interagency policy issues.36 As a result, the National Security Advisor and Deputy National Security Advisors did not generally act decisively for fear of shutting down the views of a major department or entity in the national security arena. The President or the full National Security Council would be necessary to make major changes.37 The purpose of this section is not to provide a bogged down analysis of the staff and decision-making process working on national security issues, but to take the position that the detainee issue was one which was not easily served by the existing process: it often got caught in a giant loop. The PCC/IPC would typically generate work for the DC, which would fail to reach consensus on the recommendations and send it back again for a do over or modification. If the DC did forward an issue to the PC, it was often with a split recommendation involving key agencies on opposite sides of the recommendation. Favoring consensus over hard choices, the PC and DC generally continued to send work back down the PCC/IPC level, often failing to make the hard decisions needed to break the logjam on Guantanamo Bay or other detainee issues. As a result, the courts, Congress, and other external actors had more time and space to weigh into, and wade into, the detainee issue in the way Professor Goldsmith depicts. As a strong believer of the need for a strong interagency coordination mechanism, this is not meant to be a criticism of the U.S. government. In fairness, a great deal of credit should be given to both administrations for assembling such high-level teams to examine an issue as small as the detainee issue, particularly given that few people in the government were raising their hands enthusiastically to take the issue on. Furthermore, any decisive course of action was truly difficult, with staunchly opposing teams on either side of the following types of issues: (1) whether to close Guantanamo Bay or affirmatively stand behind its existence;(2) whether to shutter or overhaul military commissions; (3) whether to transfer back mediumand high-threat individuals into uncertain security environments or leave them in detention; and (4) whether to scrap military detention altogether and rely solely on Article III courts.38 Without extremely decisive leadership at the top ruling in favor of one side or against another, the NSS decision-making process was unable to address these contentious issues early on and then back action with solid messaging and commitment to the policies adopted. Instead, a continued evaluation and re-evaluation of the same issues in both administrations resulted in a weaker executive as the Supreme Court and Congress whittled away executive authority by acting in areas where the president could have acted by exercising his national security authorities. One could argue that the Bush Administration did act decisively by establishing a detention facility at Guantanamo Bay (rather than keeping the detainees closer to the battlefield in Afghanistan) and in deciding that Article 5 tribunals would not be used for members of alQaeda or the Taliban—two rapid decisions that were challenged directly for years to come. Perhaps this had a chilling effect on the desire of the Bush Administration to remain decisive on detainee issues in following years. It became easy to predict the public reaction to the status quo. It is likewise possible that the Obama Administration was able to blame the former administration for the ills of Guantanamo long enough that the impetus to act decisively was less critical. Unfortunately, that time the administration lost ended up costing the president the ability to close Guantanamo Bay during the only window of time possible—the first four months of his administration, before the political opposition began to build. Whatever the reasons on either side, the NSS decision-making processes as they existed were not nimble enough to force decisive or bold changes. And while extremely hardworking staff-level and senior leadership wrestled with these very difficult issues week after week, often making slow but steady improvements to the overall process, the bleeding on Guantanamo Bay continued from outside, from abroad, and from the other branches of government. The net result was a series of national security laws and policies that did not all originate with the executive and had the practical effect of eroding executive authority.

Congress also had a big impact in narrowing and constraining the president in the Military Commissions Act of 2006

#### Second, Limiting presidential war power does not solve—restrictions prevent change and make all your impacts inevitable.

Goldsmith ‘12

[Jack Goldsmith, Henry L. Shattuck Professor at Harvard Law School, “Power and Constraint: National Security Law After the 2012 Election,” CASE WESTERN RESERVE JOURNAL OF INTERNATIONAL LAW VOL. 45, Fall 2012, http://law.case.edu/journals/JIL/Documents/ 45CaseWResJIntlL1&2.pdf // wyo-ch]

Fifth, and finally, I come to the largest and most important force that led to continuity—constitutional checks and balances. A central theme of my book, Power and Constraint, is that the main reason Obama continued the trends and policies of the Bush Administration was that the Bush policies as they stood in January 2009 had been dramatically changed over the previous five years. The Bush policies had changed in just about every area of counterterrorism policy, including military commissions, military detentions, surveillance, black sites, interrogation, habeas corpus, and the like. In all of these areas, Bush’s powers narrowed, in some contexts significantly. Why did this happen? Because, contrary to conventional wisdom, our constitutional checks and balances had worked remarkably well. The courts engaged the president during wartime like never before and issued decisions that narrowed presidential power in unprecedented ways. This was true in the Hamdi case in 2004, which recognized due process rights for enemy soldiers for the first time.8 It was true in the Hamdan case in 2006, which not only struck down the president’s military commissions, but also recognized, without giving any deference to the president’s contrary interpretive view, that Common Article 3 of the Geneva Convention governed in the war with al-Qaeda.9 That rule had profound implications inside the executive branch.10 And finally in 2008 in Boumediene, the Court held that the writ of habeas corpus as a matter of constitutional law extended to Guantanamo and that the detainees at Guantanamo had a right to pursue habeas corpus release in courts in the United States.11 All those rulings had the effect, in combination with other factors, of changing Bush’s policies, of moderating Bush’s policies, in many respects, of narrowing presidential power. They also had the effect (in combination with other acts, discussed below), of enhancing the legitimacy of these presidential practices. In addition to courts, and again contrary to popular opinion, Congress was deeply involved in pushing back against the presidency. This happened most significantly in 2005 when it enacted the Detainee Treatment Act, which closed a loophole in interrogation law. 12 Despite the famous Bush signing statement, the Detainee Treatment Act stopped the CIA’s interrogation program in its tracks. 13 Congress also had a big impact in narrowing and constraining the president in the Military Commissions Act of 2006. 14 Congress, in 2008, did give President Bush, at his lowest point of his presidency, large surveillance powers in the FISA Amendments Act. 15 But they did so with an unprecedented array of internal checks and balances that, in my opinion, significantly improved the legitimacy and the efficacy of surveillance in the United States. These changes by the Court and Congress were supported by and in some senses made possible by other powerful forces at work. The press was much more aggressive in reporting government national secrets than ever before.16 Many of the published reports about secret national security activities inside the Bush Administration led to reforms in Congress and the Supreme Court.17 In addition, nongovernmental organizations were very powerful, both in litigating claims that led to some of these landmark decisions, and in criticizing the Administration, extracting information, and leading campaigns.18 The forces that pushed back against Bush also pushed back against Obama, though from the other direction. When Obama tried to close GTMO and to conduct criminal trials of GTMO detainees, Congress pushed back hard through legislation and effectively stopped the president from doing so.19 So the supposedly feckless Congress that moved Bush to the center from where he was on interrogation, black sites, and military commissions also forced Obama toward the center when he tried to change national security policy in a way that Congress did not approve. These are the larger forces that explain continuity between the Bush and Obama eras, and that I think will lead to continuity no matter who is elected president in 2012. The fact is that most big issues of national security law and policy today are settled and legitimated by our constitutional system. There is a remarkable consensus in the country today about the scope of counterterrorism policies—a consensus reflected in Congress, in the courts, and in a White House occupied by the first two post-9/11 presidents. Regardless of who is president, this consensus won’t change much unless there is some large external shock to the system like another attack or some other dramatic external event.

