# \*\*\*1AC

### Same As Round 3

# \*\*\*2AC

## \*\*\*Case

### 2AC Targeting

#### Ex post review resolves the broad definition of imminence- redress key to check the errors which cause blowback.

Hafetz, former ACLU National Security Project attorney, 13 (Jonathan Hafetz, former senior attorney at the ACLU’s National Security Project, a litigation director at NYU’s Brennan Center for Justice, and a John J. Gibbons Fellow in Public Interest and Constitutional Law at Gibbons, P.C, Reviewing Drones, March 8, http://www.huffingtonpost.com/jonathan-hafetz/reviewing-drones\_b\_2815671.html)

The better course is to ensure meaningful review after the fact. To this end, Congress should authorize federal damages suits by the immediate family members of individuals killed in drone strikes. Such ex post review would serve two main functions: providing judicial scrutiny of the underlying legal basis for targeted killings and affording victims a remedy. It would also give judges more leeway to evaluate the facts without fear that an error on their part might leave a dangerous terrorist at large. For review to be meaningful, judges must not be restricted to deciding whether there is enough evidence in a particular case, as they would likely be under a FISA model. They must also be able to examine the government's legal arguments and, to paraphrase the great Supreme Court chief justice John Marshall, "to say what the law is" on targeted killings. Judicial review through a civil action can achieve that goal. It can thus help resolve the difficult questions raised by the Justice Department white paper, including the permissible scope of the armed conflict with al Qaeda and the legality of the government's broad definition of an "imminent" threat. Judges must also be able to afford a remedy to victims. Mistakes happen and, as a recent report by Columbia Law School and the Center for Civilians in Conflict suggests, they happen more than the U.S. government wants to acknowledge. Errors are not merely devastating for family members and their communities. They also increase radicalization in the affected region and beyond. Drone strikes -- if unchecked -- could ultimately create more terrorists than they eliminate.

#### The plan would result in a balanced definition of imminence. The court would apply a standard that still allows decapitation of high value targets and out-of-battlefield operations– Hamdi proves

Kwoka 11 (Lindsay, J.D. UPenn, “TRIAL BY SNIPER: THE LEGALITY OF TARGETED KILLING IN THE WAR ON TERROR” Accessed at HeinOnline)

But this is not the end of the inquiry. Even if a targeted individual is not located on a field of battle, he may still be a threat, and tar- geted killing may potentially be necessary and appropriate in some circumstances. Applying the reasoning of" Hamdi here, a court would likely find that the use of targeted killing is only "necessary and ap- propriate" if it is the only way to prevent someone like Al-Awlaki from engaging in terrorist activity or otherwise harming the United States. The Hamdi Court was concerned with assuring that the executive used the least intrusive means in achieving its objective of preventing the enemy combatant from returning to battle. The Court made clear that the means used to achieve this objective should be no more intrusive than necessary.7\* It is consistent with the Court's concern to allow targeted killing only when it is the only means available to pre- vent harm to the United States. If the executive can demonstrate that an individual outside of a warzone will harm the United States unless he is killed, targeted kill- ing may be authorized. This is consistent with Hamdi, in which the main concern was preventing future harm to the United States while using the least intrusive means available. This is also consistent with U.S. criminal law, in which the executive branch is permitted to kill an individual if there is no peaceful means left to apprehend him. Such an approach is also consistent with the approach of the Su- preme Court. Even the most stalwart protectors of constitutional rights of alleged terrorists recognize that immediate action by the executive is at times necessary to prevent attacks.7'' An approach that al- lows the executive to use deadly force when it is the only available means of preventing harm effectively balances the need to protect citizen's constitutional rights while affording sufficient deference to the executive.

### 2AC NATO Add-on

#### Nato still relevant----military and commerce

Charles A. Kupchan 13, D.Phil from Oxford in International Affairs, Professor of International Affairs at Georgetown, Whitney H. Shepardson Senior Fellow at the Council on Foreign Relations, 3/6/13, "Why is NATO still needed, even after the downfall of the Soviet Union?," http://www.cfr.org/nato/why-nato-still-needed-even-after-downfall-soviet-union/p30152

The North Atlantic Treaty Organization (NATO) is an international military alliance that was created to enable its members (the United States, Canada, and their European partners) to counter the threat posed by the Soviet Union. Alliances usually come to an end when the threat that led to their formation disappears. However, NATO defies the historical norm, not only surviving well beyond the Cold War's end, but also expanding its membership and broadening its mission.¶ NATO remains valuable to its members for a number of reasons. The expansion of the alliance has played an important role in consolidating stability and democracy in Central Europe, where members continue to look to NATO as a hedge against the return of a threat from Russia. In this respect, NATO and the European Union have been working in tandem to lock in a prosperous and secure Atlantic community.¶ Meanwhile, NATO has repeatedly demonstrated the utility of its integrated military capability. The alliance used force to end ethnic conflict in the Balkans and played a role in preserving the peace that followed. NATO has sustained a long-term presence in Afghanistan, helping to counter terrorism and prepare Afghans to take over responsibility for their own security. NATO also oversaw the mission in Libya that succeeded in stopping its civil war and removing the Qaddafi regime. All of these missions demonstrate NATO's utility and its contributions to the individual and collective welfare of its members, precisely why they continue to believe in the merits of membership.

#### NATO cohesion solves everything and cyber-war

Jamie Shea 12, Deputy Assistant Secretary General for Emerging Security Challenges, "Keeping NATO Relevant", April 19, carnegieendowment.org/2012/04/19/keeping-nato-relevant/acl9#

At the same time, the national security strategies of the NATO allies underline the extent to which they are currently preoccupied with regional crises, preventing global proliferation, dismantling terrorist networks, preserving their trade routes and access to raw materials, and integrating the rising global powers into a rules-based international system. If NATO is decreasingly responsive to this global agenda, or is focused only on contingencies requiring major military mobilization, such as those that Article 5 was traditionally intended to address, there is a risk of a disconnect between NATO-Brussels and the policy and resource decisions taken in NATO capitals or in other institutions like the EU.¶ SLIMMING DOWN AND STAYING RELEVANT¶ NATO’s core challenge for the next decade will be to slim down while retaining the capability to handle the global security agenda of its members. This is still possible, and NATO’s new Strategic Concept certainly provides the doctrinal basis. But words do not automatically lead to actions.¶ To succeed, the Alliance will need to be serious about three things: demonstrating real capability to counter the new security challenges; harmonizing allied positions on potential or actual regional crises; and binding the maximum number of its partners in North Africa, the Middle East, and the Asia-Pacific region into a structured security community through consultations, training, and interoperability. As NATO builds down, it will need to make sure that it does not sacrifice the structures and people that allow it to deliver on these three tasks and that make the Alliance more than just a multinational military headquarters for “when all else has failed” responses.¶ Because the new security challenges are often civilian in nature (90 percent of cyberspace is owned by the private sector) and because they are often managed by ministries of the interior, the police, or specialized government agencies, some have questioned NATO’s role and relevance. It is also not easy for an organization that has traditionally taken on the major role and responsibility in a crisis (Bosnia, Kosovo, Afghanistan, Libya) or has not been involved at all (Iraq, North Korea, Syria) to adapt to being a partial or supporting actor. There are a large number of agencies involved in a cyber, terrorism, or energy incident and the military role is only one of many that need to be brought into play, and with varying degrees of importance as the crisis develops. But because NATO cannot always be the complete solution does not mean that its role is symbolic, provided that the Alliance identifies the aspect of the issue that corresponds to its essentially military capabilities and crisis-management mechanisms.¶ Countering New Security Challenges¶ All future conflicts will have a cyber dimension, whether in stealing secrets and probing vulnerabilities to prepare for a military operation or in disabling crucial information and command and control networks of the adversary during the operation itself. Consequently, NATO’s future military effectiveness will be closely linked to its cyber-defense capabilities; in this respect, there is also much that NATO can do to help allies improve their cyber forensics, intrusion detection, firewalls, and procedures for handling an advanced persistent attack, such as that which affected Estonia in 2007.¶ The Alliance can also help to shape the future cyber environment by promoting information sharing and confidence-building measures among its partners and, in a longer-term perspective, other key actors, such as Brazil, China, and India. This is a field where the military is clearly ahead in many key technical areas. NATO already has one of the most capable computer incident response centers around and one of the best systems for exchanging and assessing intelligence on cyber threats. NATO must first establish its credibility in this area by bringing all of its civilian and military networks under centralized protection by the end of 2012, but it would not make sense to leave NATO’s role in cyber defense there. It can be a center of excellence for exercises, best practice, stress testing, and common standards for both allies and partners.¶ Of course, NATO will have work to do in order to be an effective player in the cyber field, along with other emerging threats. It will need to go beyond its traditional stakeholders in the allied foreign and defense ministries and build relationships with ministries of the interior, intelligence services, customs, and government crisis-management cells (such as COBRA in the United Kingdom). It will also need to step up its cooperation with industry (which is still in the lead for most of the analysis of cyber malware) and also with private security companies that will be playing an increasing role in cyber defense, protection of critical infrastructure, and protection of shipping from pirates.¶ This field is the very expression of security policy in the twenty-first century, in which industry will not just provide equipment but entire security management services to the armed forces. Private contractors will be firmly embedded in every level of defense ministries as well as the armed forces and security agencies. Many of the security functions traditionally performed by governments will be subcontracted to private companies—from physical protection to malware analysis, intelligence and early warning, and logistics. Accordingly, NATO must learn how to work more productively with them.¶ Given the exponential growth in malware and hacking skills, the cyber threat is the most pressing challenge; but there are others too that NATO can readily handle. For instance, using its Special Forces Headquarters at Allied Command Operations to train and set common standards for special forces with centralized air lift, or monitoring emerging technologies so that NATO can better exploit both existing and future disruptive technologies and counter the use of asymmetric methods by its adversaries. Yet another is the protection of critical infrastructure and supply lines for energy and raw materials, especially in the maritime domain where 90 percent of global trade takes place. Key choke points are especially vulnerable to piracy or threats of closure during crises and war. Related areas are the protection against chemical, biological, or radiological agents and training armed forces to cope with extreme weather conditions and natural disasters resulting from climate change.¶ The difference between these emerging challenges and what NATO encountered in the past is that they cannot be deterred. Cyber attacks, terrorism, supply shortages, and natural disasters will all occur. So a key new role of NATO is to help develop the societal resilience to cope with these new types of attacks, to plug vulnerabilities, and to build in the redundant back-up capabilities to allow societies to recover quickly.¶ But again, while NATO’s military organization and capabilities can be a useful first or second responder, they will need to be coordinated with domestic police, health, and emergency management agencies and organizations like the EU. So NATO’s progress in practically embracing the new challenges will depend upon its capacity for effective networking. This is where civilian-military exercises involving NATO and the EU, and NATO and the civilian crisis-management agencies, can help the Alliance to better prepare and understand the different structures and procedures used by its member nations.