#### HUMAN RIGHTS DISCOURSE LEADS TO THE VICTIMIZATION OF THOSE OPPRESSED, WE SHOULD FOCUS ON EMPOWERING THEM AND CHALLENGING THE STATE

Zevnik 11

[Andreja Zevnik, Department of International Politics, “Becoming-Animal, Becoming-Detainee: Encountering Human Rights Discourse in Guantanamo”, 25 March 2011, Springer, \\wyo-bb]

One of the ideas of how to think a human rights discourse in the scope of these¶ three challenges and of the becoming itself is through Alain Badiou’s philosophy.¶ Badiou prefers the idea of ethics—as a process—to the static human rights¶ discourse. Here, I will briefly engage with his argument. Badiou refuses to link¶ ethics to abstract categories such as Man or Human, Rights or Law, or the Other,¶ and instead he argues that ethics ‘should be referred back to particular situations.¶ Rather than reduce it to an aspect of pity for victims, it should become the enduring¶ maxim of singular processes’ (Badiou 2002, p. 3). This statement, because of its¶ focus on a singular situation, captures the gist of our earlier discussion on becoming¶ as a new subject of human rights. For Badiou, the subject is no longer seen as a¶ victim; rather, it is created and re-created in every situation. There are no two¶ situations or moments in which the subject of human rights would be the same, or¶ for which one could in advance determine the limits of its subjectivity. This¶ situational determination of who/what the subject of law is goes against existing¶ human rights discourse, which bases its claims on a notion of universal human¶ subject capable of reducing ethical issues to matters of universal human rights and¶ humanitarianism. Such an understanding of ethics and the subject implies the¶ subject’s identification with an external universalising principle or category, which¶ conceals a necessary capability to recognise evil and what ‘ethical actions’ one¶ should take to address evil (ibid. p. 10). In this understanding, the human rights¶ discourse has a pre-existing conception of what constitutes a breach of human¶ rights, and what mechanisms there are to address those breaches. Human rights, as¶ Badiou writes, are rights ‘to non-Evil: rights not to be offended or mistreated with¶ respect to one’s life (the horrors of murder and execution), one’s body (the horrors¶ of torture, cruelty and famine), or one’s cultural identity (the horrors of the¶ humiliation of women, of minorities, etc.)’ (ibid. p. 9). Ultimately, human rights¶ discourse, or the entire discourse of rights, then sees a man as a victim; or teaches a¶ man to recognise himself as a victim (ibid. p. 10). Such were the struggles in¶ Guantanamo, where the detainees recognised the gravity of their situations by¶ comparing themselves to what was around them, and such were the situations in¶ which lawyers aimed to bring the detainees into the existing legal discourse, rather¶ than finding an alternative way of managing and fighting for the improvement of¶ their situation.¶ In such a discourse of victimisation, three important aspects of (human) rights are¶ embedded. Firstly, the question of life, where the discourse of human rights is¶ created to save life as such and preserve it in its ‘bare’ form; secondly, the¶ distinction between ‘civilised’ and ‘barbarian’; and thirdly, the question of¶ universality and singularity, where universality prevails and enables singularity—¶ the faithfulness to the event as a practice that pushes the rights to its limits—to come¶ to life fully as an alternative (ibid. pp. 13–15). With such an understanding, one can¶ conclude that most of the problems human rights face today have to do with the¶ discourse of human rights, rather than the rights themselves. The discourse that¶ facilitates the broadly-accepted understanding of rights and breathes life into a¶ subject of rights has an inherent flaw—it in itself creates the possibility of saving¶ only life as such, without any other qualities, and preserving it in such ‘bare’¶ condition.

#### SECOND, MUTUALLY EXCLUSIVE- THE BALLOT MUST BE SEEN AS AN ADVOCACY FOR A POLITICAL STRATEGY- FOR OR AGAINST THE STATE

Agamben, 2000 (Giorgio, philosopher and bad ass, “Means Without End: Notes on Politics.” University of Minnesota Press, 2000. MB)