#### Cyber causes nuclear war

Jason Fritz 9, Former Captain of the U.S. Army, July, Hacking Nuclear Command and Control, www.icnnd.org/Documents/Jason\_Fritz\_Hacking\_NC2.doc

The US uses the two-man rule to achieve a higher level of security in nuclear affairs. Under this rule two authorized personnel must be present and in agreement during critical stages of nuclear command and control. The President must jointly issue a launch order with the Secretary of Defense; Minuteman missile operators must agree that the launch order is valid; and on a submarine, both the commanding officer and executive officer must agree that the order to launch is valid. In the US, in order to execute a nuclear launch, an Emergency Action Message (EAM) is needed. This is a preformatted message that directs nuclear forces to execute a specific attack. The contents of an EAM change daily and consist of a complex code read by a human voice. Regular monitoring by shortwave listeners and videos posted to YouTube provide insight into how these work. These are issued from the NMCC, or in the event of destruction, from the designated hierarchy of command and control centres. Once a command centre has confirmed the EAM, using the two-man rule, the Permissive Action Link (PAL) codes are entered to arm the weapons and the message is sent out. These messages are sent in digital format via the secure Automatic Digital Network and then relayed to aircraft via single-sideband radio transmitters of the High Frequency Global Communications System, and, at least in the past, sent to nuclear capable submarines via Very Low Frequency (Greenemeier 2008, Hardisty 1985). The technical details of VLF submarine communication methods can be found online, including PC-based VLF reception. Some reports have noted a Pentagon review, which showed a potential “electronic back door into the US Navy’s system for broadcasting nuclear launch orders to Trident submarines” (Peterson 2004). The investigation showed that cyber terrorists could potentially infiltrate this network and **insert false orders for launch.** The investigation led to “elaborate new instructions for validating launch orders” (Blair 2003). Adding further to the concern of cyber terrorists seizing control over submarine launched nuclear missiles; The Royal Navy announced in 2008 that it would be installing a Microsoft Windows operating system on its nuclear submarines (Page 2008). The choice of operating system, apparently based on Windows XP, is not as alarming as the advertising of such a system is. This may attract hackers and narrow the necessary reconnaissance to learning its details and potential exploits. It is unlikely that the operating system would play a direct role in the signal to launch, although this is far from certain. Knowledge of the operating system may lead to the insertion of malicious code, which could be used to gain accelerating privileges, tracking, valuable information, and deception that could subsequently be used to initiate a launch. Remember from Chapter 2 that the UK’s nuclear submarines have the authority to launch if they believe the central command has been destroyed.¶ Attempts by cyber terrorists to create the illusion of a decapitating strike could also be used to engage fail-deadly systems. Open source knowledge is scarce as to whether Russia continues to operate such a system. However evidence suggests that they have in the past. Perimetr, also known as Dead Hand, was an automated system set to launch a mass scale nuclear attack in the event of a decapitation strike against Soviet leadership and military.¶ In a crisis, military officials would send a coded message to the bunkers, switching on the dead hand. If nearby ground-level sensors detected a nuclear attack on Moscow, and if a break was detected in communications links with top military commanders, the system would send low-frequency signals over underground antennas to special rockets. Flying high over missile fields and other military sites, these rockets in turn would broadcast attack orders to missiles, bombers and, via radio relays, submarines at sea. Contrary to some Western beliefs, Dr. Blair says, many of Russia's nuclear-armed missiles in underground silos and on mobile launchers can be fired automatically. (Broad 1993)¶ Assuming such a system is still active, cyber terrorists would need to create a crisis situation in order to activate Perimetr, and then fool it into believing a decapitating strike had taken place. While this is not an easy task, the information age makes it easier. Cyber reconnaissance could help locate the machine and learn its inner workings. This could be done by targeting the computers high of level official’s—anyone who has reportedly worked on such a project, or individuals involved in military operations at underground facilities, such as those reported to be located at Yamantau and Kosvinksy mountains in the central southern Urals (Rosenbaum 2007, Blair 2008)¶ Indirect Control of Launch¶ Cyber terrorists could cause incorrect information to be transmitted, received, or displayed at nuclear command and control centres, or shut down these centres’ computer networks completely. In 1995, a Norwegian scientific sounding rocket was mistaken by Russian early warning systems as a nuclear missile launched from a US submarine. A radar operator used Krokus to notify a general on duty who decided to alert the highest levels. Kavkaz was implemented, all three chegets activated, and the countdown for a nuclear decision began. It took eight minutes before the missile was properly identified—a considerable amount of time considering the speed with which a nuclear response must be decided upon (Aftergood 2000).¶ Creating a false signal in these early warning systems would be relatively easy using computer network operations. The real difficulty would be gaining access to these systems as they are most likely on a closed network. However, if they are transmitting wirelessly, that may provide an entry point, and information gained through the internet may reveal the details, such as passwords and software, for gaining entrance to the closed network. If access was obtained, a false alarm could be followed by something like a DDoS attack, so the operators believe an attack may be imminent, yet they can no longer verify it. This could add pressure to the decision making process, and if coordinated precisely, could appear as a first round EMP burst. Terrorist groups could also attempt to launch a non-nuclear missile, such as the one used by Norway, in an attempt to fool the system. The number of states who possess such technology is far greater than the number of states who possess nuclear weapons. Obtaining them would be considerably easier, especially when enhancing operations through computer network operations. Combining traditional terrorist methods with cyber techniques opens opportunities neither could accomplish on their own. For example, radar stations might be more vulnerable to a computer attack, while satellites are more vulnerable to jamming from a laser beam, thus together they deny dual phenomenology. Mapping communications networks through cyber reconnaissance may expose weaknesses, and automated scanning devices created by more experienced hackers can be readily found on the internet.¶ Intercepting or spoofing communications is a highly complex science. These systems are designed to protect against the world’s most powerful and well funded militaries. Yet, there are recurring gaffes, and the very nature of asymmetric warfare is to bypass complexities by finding simple loopholes. For example, commercially available software for voice-morphing could be used to capture voice commands within the command and control structure, cut these sound bytes into phonemes, and splice it back together in order to issue false voice commands (Andersen 2001, Chapter 16). Spoofing could also be used to escalate a volatile situation in the hopes of starting a nuclear war. “ [they cut off the paragraph] “In June 1998, a group of international hackers calling themselves Milw0rm hacked the web site of India’s Bhabha Atomic Research Center (BARC) and put up a spoofed web page showing a mushroom cloud and the text “If a nuclear war does start, you will be the first to scream” (Denning 1999). Hacker web-page defacements like these are often derided by critics of cyber terrorism as simply being a nuisance which causes no significant harm. However, web-page defacements are becoming more common, and they point towards alarming possibilities in subversion. During the 2007 cyber attacks against Estonia, a counterfeit letter of apology from Prime Minister Andrus Ansip was planted on his political party website (Grant 2007). This took place amid the confusion of mass DDoS attacks, real world protests, and accusations between governments.

## \*\*\*Offcase

### 2AC T

#### We meet-Due process rights are judicial restrictions on executive authority

Al-Aulaqi Motion to Dismiss Memo 2013 (PLAINTIFFS’ OPPOSITION TO DEFENDANTS’ MOTION TO DISMISS, files February 5, 2013)

Despite Defendants’ attempt to distinguish the habeas cases, Defs. Br. 12, claims alleging

unlawful deprivation of life under the Fifth Amendment’s Due Process Clause are as textually

committed to the courts as claims brought under the Suspension Clause. Both are fundamental

judicial checks on executive authority. Cf. Boumediene v. Bush, 476 F.3d 981, 993 (D.C. Cir.

1997) (rejecting distinction between the Suspension Clause and Bill of Rights amendments

because both are “restrictions on governmental power”), rev’d on other grounds by Boumediene,

553 U.S. 723.

#### C/I – Authority is what the president may do not what the president can do

Ellen Taylor 96, 21 Del. J. Corp. L. 870 (1996), Hein Online

The term authority is commonly thought of in the context of the law of agency, and the Restatement (Second) of Agency defines both power and authority.'89 Power refers to an agent's ability or capacity to produce a change in a legal relation (whether or not the principal approves of the change), and authority refers to the power given (permission granted) to the agent by the principal to affect the legal relations of the principal; the distinction is between what the agent can do and what the agent may do.

#### C/I --- Restriction is limitation, NOT prohibition

CAC 12,COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT, COUNTY OF LOS ANGELES, Plaintiff and Respondent, v. ALTERNATIVE MEDICINAL CANNABIS COLLECTIVE et al., Defendants and Appellants, DIVISION ONE, 207 Cal. App. 4th 601; 143 Cal. Rptr. 3d 716; 2012 Cal. App. LEXIS 772

We disagree with County that in using the phrases “further restrict the location or establishment” and “regulate the location or establishment” in [\*615] section 11362.768, subdivisions (f) and (g), the Legislature intended to authorize local governments to ban all medical marijuana dispensaries that are otherwise “authorized by law to possess, cultivate, or distribute medical marijuana” (§ 11362.768, subd. (e) [stating scope of section's application]); the Legislature did not use the words “ban” or “prohibit.” Yet County cites dictionary definitions of “regulate” (to govern or direct according to rule or law); “regulation” (controlling by rule or restriction; a rule or order that has legal force); “restriction” (a limitation or qualification, including on the use of property); “establishment” (the act of establishing or state or condition of being established); “ban” (to prohibit); and “prohibit” (to forbid by law; to prevent or hinder) to attempt to support its interpretation. County then concludes that “the ordinary meaning [\*\*\*23] of the terms, ‘restriction,’ ‘regulate,’ and ‘regulation’ are consistent with a ban or prohibition against the opening or starting up or continued operation of [a medical marijuana dispensary] storefront business.” We disagree.¶CA(9)(9) The ordinary meanings of “restrict” and “regulate” suggest a degree of control or restriction falling short of “banning,” “prohibiting,” “forbidding,” or “preventing.” Had the Legislature intended to include an outright ban or prohibition among the local regulatory powers authorized in section 11362.768, subdivisions (f) and (g), it would have said so. Attributing the usual and ordinary meanings to the words used in section 11362.768, subdivisions (f) and (g), construing the words in context, attempting to harmonize subdivisions (f) and (g) with section 11362.775 and with the purpose of California's medical marijuana [\*\*727] statutory program, and bearing in mind the intent of the electorate and the Legislature in enacting the CUA and the MMP, we conclude that HN21Go to this Headnote in the case.the phrases “further restrict the location or establishment” and “regulate the location or establishment” in section 11362.768, subdivisions (f) and (g) do not authorize a per se ban at the local level. The Legislature [\*\*\*24] decided in section 11362.775 to insulate medical marijuana collectives and cooperatives from nuisance prosecution “solely on the basis” that they engage in a dispensary function. To interpret the phrases “further restrict the location or establishment” and “regulate the location or establishment” to mean that local governments may impose a blanket nuisance prohibition against dispensaries would frustrate both the Legislature's intent to “[e]nhance the access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects” and “[p]romote uniform and consistent application of the [CUA] among the counties within the state” and the electorate's intent to “ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes” and “encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana.”

#### C/I – ex post is a restriction on authority and better than ex ante

Brooks ‘13

Rosa, Professor of Law @ Georgetown University Law Center and Bernard L. Schwartz Senior Fellow @ the New American Foundation, “The Constitutional and Counterterrorism Implications of Targeted Killing: Testimony Before the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights”, http://www.judiciary.senate.gov/pdf/04-23-13BrooksTestimony.pdf

A judicial mechanism designed to ensure that US targeted killing policy complies with US law and the law of armed conflict might take any of several forms. Most controversially, a court might be tasked with the ex ante determination of whether a particular individual could lawfully be targeted. This approach is likely to be strenuously resisted by the Administration on separation of powers grounds, and it also raises potential issues about whether the Constitution’s case and controversy requirement could be satisfied, insofar as proceedings before such a judicial body would, of necessity, be in camera and ex parte. 45 This is also true for the existing FISA court, however, and its procedures have generally been upheld on Fourth Amendment grounds. It would seem odd to permit ex parte proceedings in an effort to ensure judicial approval for surveillance, but reject such proceedings as insufficiently protective of individual rights when an individual has been selected for lethal targeting rather than mere search and seizure. I believe it would be possible to design an ex ante judicial mechanism that would pass constitutional and practical muster. It would be complex and controversial, however, and there is an alternative approach that might offer many of the same benefits with far fewer of the difficulties. This alternative approach would be to develop a judicial mechanism that conducts a post hoc review of targeted killings, perhaps through a statute creating a cause of action for damages for those claiming wrongful injury or death as a result of unlawful targeted killing operations. This would add additional incentives for executive branch officials to abide by the law, without placing the judiciary in the troubling role of authorizing or rejecting the use of military force in advance. While proceedings might need to be conducted at least partially in camera, judicial decisions in these cases could be released in redacted form.

#### Their interpretation is flawed-

#### A. Over limits- core cases revolve around regulating executive behavior not banning specific policies. Their interpretation would eliminate topic literature.

#### B. Affirmative Ground-Ban specific policies are dead to any agent counterplan. You should err affirmative because the negative is strapped with an arsenal of generics.

#### ---Reasonability-competing interpretations causes substance crowd by encouraging debate over Topicality instead of war powers. Good is good enough when the topic is limited by areas and our affirmative is in the lit.

### 2AC K

#### Framework – the role of the ballot should be dependent on evaluating federal government restrictions on presidential war power authority – only predictable and fair standard since the resolution sets the ground for all debates and the negative has the ability to access multiple arbitrary self-serving frameworks---method focus steamrolls politics

Jackson, associate professor of IR – School of International Service @ American University, ‘11

(Patrick Thadeus, The Conduct of Inquiry in International Relations, p. 57-59)

Perhaps the greatest irony of this instrumental, decontextualized importation of “falsification” and its critics into IR is the way that an entire line of thought that privileged disconfirmation and refutation—no matter how complicated that disconfirmation and refutation was in practice—has been transformed into a license to **worry endlessly about foundational assumptions.** At the very beginning of the effort to bring terms such as “paradigm” to bear on the study of politics, Albert O. **Hirschman** (1970b, 338) **noted this very danger**, suggesting that without “a little more ‘reverence for life’ and a little less straightjacketing of the future,” the **focus on** producing internally **consistent** packages of **assumptions instead of** actually examining **complex empirical situations would result in scholarly paralysis.** Here as elsewhere, Hirschman appears to have been quite prescient, inasmuch as the major effect of paradigm and research programme language in IR seems to have been a series of debates and discussions about whether the fundamentals of a given school of thought were sufficiently “scientific” in their construction. Thus **we have debates about how to evaluate scientific progress**, and attempts to propose one or another set of research design principles **as uniquely scientific**, and inventive, “reconstructions” of IR schools, such as Patrick James’ “elaborated structural realism,” supposedly for the purpose of placing them on a **firmer scientific footing** by making sure that they have all of the required elements of a basically Lakatosian19 model of science (James 2002, 67, 98–103).

The bet with all of this scholarly activity seems to be that if we can just get the fundamentals right, then scientific progress will inevitably ensue . . . even though this is the precise opposite of what Popper and Kuhn and Lakatos argued! In fact, all of this obsessive interest in foundations and starting-points is, in form if not in content, a lot closer to logical positivism than it is to the concerns of the falsificationist philosophers, despite the prominence of language about “hypothesis testing” and the concern to formulate testable hypotheses among IR scholars engaged in these endeavors. That, above all, is why I have labeled this methodology of scholarship neopositivist. While it takes much of its self justification as a science from criticisms of logical positivism, in overall sensibility it still operates in a visibly positivist way, attempting to construct knowledge from the ground up by getting its foundations in logical order before concentrating on how claims encounter the world in terms of their theoretical implications. This is by no means to say that neopositivism is not interested in hypothesis testing; on the contrary, neopositivists are extremely concerned with testing hypotheses, but **only after the fundamentals have been** soundly **established.** Certainty, not conjectural provisionality, seems to be the goal—a goal that, ironically, Popper and Kuhn and Lakatos would all reject.

#### The plans reform matters---the alts dismissal is a pretext for more conservative national security policies

Cole 10 (David Cole is a professor at Georgetown University Law Center, “Breaking Away,” http://www.newrepublic.com/article/magazine/politics/79752/breaking-away-obama-bush-aclu-guantanamo-war-on-terror)

To dismiss the changes Obama has introduced as merely rhetorical, however, as Goldsmith and others have done, is to miss the critical difference between lawless and law-abiding exercises of state power. The Constitution, domestic law, and international law permit democracies to take aggressive action to defend themselves against attacks like the ones we suffered on September 11. But they insist that when the state employs coercion to achieve security, it must abide by rules designed to forestall government abuse and respect human rights. Bush blatantly disregarded this principle; Obama has embraced it. It is true that, by the end of his term, Bush had been compelled to curtail his most aggressive assertions of power. Waterboarding was out, many of the disappeared prisoners had been transferred to Guantánamo and identified, the military commissions had been improved, and courts were reviewing Guantánamo detentions. But Bush adopted these changes grudgingly, after losing before the courts, Congress, and public opinion. And as the declassified torture memos illustrate, his administration continued to obstinately reinterpret the laws against torture and cruel, inhuman, and degrading treatment in order to permit the CIA to do precisely what Congress, the courts, and international law had forbade. By contrast, Obama has willingly accepted the limits of law. Critics on all sides undermine their credibility if they fail to acknowledge the significant differences between Obama and Bush. Liberals risk sounding as if no national security policy short of ordinary criminal law enforcement will suffice, while conservatives and moderates appear tone-deaf to the difference that the rule of law makes to the legitimacy of state power. For both advocates of civil liberties and defenders of Bush, it is tempting to accuse the Obama administration of being no better than its predecessor. But if we fail to recognize the changes he has instituted, we run the risk of contributing to a misleading historical narrative that will support future presidents who might choose to repeat Bush’s errors. On issues of executive power, history can play an important role. Even if Obama himself is unlikely to unleash the tactics of the previous administration, a future president might justify doing so by pointing to the fact that observers from across the political spectrum agreed that both Bush and Obama had embraced the same policy. There are, however, two areas in which Obama has come up painfully short, and that is on issues of transparency and accountability. These failures threaten to undermine the good that Obama has otherwise done, because if U.S. counterterrorism policy is to succeed, it is critical to restore the trust that Bush’s policies so recklessly squandered.