What does the scenario that world politics is setting up before us look like under the twilight of the Commentaries? The state of the integrated spectacle (or, spectacular-democratic state) is the final stage in the evolution of the state-form—the ruinous stage toward which monar¬chies and republics, tyrannies and democracies, racist regimes and progressive regimes are all rushing. Al-though it seems to bring national identities back to life, this global movement actually embodies a tendency toward the constitution of a kind of supranational police state, in which the norms of international law are tacitly abrogated one after the other. Not only has no war offi¬cially been declared in many years (confirming Carl Schmitt's prophecy, according to which every war in our time has become a civil war), but even the outright invasion of a sovereign state can now be presented as an act of internal jurisdiction. Under these circumstances, the secret services—which had always been used to act ignoring the boundaries of national sovereignties — become the model itself of real political organization and of real political action. For the first time in the history of our century, the two most important world powers are headed by two direct emanations of the secret services: Bush (former CIA head) and Gorbachev (Andropov's man); and the more they concentrate all the power in their own hands, the more all of this is hailed, in the new course of the spectacle, as a triumph of democracy. All appearances notwithstanding, the spectacular-dem¬ocratic world organization that is thus emerging actually runs the risk of being the worst tyranny that ever materialized in the history of humanity, against which resistance and dissent will be practically more and more difficult—and all the more so in that it is increasingly clear that such an organization will have the task of man¬aging the survival of humanity in an uninhabitable world. One cannot be sure, however, that the spectacle's at¬tempt to maintain control over the process it contributed to putting in motion in the first place will actually suc¬ceed. The state of the spectacle, after all, is still a state that bases itself (as Badiou has shown every state to base itself) not on social bonds, of which it purportedly is the expression, but rather on their dissolution, which it forbids. In the final analysis, the state can recognize any claim for identity—even that of a state identity within itself (and in our time, the history of the relations be¬tween the state and terrorism is an eloquent confirma¬tion of this fact). But what the state cannot tolerate in any way is that singularities form a community without claiming an identity, that human beings co-belong with¬out a representable condition of belonging (being Italian, working-class, Catholic, terrorist, etc.). And yet, the state of the spectacle — inasmuch as it empties and nullifies every real identity' and substitutes the public and public opinion for the people and the general will—is precisely what produces massively from within itself singularities that are no longer characterized either by any social identity or by any real condition of belonging: singularities that are truly whatever singularities. It is clear that the society of the spectacle is also one in which all social identities have dissolved and in which everything that for centuries represented the splendor and misery of the generations succeeding themselves on Earth has by now lost all its significance. The different identities that have marked the tragicomedy of universal history are exposed and gathered with a phantasmagorical vacuity in the global petite bourgeoisie — a petite bourgeoisie that constitutes the form in which the spectacle has realized parodistically the Marxian project of a classless society. For this reason — to risk advancing a prophecy here — the coming politics will no longer be a struggle to conquer or to control the state on the part of either new or old social subjects, but rather a struggle between the state and the nonstate (humanity), that is, an irresolvable disjunction between whatever singularities and the state organization. This has nothing to do with the mere demands of society against the state, which was for a long time the shared concern of the protest movements of our age. Whatever singularities cannot form a societies within a society of the spectacle because they do not possess any identity to vindicate or any social bond whereby to seek recognition. The struggle against the state, therefore, is all the more implacable, because this is a state that nullifies all real contents but that—all empty declarations about the sacredness of life and about human rights aside—would also declare any being radically lacking a representable identity to be simply nonexistent. This is the lesson that could have been learned from Tiananmen, if real attention had been paid to the facts of that event. What was most striking about the demonstrations of the Chinese May in fact, was the relative absence of specific contents in their demands. (The notions of democracy and freedom are too generic to constitute a real goal of struggle, and the only concrete demand, the rehabilitation of Hu Yaobang, was promptly granted.) It is for this reason that the violence of the state's reaction seems all the more inexplicable. It is likely, however, that this disproportion was only apparent and that the Chinese leaders acted, from their point of view, with perfect lucidity. In Tiananmen the state found itself facing something that could not and did not want to be represented, but that presented itself nonetheless as a community and as a common life (and this regardless of whether those who were in that square were actually aware of it). The threat the state is not willing to come to terms with is precisely the fact that the unrepresentable should exist and form a community without either presuppositions or conditions of belonging (just like Cantor's inconsistent multiplicity). The whatever singularity — this singularity that wants to take possession of belonging itself as well as of its own being-into-language, and that thus declines any identity and any condition of belonging—is the new, nonsubjective, and socially inconsistent protagonist of the com¬ing politics. Wherever these singularities peacefully manifest their being-in-common, there will be another Tiananmen and, sooner or later, the tanks will appear again.

#### Second, Limiting presidential war power does not solve—restrictions prevent change and make all your impacts inevitable.

Goldsmith ‘12

[Jack Goldsmith, Henry L. Shattuck Professor at Harvard Law School, “Power and Constraint: National Security Law After the 2012 Election,” CASE WESTERN RESERVE JOURNAL OF INTERNATIONAL LAW VOL. 45, Fall 2012, http://law.case.edu/journals/JIL/Documents/ 45CaseWResJIntlL1&2.pdf // wyo-ch]

Fifth, and finally, I come to the largest and most important force that led to continuity—constitutional checks and balances. A central theme of my book, Power and Constraint, is that the main reason Obama continued the trends and policies of the Bush Administration was that the Bush policies as they stood in January 2009 had been dramatically changed over the previous five years. The Bush policies had changed in just about every area of counterterrorism policy, including military commissions, military detentions, surveillance, black sites, interrogation, habeas corpus, and the like. In all of these areas, Bush’s powers narrowed, in some contexts significantly. Why did this happen? Because, contrary to conventional wisdom, our constitutional checks and balances had worked remarkably well. The courts engaged the president during wartime like never before and issued decisions that narrowed presidential power in unprecedented ways. This was true in the Hamdi case in 2004, which recognized due process rights for enemy soldiers for the first time.8 It was true in the Hamdan case in 2006, which not only struck down the president’s military commissions, but also recognized, without giving any deference to the president’s contrary interpretive view, that Common Article 3 of the Geneva Convention governed in the war with al-Qaeda.9 That rule had profound implications inside the executive branch.10 And finally in 2008 in Boumediene, the Court held that the writ of habeas corpus as a matter of constitutional law extended to Guantanamo and that the detainees at Guantanamo had a right to pursue habeas corpus release in courts in the United States.11 All those rulings had the effect, in combination with other factors, of changing Bush’s policies, of moderating Bush’s policies, in many respects, of narrowing presidential power. They also had the effect (in combination with other acts, discussed below), of enhancing the legitimacy of these presidential practices. In addition to courts, and again contrary to popular opinion, Congress was deeply involved in pushing back against the presidency. This happened most significantly in 2005 when it enacted the Detainee Treatment Act, which closed a loophole in interrogation law. 12 Despite the famous Bush signing statement, the Detainee Treatment Act stopped the CIA’s interrogation program in its tracks. 13 Congress also had a big impact in narrowing and constraining the president in the Military Commissions Act of 2006. 14 Congress, in 2008, did give President Bush, at his lowest point of his presidency, large surveillance powers in the FISA Amendments Act. 15 But they did so with an unprecedented array of internal checks and balances that, in my opinion, significantly improved the legitimacy and the efficacy of surveillance in the United States. These changes by the Court and Congress were supported by and in some senses made possible by other powerful forces at work. The press was much more aggressive in reporting government national secrets than ever before.16 Many of the published reports about secret national security activities inside the Bush Administration led to reforms in Congress and the Supreme Court.17 In addition, nongovernmental organizations were very powerful, both in litigating claims that led to some of these landmark decisions, and in criticizing the Administration, extracting information, and leading campaigns.18 The forces that pushed back against Bush also pushed back against Obama, though from the other direction. When Obama tried to close GTMO and to conduct criminal trials of GTMO detainees, Congress pushed back hard through legislation and effectively stopped the president from doing so.19 So the supposedly feckless Congress that moved Bush to the center from where he was on interrogation, black sites, and military commissions also forced Obama toward the center when he tried to change national security policy in a way that Congress did not approve. These are the larger forces that explain continuity between the Bush and Obama eras, and that I think will lead to continuity no matter who is elected president in 2012. The fact is that most big issues of national security law and policy today are settled and legitimated by our constitutional system. There is a remarkable consensus in the country today about the scope of counterterrorism policies—a consensus reflected in Congress, in the courts, and in a White House occupied by the first two post-9/11 presidents. Regardless of who is president, this consensus won’t change much unless there is some large external shock to the system like another attack or some other dramatic external event.