The alternative collapses NATO which is critical to upholding deterrence which prevents the most proximate causes of war---the theory is useful despite flaws

Lupovici 10 Amir, assistant professor in the Department of Political Sciences at Tel Aviv University, International Studies Quarterly, "The Emerging Fourth Wave of Deterrence Theory--Toward a New Research Agenda", onlinelibrary.wiley.com/doi/10.1111/j.1468-2478.2010.00606.x/pdf

The ﬁrst three waves of deterrence theory made some signiﬁcant theoretical contributions not only to the study of deterrence but with regard to security studies in general. These theories constituted how scholars thought about deterrence for many years, and in this way they helped to solidify the realist school of international relations (Jervis 1979:290–291).5 Essential inﬂuences of the third wave can also be seen in the framing of theoretical issues, such as enduring rivals (Huth and Russett 1993; and compare Lieberman 1995 with Stein 1996), conventional deterrence (Mearsheimer 1983; Shimshoni 1988), extended deterrence (Huth 1988), and psychological and cognitive understanding of decision making (Jervis 1985; Lebow and Stein 1987, 1989; Morgan 2003:134–142, 149–151; see also Levy 1992).6 Furthermore, the methodological impact of this wave can also be seen (Achen and Snidal 1989:161; Lebow and Stein 1990:346–351), not only in the ﬁeld of security studies but in international relations and political science as well (Maoz 2002:172–174; see also King, Keohane, and Verba 1994:24, 134– 135).¶ The ﬁrst three waves of deterrence theory also signiﬁcantly inﬂuenced policymaking. The un-intuitive implications of deterrence literature were evident in the strategies and relations of the superpowers, in particular with regard to the strategy of MAD aimed at stabilizing relations between opponents, as demonstrated in the SALT agreements of 1972 (Adler 1992; Garthoff 1994:647, 849– 852; Evangelista 1999). Deterrence theories allowed policymakers to organize strategic knowledge into a clear conceptual framework that was easier to ‘‘sell,’’ providing them with strategic language and jargon (Jervis 1979:291; Kaplan 1991:171–172) that included concepts such as massive retaliation, invulnerability, assured destruction, counterforce, pre-emptive strike, ﬁrst strike, second strike, and ﬂexible response. While some of these concepts were not completely new (Quester 1966:1–2; Chilton 1985:115), they gained inﬂuence primarily in the context of deterrence.¶ Scholars, mainly of the ﬁrst two waves, based the idea of deterrence upon apolitical and ahistorical arguments (Jervis 1979:322–323; Kaplan 1991:109; Trachtenberg 1991:40, 44–46), and as a result paid very little attention to its operation in reality. Ironically, this obfuscation of empirical contradictions and problems led to the consensus on its validity.7 As Adler argues, ‘‘because the science of nuclear strategy has no empirical reference points and data banks, it cannot be falsiﬁed’’ (Adler 1992:107).8 In other words, deterrence could become a heuristic tool, supplying simple, and even simplistic, solutions to complicated foreign policy problems. This made it more attractive than other strategic options to decision makers. Moreover, the concept of deterrence could force rationality on decision making, so that deterrence practices became a convincing—and even justiﬁable—option (Kaplan 1991:72–73; Morgan 2003:13).

#### No risk of endless warfare

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7. A policy that favors preventive warfare expresses a futile quest for absolute security. It could do so. Most controversial policies contain within them the possibility of misuse. In the hands of a paranoid or boundlessly ambitious political leader, prevention could be a policy for endless warfare. However, the American political system, with its checks and balances, was designed explicitly for the purpose of constraining the executive from excessive folly. Both the Vietnam and the contemporary Iraqi experiences reveal clearly that although the conduct of war is an executive prerogative, in practice that authority is disciplined by public attitudes. Clausewitz made this point superbly with his designation of the passion, the sentiments, of the people as a vital component of his trinitarian theory of war. 51 It is true to claim that power can be, and indeed is often, abused, both personally and nationally. It is possible that a state could acquire a taste for the apparent swift decisiveness of preventive warfare and overuse the option. One might argue that the easy success achieved against Taliban Afghanistan in 2001, provided fuel for the urge to seek a similarly rapid success against Saddam Hussein’s Iraq. In other words, the delights of military success can be habit forming. On balance, claim seven is not persuasive, though it certainly contains a germ of truth. A country with unmatched wealth and power, unused to physical insecurity at home—notwithstanding 42 years of nuclear danger, and a high level of gun crime—is vulnerable to demands for policies that supposedly can restore security. But we ought not to endorse the argument that the United States should eschew the preventive war option because it could lead to a futile, endless search for absolute security. One might as well argue that the United States should adopt a defense policy and develop capabilities shaped strictly for homeland security approached in a narrowly geographical sense. Since a president might misuse a military instrument that had a global reach, why not deny the White House even the possibility of such misuse? In other words, constrain policy ends by limiting policy’s military means. This argument has circulated for many decades and, it must be admitted, it does have a certain elementary logic. It is the opinion of this enquiry, however, that the claim that a policy which includes the preventive option might lead to a search for total security is **not at all convincing**. Of course, folly in high places is always possible, which is one of the many reasons why popular democracy is the superior form of government. It would be absurd to permit the fear of a futile and dangerous quest for absolute security to preclude prevention as a policy option. Despite its absurdity, this rhetorical charge against prevention is a stock favorite among prevention’s critics. It should be recognized and dismissed for what it is, a debating point with little pragmatic merit. And strategy, though not always policy, **must be nothing if not pragmatic**.

#### Discursive othering doesn’t result in ‘uncontrollable violence’

Rodwell 5 (Jonathan Rodwell is a PhD student at Manchester Met. researching the U.S. Foreign Policy of the late 70's / rise of ‘neo-cons’ and Second Cold War, “Trendy But Empty: A Response to Richard Jackson,” http://www.49thparallel.bham.ac.uk/back/issue15/rodwell1.htm)

To be specific if the U.S. and every other nation is continually reproducing identities through ‘othering’ it is a constant and universal phenomenon that fails to help us understand at all why one result of the othering turned out one way and differently at another time. For example, how could one explain how the process resulted in the 2003 invasion of Iraq but didn’t produce a similar invasion of Afghanistan in 1979 when that country (and by the logic of the Regan administrations discourse) the West was threatened by the ‘Evil Empire’. By the logical of discourse analysis in both cases these policies were the result of politicians being able to discipline and control the political agenda to produce the outcomes. So why were the outcomes not the same? To reiterate the point how do we explain that the language of the War on Terror actually managed to result in the eventual Afghan invasion in 2002? Surely it is impossible to explain how George W. Bush was able to convince his people (and incidentally the U.N and Nato) to support a war in Afghanistan without referring to a simple fact outside of the discourse; the fact that a known terrorist in Afghanistan actually admitted to the murder of thousands of people on the 11h of Sepetember 2001. The point is that if the discursive ‘othering’ of an ‘alien’ people or group is what really gave the U.S. the opportunity to persue the war in Afghanistan one must surly wonder why Afghanistan. Why not North Korea? Or Scotland? If the discourse is so powerfully useful in it’s own right why could it not have happened anywhere at any time and more often? Why could the British government not have been able to justify an armed invasion and regime change in Northern Ireland throughout the terrorist violence of the 1980’s? Surely they could have just employed the same discursive trickery as George W. Bush? Jackson is absolutely right when he points out that the actuall threat posed by Afghanistan or Iraq today may have been thoroughly misguided and conflated and that there must be more to explain why those wars were enacted at that time. Unfortunately that explanation cannot simply come from the result of inscripting identity and discourse. On top of this there is the clear problem that the consequences of the discursive othering are not necessarily what Jackson would seem to identify. This is a problem consistent through David Campbell’s original work on which Jackson’s approach is based[iii]. David Campbell argued for a linguistic process that ‘always results in an other being marginalized’ or has the potential for ‘demonisation’[iv]. At the same time Jackson, building upon this, maintains without qualification that the systematic and institutionalised abuse of Iraqi prisoners first exposed in April 2004 “is a direct consequence of the language used by senior administration officials: conceiving of terrorist suspects as ‘evil’, ‘inhuman’ and ‘faceless enemies of freedom creates an atmosphere where abuses become normalised and tolerated”[v]. The only problem is that the process of differentiation does not actually necessarily produce dislike or antagonism. In the 1940’s and 50’s even subjected to the language of the ‘Red Scare’ it’s obvious not all Americans came to see the Soviets as an ‘other’ of their nightmares. And in Iraq the abuses of Iraqi prisoners are isolated cases, it is not the case that the U.S. militarily summarily abuses prisoners as a result of language. Surely the massive protest against the war, even in the U.S. itself, is also a self evident example that the language of ‘evil’ and ‘inhumanity’ does not necessarily produce an outcome that marginalises or demonises an ‘other’. Indeed one of the points of discourse is that we are continually differentiating ourselves from all others around us without this necessarily leading us to hate fear or abuse anyone.[vi] Consequently, the clear fear of the Soviet Union during the height of the Cold War, and the abuses at Abu Ghirab are unusual cases. To understand what is going on we must ask how far can the process of inscripting identity really go towards explaining them? As a result at best all discourse analysis provides us with is a set of universals and a heuristic model

#### Even if they win their framework, there is still no spillover to our single use of reps from the 1ac

Irina Ghughunishvili 10, “Securitization of Migration in the United States after 9/11: Constructing Muslims and Arabs as Enemies”, Submitted to Central European University Department of International Relations European Studies In partial fulfillment of the requirements for the degree of Master of Arts Supervisor: Professor Paul Roe <http://www.etd.ceu.hu/2010/ghughunishvili_irina.pdf>

As provided by the Copenhagen School securitization theory is comprised by speech act, acceptance of the audience and facilitating conditions or other non-securitizing actors contribute to a successful securitization. The causality or a one-way relationship between the speech act, the audience and securitizing actor, where politicians use the speech act first to justify exceptional measures, has been criticized by scholars, such as Balzacq. According to him, the one-directional relationship between the three factors, or some of them, is not the best approach. To fully grasp the dynamics, it will be more beneficial to “rather than looking for a one-directional relationship between some or all of the three factors highlighted, it could be profitable to focus on the degree of congruence between them. 26 Among other aspects of the Copenhagen School’s theoretical framework, which he criticizes, the thesis will rely on the criticism of the lack of context and the rejection of a ‘one-way causal’ relationship between the audience and the actor. The process of threat construction, according to him, can be clearer if external context, which stands independently from use of language, can be considered. 27 Balzacq opts for more context-oriented approach when it comes down to securitization through the speech act, where a single speech does not create the discourse, but it is created through a long process, where context is vital. 28 He indicates: In reality, the speech act itself, i.e. literally a single security articulation at a particular point in time, will at best only very rarely explain the entire social process that follows from it. In most cases a security scholar will rather be confronted with a process of articulations creating sequentially a threat text which turns sequentially into a securitization. 29 This type of approach seems more plausible in an empirical study, as it is more likely that a single speech will not be able to securitize an issue, but it is a lengthy process, where a the audience speaks the same language as the securitizing actors and can relate to their speeches.

#### Uncertainty principals mean shifting your thought process won’t change the inevitability of security competition

Copeland 2k [Dale C., Professor of Political Science, University of Virginia, author The Origins of Major War, “The Constructivist Challenge to Structural Realism.(Review)” *International Security*, September 22, 2000, <http://www.accessmylibrary.com/article-1G1-67320178/constructivist-challenge-structural-realism.html>]

For more than a decade realism, by most accounts the dominant paradigm in international relations theory, has been under assault by the emerging paradigm of constructivism. One group of realists--the structural (or neo-/systemic) realists who draw inspiration from Kenneth Waltz's seminal Theory of International Politics[1]--has been a particular target for constructivist arrows. Such realists contend that anarchy and the distribution of relative power drive most of what goes on in world politics. Constructivists counter that structural realism misses what is often a more determinant factor, namely, the intersubjectively shared ideas that shape behavior by constituting the identities and interests of actors. Through a series of influential articles, Alexander Wendt has provided one of the most sophisticated and hard-hitting constructivist critiques of structural realism.[2] Social Theory of International Politics provides the first book-length statement of his unique brand of constructivism.[3] Wendt goes beyond the more moderate constructivist point that shared ideas must be considered alongside material forces in any empirical analysis. Instead he seeks to challenge the core neorealist premise that anarchy forces states into recurrent security competitions. According to Wendt, whether a system is conflictual or peaceful is a function not of anarchy and power but of the shared culture created through discursive social practices. Anarchy has no determinant "logic," only different cultural instantiations. Because each actor's conception of self (its interests and identity) is a product of the others' diplomatic gestures, states can reshape structure by process; through new gestures, they can reconstitute interest s and identities toward more other-regarding and peaceful means and ends. If Wendt is correct, and "anarchy is what states make of it," then realism has been dealt a crushing blow: States are not condemned by their anarchic situation to worry constantly about relative power and to fall into tragic conflicts. They can act to alter the intersubjective culture that constitutes the system, solidifying over time the non-egoistic mind-sets needed for long-term peace. Notwithstanding Wendt's important contributions to international relations theory, his critique of structural realism has inherent flaws. Most important, it does not adequately address a critical aspect of the realist worldview: the problem of uncertainty. For structural realists, it is states' uncertainty about the present and especially the future intentions of others that makes the levels and trends in relative power such fundamental causal variables. Contrary to Wendt's claim that realism must smuggle in states with differently constituted interests to explain why systems sometimes fall into conflict, neorealists argue that uncertainty about the other's present interests--whether the other is driven by security or nonsecurity motives--can be enough to lead security-seeking states to fight. This problem is exacerbated by the incentives that actors have to deceive one another, an issue Wendt does not address. Yet even when states are fairly sure that the other is also a security seeker, they know that it might change its spots later on. States must therefore worry about any decline in their power, lest the other turn aggressive after achieving superiority. Wendt's building of a systemic constructivist theory--and his bracketing of unit-level processes--thus presents him with an ironic dilemma. It is the very mutability of polities as emphasized by domestic-level constructivists--that states may change because of domestic processes independent of international interaction--that makes prudent leaders so concerned about the future. If diplomacy can have only a limited effect on another's character or regime type, then leaders must calculate the other's potential to attack later should it acquire motives for expansion. In such an environment of future uncertainty, levels and trends in relative power will thus act as a key constraint on state behavior. The problem of uncertainty complicates Wendt's efforts to show that anarchy has no particular logic, but only three different ideational instantiations in history--as Hobbesian, Lockean, or Kantian cultures, depending on the level of actor compliance to certain behavioral norms. By differentiating these cultures in terms of the degree of cooperative behavior exhibited by states, Wendt's analysis reinforces the very dilemma underpinning the realist argument. If the other is acting cooperatively, how is one to know whether this reflects its peaceful character, or is just a facade masking aggressive desires? Wendt's discussion of the different degrees of internalization of the three cultures only exacerbates the problem. What drives behavior at the lower levels of internalization is precisely what is not shared between actors--their private incentives to comply for short-term selfish reasons. This suggests that the neorealist and neoliberal paradigms, both of which emphasize the role of uncertainty when interna lization is low or nonexistent, remain strong competitors to constructivism in explaining changing levels of cooperation through history. And because Wendt provides little empirical evidence to support his view in relation to these competitors, the debate over which paradigm possesses greater explanatory power is still an open one.

#### Perm do the plan and non-mutually exclusive parts of the alternative---creates self-reflexivity which solves the link but avoids conservative cooption of LOAC

Margulies and Metcalf 11 (Joseph Margulies is a Clinical Professor, Northwestern University School of Law Hope Metcalf is a Lecturer, Yale Law School. Metcalf is co-counsel for the plaintiffs/petitioners in Padilla v. Rumsfeld, Padilla v. Yoo, Jeppesen v. Mohammed, and Maqaleh v. Obama, “Terrorizing Academia,” http://www.swlaw.edu/pdfs/jle/jle603jmarguilies.pdf)

The foregoing is simply one attempt at a scholarship that goes beyond the “myth of rights” and takes account of the broader historical, social and political context for U.S. reactions to terrorism. But we note that other disciplines are ahead of the legal academy in this regard. Many scholars— notably in socio-legal studies, history and political science—have probed the causes and consequences of U.S. counterterrorism policies.138 Sociologists have explored various explanations for post-9/11 policies, from consumerism139 to media portrayals of crime140 to the politics of fear generally.141 As Jonathan Simon observed, from a socio-legal perspective, post-9/11 policies were not the exception but “only the latest effort to redefine the scope of the U.S. federal government’s power (and especially the executive branch) by invoking the metaphor of war.”142 Legal historians also noted continuities, especially with respect to the historic U.S. antipathy to prisoners’ dignity and humanity143 as well as the long-standing presence of terrorism on U.S. soil.144 Mary Dudziak has probed the foundations of the dominant emergency framing, arguing that “[i]deas about the temporality of war are embedded in American legal thought [which are] in tension with the experience of war in the twentieth century. The problem of time, in essence, clouds an understanding of the problem of war."1 And cultural critics have provided much needed context for U.S. torture policies'16 and reactions to "Islamic extremism.'11"

An emerging group of legal scholars—whom we might term "integrationists"— have examined the continuities between post-9/11 policies and American practices and attitudes toward crime, risk, security, and socially constructed "others."118 As argued by John Parry,'1\* Judith Rcsnik,'\*° and James Foreman,1\*' post-9/11 policies arc neither sui generis nor likely to disappear at the end of this "war," whenever that might be. The struggle against abusive treatment and confinement of terrorism suspects will undoubtedly persist over the long- term, and we arc best served by broadening our lens to consider how post-9/11 policies repeat, reflect, and inform broader U.S. policies towards marginalized people such as prisoners and non-citizens. Munccr Ahmad has begun the difficult task of questioning whether a rights-based strategy can possibly be effective in the political context of Guantanamo,\*1 and most fundamentally, we must heed the admonition of Richard Fallon, who recently and quite properly observed that "the Constitution is 'politically constructed\* by the tolerances of Congress and the president, as supported by public opinion.""'