#### Congress has more authority over detainees than the executive- the NDAA proves, limiting presidential power will not end indefinite detention

Gosztola ‘13

[Kevin, OpEdNews, Open Salon, and documentary filmmaker currently completing a Film/Video degree at Columbia College in Chicago, “Closing Guantanamo Prison More Difficult After Obama Signs NDAA” 01.03.2013. <<http://dissenter.firedoglake.com/2013/01/03/closing-guantanamo-prison-more-difficult-after-obama-signs-ndaa/>>//wyo-hdm]

President Barack Obama signed the intelligence authorization bill—the National Defense Authorization Act (NDAA). Included in the bill were restrictions that would make it harder for his administration to transfer detainees from Guantanamo Bay prison and the Bagram prison in Afghanistan. Human rights groups, which had opposed the restrictions and urged the president to veto the bill, condemned his signing of the bill. Anthony Romero, executive director of the American Civil Liberties Union, reacted saying Obama had “jeopardized his ability to close Guantanamo during his presidency.” “Scores of men who have already been held for nearly 11 years without being charged with a crime–including more than 80 who have been cleared for transfer–may very well be imprisoned unfairly for yet another year,” Romero added. “The president should use whatever discretion he has in the law to order many of the detainees transferred home, and finally step up next year to close Guantanamo and bring a definite end to indefinite detention.” “The administration blames Congress for making it harder to close Guantanamo, yet for a second year President Obama has signed damaging congressional restrictions into law,” said Andrea Prasow, senior counterterrorism counsel and advocate at Human Rights Watch. “The burden is on Obama to show he is serious about closing the prison.” The Center for Constitutional Rights (CCR) stated: For the second year in a row, President Obama has caved on his threat to veto this dangerous legislation, which severely restricts his ability to transfer or provide fair trials for the 166 men who remain imprisoned at Guantanamo. The 2013 NDAA extends restrictions that have been in place for nearly two years, during which zero prisoners have been certified for transfer oversees and zero have been transferred to the U.S. for prosecution. Once again, Obama has failed to lead on Guantanamo and surrendered closure issues to his political opponents in Congress. In one fell swoop, he has belied his recent lip-service about a continued commitment to closing Guantanamo. Similar to the previous NDAA, where he issued a signing statement expressing his administration’s thoughts on how his administration would or would not use military indefinite detention powers in the bill, Obama issued a statement asserting that multiple sections of the legislation may violate “constitutional separation of powers principles.” One section bars the administration from using “appropriated funds for fiscal year 2012 to transfer Guantanamo detainees into the United States for any purpose.” He indicated his administration opposed this because it “substitutes the Congress’s blanket political determination for careful and fact-based determinations, made by counterterrorism and law enforcement professionals, of when and where to prosecute Guantanamo detainees.” …For decades, Republican and Democratic administrations have successfully prosecuted hundreds of terrorists in Federal court. Those prosecutions are a legitimate, effective, and powerful tool in our efforts to protect the Nation, and in certain cases may be the only legally available process for trying detainees… With regards to a section that restricts the administration’s ability to transfer detainees to a foreign country, he stated Congress designed the sections renewed them once more to “foreclose” his ability to “shut down the Guantanamo Bay detention facility.” He added, “Operating the facility weakens our national security by wasting resources, damaging our relationships with key allies, and strengthening our enemies.” Congress also limited the military’s authority to “transfer third country nationals” currently detained at Bagram. Obama stated, “Decisions regarding the disposition of detainees captured on foreign battlefields have traditionally been based upon the judgment of experienced military commanders and national security professionals without unwarranted interference by members of Congress.” This section, he argued, could restrict his ability to make “time-sensitive determinations” about whether a detainee needs to be held or released. While it restricted the power of the Executive Branch to make decisions with regards to detainees, it included no provision that would have removed the power of the military to indefinitely detain individuals, including US citizens, who are suspected of providing “substantial support” for terrorism. \* In this instance, the legislation passed with the intention of keeping detainees, many whom are being held indefinitely without charge, imprisoned. There are at least 166 men in Guantanamo who deserve to be tried in federal court or released, but Republicans and Democrats in Congress maintain the administration should keep them in detention, not transfer them to any facilities in the United States and put them through a military commissions system that is making up law and procedures as it goes along and is a second-class legal system for trying detainees. Moreover, it could be decades before all the men are released if they all have to go through the military commissions system; it only seems capable of handling, at most, the cases of four or five men a year. Eighty-six men are cleared for release. The names of fifty-five of those detainees are publicly known, as they were disclosed by the Justice Department in September 2012. There were multiple actions the Obama administration could have taken to close Guantanamo that now become unlikely because Obama signed the NDAA. However, he signed a bill that—as human rights groups have pointed out—forces the continued imprisonment of individuals who the government has determined do not deserve to remain imprisoned. This should be seen as an act that clearly undermines the rule of law. Not wanting to use up political capital to free these men and close the ongoing abomination that is the Guantanamo Bay prison, Obama chose to bow to the politics of fear driving the restrictions in the NDAA. The president again chose the path of least resistance. He opted to move forward and not look back and because of that innocent men, most imprisoned by his predecessor, will continue to languish in jail indefinitely. Without challenging opposition in Congress meaningfully, his promise to close Guantanamo while he is president is not likely to be fulfilled.