From the vantage of 2010, it appears the interventionist position—our position—has failed. As we see it, it failed because it was premised upon a legalistic view of rights that simply cannot be squared with the reality of the American political experience. Yet the interventionist stance holds an undeniable attraction. Of all the positions advanced since 9/11, it holds out the best promise of preserving the pluralist ideals of a liberal democracy. The challenge going forward, therefore, is to re-imagine the interventionist intellectual endeavor. To retain relevance, we must translate the lessons of the social sciences into the language of the law, which likely requires that we knock law from its lofty perch. As a beginning, scholarship should be more attuned to the limitations of the judiciary, and mindful of the complicated tendency of narratives to generate backlash and counter-narratives.

But there is another tendency we must resist, and that is the impulse to nihilism—to throw up our hands in despair, with the lament that nothing works and repression is inevitable. Just how to integrate the political and the ideal is, of course, a problem that is at least as old as legal realism itself and one we do not purport to solve in this essay.'\*\* Still, we are heartened by the creative work undertaken in other arenas, ranging from poverty law to gay rights, that explores how, done properly, lawyering (and even litigation) can make real differences in the lives of marginalized people.'" We hope that the next decade of reflections on the policies undertaken in the name of national security will follow their lead in probing not just what the law should be, but how it functions and whom it serves.

#### Judicial review is good and solves the k

Borislavov 2005

Rad, Ph.D. Candidate at Syracuse, August 2005, Debatte, Vol. 13, No. 2, p. 181-183

I would like to take a step back and consider what Agamben has implicitly silenced in this overarching and totalizing genealogy of modernity. In a recent article in the Boston Review, Larry Kramer points to the falling fortunes of popular constitutionalism in the US. While the history of popular constitutionalism in the US is quite rich and complex it also allows us to glimpse at how liberal constitutionalism deals with the problem of sovereignty. The division of powers in the liberal state notwithstanding, in recent years it has become the rule that the Supreme Court has assumed the role of interpreting the constitution for everyone else. In Kramer’s words, ‘‘The president, Congress, the states, and ordinary citizens can all express opinions about the meaning of the Constitution. But the Justices decide whether those opinions are right or wrong, and the Justices’ judgments are supposed to settle matters for everyone’’ (14). The doctrine of judicial supremacy, which was historically opposed to the departmentalist view, summarizes this state of affairs, and might be usefully approximated to what Schmitt defined as the effective and only apparent emptying out of the political in liberal democracy while the need for eminently political decisions remains very much in force. The fundamental question is: Who interprets the constitution? Kramer points out that the debates about the relative advantages of departmentalism and judicial supremacy go back to the 1790s and only recently has judicial supremacy come to dominate interpretations of the constitution. If we assume that, barring Agamben’s fundamentally new ontology, sovereignty still plays an important role, then we need to attend to the difficulties associated with this predicament. The more mundane question would be who and how exercises power. Liberalism is certainly not toothless, nor is it incapable of decision (as US interventions amply show), it simply presents its intentions in the garb of universalism and good will but the problem of sovereignty is by no means wished away in the doctrine of the separation of powers. That no social order can sustain itself without a sovereign was clear enough to conservative thinkers since the Enlightenment. Thus, in an effort to put in perspective Agamben’s teleology and his apocalyptic messianic language, we might offer the following objection: ‘‘a liberal theory of sovereign power understands full well the paradoxical relation between law and fact, norm and exception; and, precisely in light of such an understanding constructs an institutional system that cannot resolve the paradox but nonetheless attempts to prevent it from reaching an intensified and catastrophic conclusion’’ (501). Agamben will insist, of course, as Nasser Hussain rightly observes, that we are stuck with the very same assumption with which we began: ‘‘the source of the problem is not the institutional operation of sovereign power, but its object—bare life—so too the solution is not a proliferation of institutional safeguards but a rethinking of that mode of being’’ (501). My argument so far has been informed by the assumption that we need to read Schmitt both selectively and against many of his assertions, and despite the efforts of critics like Heinrich Meier who have attempted to present an essentially religious Schmitt, Schmitt retains only a very attenuated form of theology in his conceptual framework. For the Schmitt of Political Theology and the Verfassungslehre, it is of utmost importance who makes the decision on the exception, and not the ontological structure of the decision that Agamben tries to explicate. The necessity for a strong sovereign in Schmitt is indeed buttressed on a theological reference that acts by analogy (the miracle as analogous to the sovereign decision) but the thrust of the argument is concerned with the prosaic and immediate effects of power. It is conceivable that the rulings of the Supreme Court, to the extent that they remain unchallenged, approximate the decisions of a sovereign, of the one who decides on the exception, behind the veil of a broadly determined consensus, or Schmitt’s favorite image of the bourgeoisie as the clasa discutidora, the class that endlessly discusses. Agamben himself would not be averse to such a view because the rulings certainly bring out the zone of indistinction between law and fact, as well as the groundlessness of decision making constitutive of modernity. The question, however, is what is to be done about it? In his zeal to reveal the essence of potentiality and the role of constituting power, to bare the origins of an ontology that has defined the experience of power in the West but also to work toward the coming of a new one, Agamben inadvertently casts himself in the role of a philosopher king. The paradoxical conclusion, given Agamben’s insistence on ontology (he complains about ‘‘the meager propensity of our time for ontology’’) (The Coming Community 89) and the equation of ontology with biopolitics, is that we must make the guardians philosophers after they have duly internalized Agamben’s delphic pronouncements. How else is one to move from the oppression of ubiquitous sovereignty to whatever singularity without invoking the compromised potentiality of constituting power as revolution? It is interesting, and again paradoxical, that Agamben’s philosopher appeals to a sovereign on behalf of his new ontology, that is, to the developed Western democracies. If power continues to be exercised sovereignly what difference would a new ontology really make? Isn’t that what Heidegger attempted to do in his Rectoral address, although of course with a completely different political purpose? But for Agamben, a thinker who has chosen to dwell in uncertainties and ambiguities, the proximity of a disastrous outcome authorized by a possible new ontology and a truly new beginning is what is most intellectually satisfying.

#### The state of exception can be contained---no impact

Jennifer Mitzen 11, PhD, University of Chicago, Associate Professor of Political Science at Ohio State University, Michael E. Newell, “Crisis Authority, the War on Terror and the Future of Constitutional Democracy,” PDF

But what Agamben has potentially overlooked is the conversation between the government, public and media concerning the state of exception. Waever’s desecuritization theory tells us that it is possible for continued debate and media coverage to desecuritize a threat in whole or in part (Waever, 1995). As the War on Terror progressed, more academics and government officials began to speak out against the usefulness of interrogations, the reality of the terrorist threat and the morality of the administration’s policies. Some critics suggested that the terrorist threat was not as imminent as the Administration made it appear, and that “…fears of the omnipotent terrorist…may have been overblown, the threat presented within the United States by al Qaeda greatly exaggerated” (Mueller, 2006). Indeed, as Mueller points out, there have been no terrorist attacks in the United States five years prior and five years after September 11th. The resignation of administration officials, such as Jack Goldsmith, who, it was later learned, sparred with the administration over Yoo’s torture memos, their wiretapping program and their trial of suspected terrorists also contributed to this shift in sentiment (Rosen, 2007). The use of the terms “torture,” and “prisoner abuse,” that began to surface in critical media coverage of the War on Terror framed policies as immoral. As the public gradually learned more from media coverage, academic discourse, and protests from government officials, the administration and its policies saw plummeting popularity in the polls. Two-thirds of the country did not approve of Bush’s handling of the War on Terror by the end of his presidency (Harris Poll) and as of February 2009 two-thirds of the country wanted some form of investigation into torture and wiretapping policies (USA Today Poll, 2009).¶ In November 2008 a Democratic President was elected and Democrats gained substantial ground in Congress partly on promises of changing the policies in the War on Terror. Republican presidential nominees, such as Mitt Romney, who argued for the continuance of many of the Bush administration’s policies in the War on Terror, did not see success at the polls. Indeed, this could be regarded as Waever’s “speech-act failure” which constitutes the moment of desecuritization (Waever, 1995). In this sense, Agamben’s warning of “pure de-facto rule” in the War on Terror rings hollow because of one single important fact: the Bush administration peacefully transferred power to their political rivals after the 2008 elections. The terrorist threat still lingers in the far reaches of the globe, and a strictly Agamben-centric analysis would suggest that the persistence of this threat would allow for the continuance of the state of exception. If Agamben was correct that the United States was under “pure de-facto rule” then arguably its rulers could decide to stay in office and to use the military to protect their position. Instead, Bush and his administration left, suggesting that popular sovereignty remained intact.

#### Util first

Cowen 2004 (Tyler, Department of Economics at George Mason University, "The Epistemic Problem Does Not Refute Consequentialism," November 2, http://www.gmu.edu/jbc/Tyler/Epistemic2.pdf, p. 14-15)

The epistemic critique relies heavily on a complete lack of information about initial circumstances. This is not a plausible general assumption, although it may sometimes be true. The critique may give the impression of relying more heavily on a more plausible assumption, namely a high variance for the probability distribution of our estimates concerning the future. But simply increasing the level of variance or uncertainty does not add much force to the epistemic argument. To see this more clearly, consider another case of a high upfront benefit. Assume that the United States has been hit with a bioterror attack and one million children have contracted smallpox. We also have two new experimental remedies, both of which offer some chance of curing smallpox and restoring the children to perfect health. If we know for sure which remedy works, obviously we should apply that remedy. But imagine now that we are uncertain as to which remedy works. The uncertainty is so extreme that each remedy may cure somewhere between three hundred thousand and six hundred thousand children. Nonetheless we have a slight idea that one remedy is better than the other. That is, one remedy is slightly more likely to cure more children, with no other apparent offsetting negative effects or considerations. Despite the greater uncertainty, we still have the intuition that we should try to save as many children as possible. We should apply the remedy that is more likely to cure more children. We do not say: “We are now so uncertain about what will happen. We should pursue some goal other than trying to cure as many children as possible.” Nor would we cite greater uncertainty about longer-run events as an argument against curing the children. We have a definite good in the present (more cured children), balanced against a radical remixing of the future on both sides of the equation. The definite upfront good still stands firm. Alternatively, let us assume that our broader future suddenly became less predictable (perhaps genetic engineering is invented, which creates new and difficult-to-forecast possibilities). That still would not diminish the force of our reason for saving more children. The variance of forecast becomes larger on both sides of the equation – whether we save the children or not – and the value of the upfront lives remains. A higher variance of forecast might increase the required size of the upfront benefit (to overcome the Principle of Roughness), but it would not refute the relevance of consequences more generally. We could increase the uncertainty more, but consequentialism still will not appear counterintuitive. The remedies, rather than curing somewhere in the range of three to six hundred thousand children, might cure in the broader range of zero to all one million of the children. By all classical statistical standards, this new cure scenario involves more uncertainty than the previous case, such as by having a higher variance of possible outcomes. Yet this higher uncertainty lends little support for the view that curing the children becomes less important. We still have an imperative to apply the remedy that appears best, and is expected the cure the greater number of children. This example may appear excessively simple, but it points our attention to the non-generality of the epistemic critique. The critique appears strongest only when we have absolutely no idea about the future; this is a special rather than a general case. Simply boosting the degree of background generic uncertainty should not stop us from pursuing large upfront benefits of obvious importance.

#### Quality of life high – we control uniqueness

**Ridley**, visiting professor at Cold Spring Harbor Laboratory, former science editor of *The Economist*, and award-winning science writer, **2010**

(Matt, *The Rational Optimist*, pg. 13-15)

If my fictional family is not to your taste, perhaps you prefer statistics. Since 1800, the population of the world has multiplied six times, yet **average life expectancy has more than doubled and real income has risen more than nine times**. Taking a shorter perspective, in 2005, compared with 1955, the average human being on Planet Earth earned nearly three times as much money (corrected for inflation), ate one-third more calories of food, buried one-third as many of her children and could expect to live one-third longer. She was less likely to die as a result of war, murder, childbirth, accidents, tornadoes, flooding, famine, whooping cough, tuberculosis, malaria, diphtheria, typhus, typhoid, measles, smallpox, scurvy or polio. She was less likely, at any given age, to get cancer, heart disease or stroke. She was more likely to be literate and to have finished school. She was more likely to own a telephone, a flush toilet, a refrigerator and a bicycle. All this during a half-century when the world population has more than doubled, so that far from being rationed by population pressure, the goods and services available to the people of the world have expanded. It is, by any standard, an astonishing human achievement. Averages conceal a lot. **But even if you break down the world into bits**, **it is hard to find any region that was worse off in 2005 than it was in 1955**. Over that half-century, real income per head ended a little lower in only six countries (Afghanistan, Haiti, Congo, Liberia, Sierra Leone and Somalia), life expectancy in three (Russia, Swaziland and Zimbabwe), and infant survival in none. In the rest they have rocketed upward. Africa’s rate of improvement has been distressingly slow and patchy compared with the rest of the world, and many southern African countries saw life expectancy plunge in the 1990s as the AIDS epidemic took hold (before recovering in recent years). There were also moments in the half-century when you could have caught countries in episodes of dreadful deterioration of living standards or life chances – China in the 1960s, Cambodia in the 1970s, Ethiopia in the 1980s, Rwanda in the 1990s, Congo in the 2000s, North Korea throughout. Argentina had a disappointingly stagnant twentieth century. But overall, after fifty years, **the outcome for the world is** remarkably, astonishingly, **dramatically positive**. The average South Korean lives twenty-six more years and earns fifteen times as much income each year as he did in 1955 (and earns fifteen times as much as his North Korean counter part). The average Mexican lives longer now than the average Briton did in 1955. The average Botswanan earns more than the average Finn did in 1955. **Infant mortality is lower today in Nepal than it was in Italy in 1951**. The proportion of Vietnamese living on less than $2 a day has dropped from 90 per cent to 30 per cent in twenty years. The rich have got richer, but the poor have done even better. **The poor in the developing world grew their consumption twice as fast as the world as a whole between 1980 and 2000**. The Chinese are ten times as rich, one-third as fecund and twenty-eight years longer-lived than they were fifty years ago. Even Nigerians are twice as rich, 25 per cent less fecund and nine years longer-lived than they were in 1955. **Despite a doubling of the world population**, even **the raw number of people living in absolute poverty** (defined as less than a 1985 dollar a day) **has fallen since the 1950s**. The percentage living in such absolute poverty has dropped by more than half – to less than 18 per cent. That number is, of course, still all too horribly high, but the trend is hardly a cause for despair: at the current rate of decline, it would hit zero around 2035 – though it probably won’t. The United Nations estimates that poverty was reduced more in the last fifty years than in the previous 500.

#### Discourse analysis is tautology; if nothing is neutral all of their evidence has the same epistemological bias---linear causality is inevitable and has explanatory power

Rodwell 5 (Jonathan Rodwell is a PhD student at Manchester Met. researching the U.S. Foreign Policy of the late 70's / rise of ‘neo-cons’ and Second Cold War, “Trendy But Empty: A Response to Richard Jackson,” http://www.49thparallel.bham.ac.uk/back/issue15/rodwell1.htm)

Next, discourse analysis as practiced exists within an enormous logical cul-de-sac. Born of the original premise that each discourse and explanation has it’s own realities, what results is a theoretical approach in which a critique is actually impossible because by post-structural logic a critique can only operate within it’s own discursive structure and on it’s own terms. If things only exist within specific languages and discourse you must share the basic premises of that discourse to be able to say anything about it. But what useful criticisms can you make if you share fundamental assumptions? Moreover remembering the much argued for normative purposes of Jackson’s case he talks about the effects of naturalizing language and without blushing criticises the dangerous anti-terror rhetoric of George W. Bush. The only problem is Jackson has attempted to illustrate that what is moral or immoral depends on the values and structures of each discourse. Therefore why should a reader believe Richard Jackson’s idea of right and wrong any more than George W. Bush’s? Fundamentally if he wishes to maintain that each discourse is specific to each intellectual framework Jackson cannot criticise at all. By his own epistemological rules if he is inside those discourses he shares their assumptions, outside they make no sense What actually occurs then is an aporia - a logical contraction where a works own stated epistemological premises rob it of the ability to contain any critical force. Such arguments are caught between the desire to maintain that all discursive practices construct their own truths, in which case critiques are not possible as they are merely one of countless possible discursive truths with no actually reason to take then seriously, or an appeal to material reality, but again the entire premises of post structural linguistics rejects the idea of a material reality.[vii] In starting from a premise that it is not possible to neutrally describe the real world, the result is that without that real world, discourse analysis actually has nothing to say. The issue of the material real world, or ‘evidence’ is actually the issue at the heart of the weakness of post-structural discourse analysis, though it does hold the potential to at least rescue some of it’s usefulness. The problem is simple, in that the only way Jackson or any post-structuralist can operationalise their argument is with an appeal to material evidence. But by the logic of discourse analysis there is no such thing as neutral ‘evidence’. To square this circle many post-struturalist writers do seem to hint at complexity and what post-structural culturalists might call ‘intertextuality’, arguing for ‘favouring a complexity of interactions’ rather than ‘linear causality’[viii]. The implication is that language is just one of an endless web of factors and surely this prompts one to pursue an understanding of these links. However, to do so would dangerously undermine the entire post-structural project as again, if there are discoverable links between factors, then there are material facts that are identifiable regardless of language. Consequently, rather than seeking to understand the links between factors what seems to happen is hands are thrown up in despair as the search for complexity is dropped as quickly as it is picked up. The result is one-dimensional arguments that again can say little. This is evident in Jackson’s approach as he details how words have histories and moreover are part of a dialectic process in which ‘they not only shape social structures but are also shaped by them’.[ix] However we do not then see any discussion of whether, therefore, it is not discourse that is the powerful tool but the effect of the history and the social structure itself. Throughout Jackson’s argument it is a top down process in which discourse disciplines society to follow the desire of the dominant, but here is an instance of a dialectic process where society may actually be the originating force, allowing the discourse in turn to actually to be more powerful. However we simply see no exploration of this potential dialectic process, merely the suggestion it exists.