#### NDAA gives congress the power to indefinitely detain al-Qaeda or associated forces- limiting executive powers won’t solve case

Greenwald ‘11

[Glenn, The Salon News, “Three myths about the detention bill,” 12.16.2011. <<http://www.salon.com/2011/12/16/three_myths_about_the_detention_bill/>>//wyo-hdm]

Section 1021 of the NDAA governs, as its title says, “Authority of the Armed Forces to Detain Covered Persons Pursuant to the AUMF.” The first provision — section (a) — explicitly “affirms that the authority of the President” under the AUMF ”includes the authority for theArmed Forces of the United States to detain covered persons.” The next section, (b), defines “covered persons” — i.e., those who can be detained by the U.S. military — as “a person who was a part of or substantially supported al-Qaeda, the Taliban, or associated forces that are engaged in hostilities against the United States or its coalition partners.” With regard to those “covered individuals,” this is the power vested in the President by the next section, (c). But this is the first time this power of indefinite detention is being expressly codified by statute (there’s not a word about detention powers in the 2001 AUMF). Indeed, as the ACLU and HRW both pointed out, it’s the first time such powers are being codified in a statute since the McCarthy era Internal Security Act of 1950, about which I [wrote yesterday](http://www.salon.com/2011/12/15/obama_to_sign_indefinite_detention_bill_into_law/singleton/)

#### HUMAN RIGHTS DISCOURSE LEADS TO THE VICTIMIZATION OF THOSE OPPRESSED, WE SHOULD FOCUS ON EMPOWERING THEM AND CHALLENGING THE STATE

Zevnik 11

[Andreja Zevnik, Department of International Politics, “Becoming-Animal, Becoming-Detainee: Encountering Human Rights Discourse in Guantanamo”, 25 March 2011, Springer, \\wyo-bb]

One of the ideas of how to think a human rights discourse in the scope of these¶ three challenges and of the becoming itself is through Alain Badiou’s philosophy.¶ Badiou prefers the idea of ethics—as a process—to the static human rights¶ discourse. Here, I will briefly engage with his argument. Badiou refuses to link¶ ethics to abstract categories such as Man or Human, Rights or Law, or the Other,¶ and instead he argues that ethics ‘should be referred back to particular situations.¶ Rather than reduce it to an aspect of pity for victims, it should become the enduring¶ maxim of singular processes’ (Badiou 2002, p. 3). This statement, because of its¶ focus on a singular situation, captures the gist of our earlier discussion on becoming¶ as a new subject of human rights. For Badiou, the subject is no longer seen as a¶ victim; rather, it is created and re-created in every situation. There are no two¶ situations or moments in which the subject of human rights would be the same, or¶ for which one could in advance determine the limits of its subjectivity. This¶ situational determination of who/what the subject of law is goes against existing¶ human rights discourse, which bases its claims on a notion of universal human¶ subject capable of reducing ethical issues to matters of universal human rights and¶ humanitarianism. Such an understanding of ethics and the subject implies the¶ subject’s identification with an external universalising principle or category, which¶ conceals a necessary capability to recognise evil and what ‘ethical actions’ one¶ should take to address evil (ibid. p. 10). In this understanding, the human rights¶ discourse has a pre-existing conception of what constitutes a breach of human¶ rights, and what mechanisms there are to address those breaches. Human rights, as¶ Badiou writes, are rights ‘to non-Evil: rights not to be offended or mistreated with¶ respect to one’s life (the horrors of murder and execution), one’s body (the horrors¶ of torture, cruelty and famine), or one’s cultural identity (the horrors of the¶ humiliation of women, of minorities, etc.)’ (ibid. p. 9). Ultimately, human rights¶ discourse, or the entire discourse of rights, then sees a man as a victim; or teaches a¶ man to recognise himself as a victim (ibid. p. 10). Such were the struggles in¶ Guantanamo, where the detainees recognised the gravity of their situations by¶ comparing themselves to what was around them, and such were the situations in¶ which lawyers aimed to bring the detainees into the existing legal discourse, rather¶ than finding an alternative way of managing and fighting for the improvement of¶ their situation.¶ In such a discourse of victimisation, three important aspects of (human) rights are¶ embedded. Firstly, the question of life, where the discourse of human rights is¶ created to save life as such and preserve it in its ‘bare’ form; secondly, the¶ distinction between ‘civilised’ and ‘barbarian’; and thirdly, the question of¶ universality and singularity, where universality prevails and enables singularity—¶ the faithfulness to the event as a practice that pushes the rights to its limits—to come¶ to life fully as an alternative (ibid. pp. 13–15). With such an understanding, one can¶ conclude that most of the problems human rights face today have to do with the¶ discourse of human rights, rather than the rights themselves. The discourse that¶ facilitates the broadly-accepted understanding of rights and breathes life into a¶ subject of rights has an inherent flaw—it in itself creates the possibility of saving¶ only life as such, without any other qualities, and preserving it in such ‘bare’¶ condition.

### 2NC Perm

#### GROUP THE PERMUTATIONS-

#### FIRST, THE PERM LINKS BECAUSE:

#### REFORMISM FAILS- BY REFORMING THE STATE IT ONLY NORMALIZES STATE VIOLENCE AND LEAVES THE STRUCTURAL KNOWLEDGE THAT BROUGHT THOSE LAWS TO BE INTACT- NEOCLEOUS 06

#### HUMAN RIGHTS DISCOURSE VALIDATES THE STATE- BY ACKNOWLEDGING THAT WE MUST NEGOTIATE OUR OWN SUBJECTIVITY FROM THE STATE IT VALIDATES THAT THE STATE HAS THE POWER TO TAKE AWAY OUR SUBJECTIVITY- THAT’S ZEVNIK 11

#### ENABLES MANAGEMENT OF LIFE- IT COOPS THE ALTERNATIVE BY PLACING AN IDENTITY FROM THE STATE ENABLING THE STATE TO MANAGE THE RESISTANCE- NEOCLEOUS 03

#### SECOND, MUTUALLY EXCLUSIVE- THE BALLOT MUST BE SEEN AS AN ADVOCACY FOR A POLITICAL STRATEGY- FOR OR AGAINST THE STATE

Agamben, 2000 (Giorgio, philosopher and bad ass, “Means Without End: Notes on Politics.” University of Minnesota Press, 2000. MB)

What does the scenario that world politics is setting up before us look like under the twilight of the Commentaries? The state of the integrated spectacle (or, spectacular-democratic state) is the final stage in the evolution of the state-form—the ruinous stage toward which monar¬chies and republics, tyrannies and democracies, racist regimes and progressive regimes are all rushing. Al-though it seems to bring national identities back to life, this global movement actually embodies a tendency toward the constitution of a kind of supranational police state, in which the norms of international law are tacitly abrogated one after the other. Not only has no war offi¬cially been declared in many years (confirming Carl Schmitt's prophecy, according to which every war in our time has become a civil war), but even the outright invasion of a sovereign state can now be presented as an act of internal jurisdiction. Under these circumstances, the secret services—which had always been used to act ignoring the boundaries of national sovereignties — become the model itself of real political organization and of real political action. For the first time in the history of our century, the two most important world powers are headed by two direct emanations of the secret services: Bush (former CIA head) and Gorbachev (Andropov's man); and the more they concentrate all the power in their own hands, the more all of this is hailed, in the new course of the spectacle, as a triumph of democracy. All appearances notwithstanding, the spectacular-dem¬ocratic world organization that is thus emerging actually runs the risk of being the worst tyranny that ever materialized in the history of humanity, against which resistance and dissent will be practically more and more difficult—and all the more so in that it is increasingly clear that such an organization will have the task of man¬aging the survival of humanity in an uninhabitable world. One cannot be sure, however, that the spectacle's at¬tempt to maintain control over the process it contributed to putting in motion in the first place will actually suc¬ceed. The state of the spectacle, after all, is still a state that bases itself (as Badiou has shown every state to base itself) not on social bonds, of which it purportedly is the expression, but rather on their dissolution, which it forbids. 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### Solvency

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Goldsmith ‘12

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The 2013 NDAA extends restrictions that have been in place for nearly two years, during which zero prisoners have been certified for transfer oversees and zero have been transferred to the U.S. for prosecution. Once again, Obama has failed to lead on Guantanamo and surrendered closure issues to his political opponents in Congress. In one fell swoop, he has belied his recent lip-service about a continued commitment to closing Guantanamo. Similar to the previous NDAA, where he issued a signing statement expressing his administration’s thoughts on how his administration would or would not use military indefinite detention powers in the bill, Obama issued a statement asserting that multiple sections of the legislation may violate “constitutional separation of powers principles.” One section bars the administration from using “appropriated funds for fiscal year 2012 to transfer Guantanamo detainees into the United States for any purpose.” He indicated his administration opposed this because it “substitutes the Congress’s blanket political determination for careful and fact-based determinations, made by counterterrorism and law enforcement professionals, of when and where to prosecute Guantanamo detainees.” …For decades, Republican and Democratic administrations have successfully prosecuted hundreds of terrorists in Federal court. Those prosecutions are a legitimate, effective, and powerful tool in our efforts to protect the Nation, and in certain cases may be the only legally available process for trying detainees… With regards to a section that restricts the administration’s ability to transfer detainees to a foreign country, he stated Congress designed the sections renewed them once more to “foreclose” his ability to “shut down the Guantanamo Bay detention facility.” He added, “Operating the facility weakens our national security by wasting resources, damaging our relationships with key allies, and strengthening our enemies.” Congress also limited the military’s authority to “transfer third country nationals” currently detained at Bagram. Obama stated, “Decisions regarding the disposition of detainees captured on foreign battlefields have traditionally been based upon the judgment of experienced military commanders and national security professionals without unwarranted interference by members of Congress.” This section, he argued, could restrict his ability to make “time-sensitive determinations” about whether a detainee needs to be held or released. While it restricted the power of the Executive Branch to make decisions with regards to detainees, it included no provision that would have removed the power of the military to indefinitely detain individuals, including US citizens, who are suspected of providing “substantial support” for terrorism. \* In this instance, the legislation passed with the intention of keeping detainees, many whom are being held indefinitely without charge, imprisoned. There are at least 166 men in Guantanamo who deserve to be tried in federal court or released, but Republicans and Democrats in Congress maintain the administration should keep them in detention, not transfer them to any facilities in the United States and put them through a military commissions system that is making up law and procedures as it goes along and is a second-class legal system for trying detainees. Moreover, it could be decades before all the men are released if they all have to go through the military commissions system; it only seems capable of handling, at most, the cases of four or five men a year. Eighty-six men are cleared for release. The names of fifty-five of those detainees are publicly known, as they were disclosed by the Justice Department in September 2012. There were multiple actions the Obama administration could have taken to close Guantanamo that now become unlikely because Obama signed the NDAA. However, he signed a bill that—as human rights groups have pointed out—forces the continued imprisonment of individuals who the government has determined do not deserve to remain imprisoned. This should be seen as an act that clearly undermines the rule of law. Not wanting to use up political capital to free these men and close the ongoing abomination that is the Guantanamo Bay prison, Obama chose to bow to the politics of fear driving the restrictions in the NDAA. The president again chose the path of least resistance. He opted to move forward and not look back and because of that innocent men, most imprisoned by his predecessor, will continue to languish in jail indefinitely. Without challenging opposition in Congress meaningfully, his promise to close Guantanamo while he is president is not likely to be fulfilled.

#### NDAA gives congress the power to indefinitely detain al-Qaeda or associated forces- limiting executive powers won’t solve case

Greenwald ‘11

[Glenn, The Salon News, “Three myths about the detention bill,” 12.16.2011. <<http://www.salon.com/2011/12/16/three_myths_about_the_detention_bill/>>//wyo-hdm]

Section 1021 of the NDAA governs, as its title says, “Authority of the Armed Forces to Detain Covered Persons Pursuant to the AUMF.” The first provision — section (a) — explicitly “affirms that the authority of the President” under the AUMF ”includes the authority for theArmed Forces of the United States to detain covered persons.” The next section, (b), defines “covered persons” — i.e., those who can be detained by the U.S. military — as “a person who was a part of or substantially supported al-Qaeda, the Taliban, or associated forces that are engaged in hostilities against the United States or its coalition partners.” With regard to those “covered individuals,” this is the power vested in the President by the next section, (c). But this is the first time this power of indefinite detention is being expressly codified by statute (there’s not a word about detention powers in the 2001 AUMF). Indeed, as the ACLU and HRW both pointed out, it’s the first time such powers are being codified in a statute since the McCarthy era Internal Security Act of 1950, about which I [wrote yesterday](http://www.salon.com/2011/12/15/obama_to_sign_indefinite_detention_bill_into_law/singleton/)

#### New review board gives prisoners a fair trial

RT News, 13

("Gitmo indefinite detainees to have cases reviewed ahead of Senate hearing on prison shutdown", July 20, rt.com/usa/guantanamo-detainees-cases-reviewed-368/ NL)

According to an email to attorneys from periodic review secretariat director retired Navy Rear Admiral Norton C. Joerg, which was cited by investigative reporter Jason Leopold, “a new Periodic Review Board (PRB) process will review the continued detention of certain detainees to assess whether continued law of war detention is necessary to protect against a continuing significant threat to the security of the United States.” The notification [published](https://pressfreedomfoundation.org/blog/2013/07/guantanamos-indefinite-prisoners-will-finally-have-cases-reviewed-just-senate%22%20%5Ct%20%22_blank) by Leopold on the The Freedom of the Press Foundation website comes some two years after the US President Barack Obama signed an executive order to form a parole board to begin reviewing the prisoners’ cases. The White House administration has claimed that the prisoners can neither be prosecuted nor released either because the evidence against them was obtained through torture, or because they are still too dangerous to release. This is despite the fact that 86 of the 166 prisoners at Guantanamo have already been cleared for release. Now, after more than a decade of detention for some of the detainees, they will finally have their cases reviewed to determine whether they should still be indefinitely detained. The periodic review board would be “composed of senior level officials from various U.S. government agencies,” according to Joerg. It will not address whether the Gitmo prisoners’ “law of war” detention is legal, but will rather determine the level of “threat” for each individual, and decide if their detention needs to continue. “Detainees receiving hearings will be notified by a Personal Representative assigned to assist them in the process,” Joerg wrote. Moreover, according to Obama’s executive order cited by Leopold, they must be provided with an“adequate notice of the reasons for continued detention,” and shall be permitted to present a written or oral statement, introduce relevant information and answer any questions posed by the PRB, as well as to “call witnesses who are reasonably available and willing to provide information that is relevant.

#### The prisoners have rights—can challenge their detention in civilian courts and have habeas corpus

AP, 08

(Associated Press, "Supreme Court back Guantanamo detainees", 6/12, [www.nbcnews.com/id/25117953/ns/world\_news-terrorism/t/supreme-court-backs-guantanamo-detainees/#.Ue58KY2TiSI](http://www.nbcnews.com/id/25117953/ns/world_news-terrorism/t/supreme-court-backs-guantanamo-detainees/#.Ue58KY2TiSI) NL)

[WASHINGTON](http://www.bing.com/maps/?v=2&where1=WASHINGTON&sty=h&form=msdate" \t "_blank) — In a stinging rebuke to President Bush's anti-terror policies, a deeply divided Supreme Court ruled Thursday that foreign detainees held for years at Guantanamo Bay in Cuba have the right to appeal to U.S. civilian courts to challenge their indefinite imprisonment without charges. Bush said he strongly disagreed with the decision — the third time the court has repudiated him on the detainees — and suggested he might seek yet another law to keep terror suspects locked up at the prison camp, even as his presidency winds down. Justice Anthony Kennedy, writing for the 5-4 high court majority, acknowledged the terrorism threat the U.S. faces — the administration's justification for the detentions — but he declared, "The laws and Constitution are designed to survive, and remain in force, in extraordinary times." In a blistering dissent, Justice Antonin Scalia said the decision "will make the war harder on us. It will almost certainly cause more Americans to be killed." Bush claims detentions are needed Bush has argued the detentions are needed to protect the nation in a time of unprecedented threats from al-Qaida and other foreign terrorist groups. The president, in Rome, said Thursday, "It was a deeply divided court, and I strongly agree with those who dissented." He said he would consider whether to seek new laws in light of the ruling "so we can safely say to the American people, 'We're doing everything we can to protect you.'" Kennedy said federal judges could ultimately order some detainees to be released, but he also said such orders would depend on security concerns and other circumstances. The ruling itself won't result in any immediate releases. The decision also cast doubt on the future of the military war crimes trials that 19 detainees, including Khalid Sheikh Mohammed and four other alleged Sept. 11 plotters, are facing so far. The Pentagon has said it plans to try as many as 80 men held at Guantanamo. [Advertise](http://www.nbcnews.com/id/31066137/media-kit/) Lawyers for detainees differed over whether the ruling, unlike the first two, would lead to prompt hearings for those who have not been charged. Roughly 270 men remain at the prison at the U.S. naval base in Cuba. Most are classed as enemy combatants and held on suspicion of terrorism or links to al-Qaida and the Taliban. Some detainee lawyers said hearings could take place within a few months. But James Cohen, a Fordham University law professor who has two clients at Guantanamo, predicted Bush would continue seeking ways to resist the ruling. "Nothing is going to happen between June 12 and Jan. 20," when the next president takes office, Cohen said. Roughly 200 detainees have lawsuits on hold in federal court in Washington. Chief Judge Royce C. Lamberth said he would call a special meeting of federal judges to address how to handle the cases. Uncertainty surrounding some cases Detainees already facing trial are in a different category. Justice Department spokesman Peter Carr said Thursday's decision should not affect war crimes trials. "Military commission trials will therefore continue to go forward," he said. The lawyer for Salim Ahmed Hamdan, Osama bin Laden's one-time driver, said he will seek dismissal of the charges against Hamdan based on the new ruling. A military judge had already delayed the trial's start to await the high court ruling. It was unclear whether a hearing at Guantanamo for Canadian Omar Khadr, charged with killing a U.S. Special Forces soldier in Afghanistan, would go forward next week as planned. Charles Swift, the former Navy lawyer who used to represent Hamdan, said he believes the court removed any legal basis for keeping the Guantanamo facility open and that the military tribunals are "doomed." Guantanamo generally and the tribunals were conceived on the idea that "constitutional protections wouldn't apply," Swift said. "The court said the Constitution applies. They're in big trouble." Human rights groups and many Democratic members of Congress celebrated the ruling as affirming the nation's commitment to the rule of law. Several Republican lawmakers called it a decision that put foreign terrorists' rights above the safety of the American people. The administration opened the detention facility at Guantanamo Bay shortly after the Sept. 11, 2001, terrorist attacks to hold enemy combatants, people suspected of ties to al-Qaida or the Taliban. Prison under scrutiny The prison has been harshly criticized at home and abroad for the detentions themselves and the aggressive interrogations that were conducted there. [Advertise](http://www.nbcnews.com/id/31066137/media-kit/) At its heart, the 70-page ruling says that the detainees have the same rights as anyone else in custody in the United States to contest their detention before a judge. Kennedy also said the system the administration has put in place to classify detainees as enemy combatants and review those decisions is not an adequate substitute for the right to go before a civilian judge. The administration had argued first that the detainees have no rights. But it also contended that the classification and review process was sufficient. Chief Justice John Roberts, in his own dissent to Thursday's ruling, criticized the majority for striking down what he called "the most generous set of procedural protections ever afforded aliens detained by this country as enemy combatants." Justices Samuel Alito and Clarence Thomas also dissented. Justices Stephen Breyer, Ruth Bader Ginsburg, David Souter and John Paul Stevens — the court's more liberal members — joined Kennedy to form the majority. [Key cases](http://www.nbcnews.com/id/24556215/ns/politics/t/supreme-court-guide--/)Souter wrote a separate opinion in which he emphasized the length of the detentions. "A second fact insufficiently appreciated by the dissents is the length of the disputed imprisonments; some of the prisoners represented here today having been locked up for six years," Souter said. "Hence the hollow ring when the dissenters suggest that the court is somehow precipitating the judiciary into reviewing claims that the military ... could handle within some reasonable period of time." Scalia, citing a report by Senate Republicans, said at least 30 prisoners have returned to the battlefield following their release from Guantanamo. The court has ruled twice previously that people held at Guantanamo without charges can go into civilian courts to ask that the government justify their continued detention. Each time, the administration and Congress, then controlled by Republicans, changed the law to try to close the courthouse doors to the detainees. The right to habeas corpus The court specifically struck down a provision of the Military Commissions Act of 2006 that denies Guantanamo detainees the right to file petitions of habeas corpus. Habeas corpus is a centuries-old legal principle, enshrined in the Constitution, that allows courts to determine whether a prisoner is being held illegally. The head of the New York-based Center for Constitutional Rights, which represents dozens of prisoners at Guantanamo, welcomed the ruling. "The Supreme Court has finally brought an end to one of our nation's most egregious injustices," said CCR Executive Director Vincent Warren. "By granting the writ of habeas corpus, the Supreme Court recognizes a rule of law established hundreds of years ago and essential to American jurisprudence since our nation's founding."

#### Third, UNCHECKED WARMING WILL CRUSH CIVILIZATION, KILLING BILLIONS and turning econ, war, and terror.

**BROWN ‘97**

(Paul, Env. Correspondent for *The Guradian,* Global Warming Expert, Global Warming: Can Civilization Survive? Pg. 9-10)

 The conclusion I come to is that there are two possible con- sequences of climate change. The first is what we could call the `nightmare scenario'. It runs something like this: Scientists have told us that global warming has already set in. This means that more and more extreme weather events become a feature of our lives. Droughts, floods, heatwaves, and sudden cold snaps damage homes and businesses. Agriculture is disrupted and world food supplies are inadequate. Mass migrations of near-starving people begin in Africa and the Middle East, bringing new wars. A large wave of bankruptcies in the industrialized world saps the economic ability of the so-called developed world to deal with the problem. There is a worldwide recession while politicians attempt to grapple with domestic problems and the root cause of the problem, the destruction of the environment, is not tackled. In the developing world the new industries which have dragged millions of people from the countryside into the cities lose their markets. The recessions throw millions out of work in countries that have no social security systems. Civil unrest and a few revolutions follow. The world begins to lapse into anarchy, making it impossible to deal with climate change. Meanwhile the gases we have already put into the atmosphere go on making things worse. The rising sea level means some of the most fertile and populous land is inundated, driving the survivors inland to find new homes. Deserts continue to expand; rainfall has become unreliable in marginal lands. Civilization breaks down and millions, possibly billions, die.

#### Warming leads to extinction

Henderson 5

[Bill, Environmental scientist, 3/16/5. <http://www.countercurrents.org/cc-henderson160305.htm>.]

But these immediate effects of global warming pale before the possibility of runaway global warming where warming due to our greenhouse gas emissions causes greatly increased greenhouse gas production from normal terrestrial sources – the release of CO2 stored in tundra, for example - creating positive feedback loops which overwhelm regular biosphere regulation and lead to temperatures possibly hundreds of degrees warmer then present. Runaway global warming that could lead to an atmosphere like Venus. In September 2000, world-renowned physicist Stephen Hawking was widely quoted in the press as being very worried about runaway global warming: "I am afraid the atmosphere might get hotter and hotter until it will be like Venus with boiling sulfuric acid," said Hawking. "I am worried about the greenhouse effect." If we go over this cliff no more humanity; the extinction of almost every existing species except some bacteria; the end of life on Earth as we know it.

#### Strong Obama k2 international climate change treaties—must change perception of U.S.

Wold 2012

[Chris Wold, Professor of Law & Director, International Environmental Law Project

(IELP), 2012, Lewis & Clark Law School, 2012, CASE WESTERN RESERVE JOURNAL OF INTERNATIONAL LAW·VOL. 45·2012, uwyo//amp]

The president has several opportunities to flex his treaty-making authority to strengthen the climate change efforts across a range of international agreements. These include the climate change regime itself, as well as the International Civil Aviation Organization and the World Trade Organization. 1. UNFCCC Climate Negotiations The negotiations within the climate change regime are complex, and are currently addressing a wide variety of economic activities and socio-economic considerations. Yet, it is clear that the United States is a major stumbling block to achieving meaningful mitigation commitments. To be sure, the United States is not alone. Canada, Japan, and Russia, among developed countries, and large-emitting developing countries like China, India, and South Korea, have shown little interest in making meaningful commitments. Long-time observers of the climate process, however, lay most of the blame at the feet of the United States, not because the United States is the biggest historic emitter of GHGs or because it is the world’s largest economy, but rather because it has done more to slow progress on a package of international commitments than other countries.109 2020.”);