#### Life is always valuable

**Torchia 2**, Professor of Philosophy, Providence College, Phd in Philosophy, Fordham College (Joseph, “Postmodernism and the Persistent Vegetative State,” The National Catholic Bioethics Quarterly Summer 2002, Vol. 2, No. 2, <http://www.lifeissues.net/writers/torc/torc_01postmodernismandpvs1.html>)

Ultimately, Aquinas' theory of personhood requires a metaphysical explanation that is rooted in an understanding of the primacy of the existence or esse of the human person. For humans beings, the upshot of this position is clear: while human personhood is intimately connected with a broad range of actions (including consciousness of oneself and others), the definition of personhood is not based upon any specific activity or capacity for action, but upon the primacy of esse. Indeed, human actions would have neither a cause nor any referent in the absence of a stable, abiding self that is rooted in the person's very being. A commitment to the primacy of esse, then, allows for an adequate recognition of the importance of actions in human life, while providing a principle for the unification and stabilizing of these behavioral features. In this respect, the human person is defined as a dynamic being which actualizes the potentiality for certain behavior or operations unique to his or her own existence. Esse thereby embraces all that the person is and is capable of doing. In the final analysis, **any attempt to define the person in terms of a single attribute, activity, or capability** (e.g., consciousness) flies in the face of the depth and multi-dimensionality which is part and parcel of personhood itself. To do so **would abdicate the ontological core of the person and the very center which renders human activities intelligible**. And Aquinas' anthropology, I submit, provides an effective philosophical lens through which the depth and profundity of the human reality comes into sharp focus. In this respect, Kenneth Schmitz draws an illuminating distinction between "person" (a term which conveys such hidden depth and profundity) and "personality" (a term which pertains to surface impressions and one's public image).40 The preoccupation with the latter term, he shows, is very much an outgrowth of the eighteenth century emphasis upon a human individuality that is understood in terms of autonomy and privacy. This notion of the isolated, atomistic individual was closely linked with a subjective focus whereby the "self" became the ultimate referent for judging reality. By extension, such a presupposition led to the conviction that only self-consciousness provides a means of validating any claims to personhood and membership in a community of free moral agents capable of responsibilities and worthy of rights. In contrast to such an isolated and enclosed conception (i.e., whereby one is a person by virtue of being "set apart" from others as a privatized entity), Schmitz focuses upon an intimacy which presupposes a certain relation between persons. From this standpoint, intimacy is only possible through genuine self-disclosure, and the sharing of self-disclosure that allows for an intimate knowledge of the other.41 For Schmitz, such a revelation of one's inner self transcends any specific attributes or any overt capacity the individual might possess.Ultimately, Schmitz argues, intimacy is rooted in the unique act of presencing, whereby the person reveals his or her personal existence. But such a mystery only admits of a metphysical explanation, rather than an epistemological theory of meaning which confines itself to what is observable on the basis of perception or sense experience. Intimacy, then, discloses a level of being that transcends any distinctive properties. Because intimacy has a unique capacity to disclose being, it places us in touch with the very core of personhood. Metaphysically speaking, intimacy is not grounded in the recognition of this or that characteristic a person has, but rather in the simple unqualified presence the person is.43

#### Legal restraints work---exception theory is self-serving and wrong

William E. Scheuerman 6, Professor of Political Science at Indiana University, Carl Schmitt and the Road to Abu Ghraib, Constellations, Volume 13, Issue 1

Yet this argument relies on Schmitt’s controversial model of politics, as outlined eloquently but unconvincingly in his famous Concept of the Political. To be sure, there are intense conflicts in which it is naïve to expect an easy resolution by legal or juridical means. But the argument suffers from a troubling circularity: Schmitt occasionally wants to define “political” conflicts as those irresolvable by legal or juridical devices in order then to argue against legal or juridical solutions to them. The claim also suffers from a certain vagueness and lack of conceptual precision. At times, it seems to be directed against trying to resolve conflicts in the courts or juridical system narrowly understood; at other times it is directed against any legal regulation of intense conflict. The former argument is surely stronger than the latter. After all, legal devices have undoubtedly played a positive role in taming or at least minimizing the potential dangers of harsh political antagonisms. In the Cold War, for example, international law contributed to the peaceful resolution of conflicts which otherwise might have exploded into horrific violence, even if attempts to bring such conflicts before an international court or tribunal probably would have failed.22¶ Second, Schmitt dwells on the legal inconsistencies that result from modifying the traditional state-centered system of international law by expanding protections to non-state fighters. His view is that irregular combatants logically enjoyed no protections in the state-centered Westphalian model. By broadening protections to include them, international law helps undermine the traditional state system and its accompanying legal framework. Why is this troubling? The most obvious answer is that Schmitt believes that the traditional state system is normatively superior to recent attempts to modify it by, for example, extending international human rights protections to individuals against states. 23 But what if we refuse to endorse his nostalgic preference for the traditional state system? Then a sympathetic reading of the argument would take the form of suggesting that the project of regulating irregular combatants by ordinary law must fail for another reason: it rests on a misguided quest to integrate incongruent models of interstate relations and international law. We cannot, in short, maintain core features of the (state-centered) Westphalian system while extending ambitious new protections to non-state actors.¶ This is a powerful argument, but it remains flawed. Every modern legal order rests on diverse and even conflicting normative elements and ideals, in part because human existence itself is always “in transition.” When one examines the so-called classical liberal legal systems of nineteenth-century England or the United States, for example, one quickly identifies liberal elements coexisting uneasily alongside paternalistic and authoritarian (e.g., the law of slavery in the United States), monarchist, as well as republican and communitarian moments. The same may be said of the legal moorings of the modern welfare state, which arguably rest on a hodgepodge of socialist, liberal, and Christian and even Catholic (for example, in some European maternity policies) programmatic sources. In short, it is by no means self-evident that trying to give coherent legal form to a transitional political and social moment is always doomed to fail. Moreover, there may be sound reasons for claiming that the contemporary transitional juncture in the rules of war is by no means as incongruent as Schmitt asserts. In some recent accounts, the general trend towards extending basic protections to non-state actors is plausibly interpreted in a more positive – and by no means incoherent – light.24¶ Third, Schmitt identifies a deep tension between the classical quest for codified and stable law and the empirical reality of a social world subject to permanent change: “The tendency to modify or even dissolve classical [legal] concepts…is general, and in view of the rapid change of the world it is entirely understandable” (12). Schmitt’s postwar writings include many provocative comments about what contemporary legal scholars describe as the dilemma of legal obsolescence. 25 In The Partisan, he suggests that the “great transformations and modifications” in the technological apparatus of modern warfare place strains on the aspiration for cogent legal norms capable of regulating human affairs (17; see also 48–50). Given the ever-changing character of warfare and the fast pace of change in military technology, it inevitably proves difficult to codify a set of cogent and stable rules of war. The Geneva Convention proviso that legal combatants must bear their weapons openly, for example, seems poorly attuned to a world where military might ultimately depends on nuclear silos buried deep beneath the surface of the earth, and not the success of traditional standing armies massed in battle on the open field. “Or what does the requirement mean of an insignia visible from afar in night battle, or in battle with the long-range weapons of modern technology of war?” (17).¶ As I have tried to show elsewhere, these are powerful considerations deserving of close scrutiny; Schmitt is probably right to argue that the enigma of legal obsolescence takes on special significance in the context of rapid-fire social change.26 Unfortunately, he seems uninterested in the slightest possibility that we might successfully adapt the process of lawmaking to our dynamic social universe. To be sure, he discusses the “motorization of lawmaking” in a fascinating 1950 publication, but only in order to underscore its pathological core.27 Yet one possible resolution of the dilemma he describes would be to figure how to reform the process whereby rules of war are adapted to novel changes in military affairs in order to minimize the danger of anachronistic or out-of-date law. Instead, Schmitt simply employs the dilemma of legal obsolescence as a battering ram against the rule of law and the quest to develop a legal apparatus suited to the special problem of irregular combatants.

#### No alternative to the law/legal system---other ideas bring more inequality and abuse

Jerold S. Auerbach 83, Professor of History at Wellesley, “Justice Without Law?”, 1983, p. 144-146

As cynicism about the legal system increases, so does enthusiasm for alternative dispute-settlement institutions. The search for alternatives accelerates, as Richard Abel has suggested, "when some fairly powerful interest is threatened by an increase in the number or magnitude of legal rights.\*'6 Alternatives are designed to provide a safety valve, to siphon discontent from courts. With the danger of political confrontation reduced, the ruling power of legal institutions is preserved, and the stability of the social system reinforced. Not incidentally, alternatives prevent the use of courts for redistributive purposes in the interest of equality, by consigning the rights of disadvantaged citizens to institutions with minimal power to enforce or protect them. It is, therefore, necessary to beware of the seductive appeal of alternative institutions. They may deflect energy from political organization by groups of people with common grievances; or discourage effective litigation strategies that could provide substantial benefits. They may, in the end, create a two-track justice system that dispenses informal "justice" to poor people with "small" claims and "minor" disputes, who cannot afford legal services, and who are denied access to courts. (Bar associations do not recommend that corporate law firms divert their clients to mediation, or that business deductions for legal expenses—a gigantic government subsidy for litigation—be eliminated.) Justice according to law will be reserved for the affluent, hardly a novel development in American history but one that needs little encouragement from the spread of alternative dispute-settlement institutions.¶ It is social context and political choice that determine whether courts, or alternative institutions, can render justice more or less accessible—and to whom. Both can be discretionary, arbitrary, domineering—and unjust. Law can symbolize justice, or conceal repression. It can reduce exploitation, or facilitate it. It can prohibit the abuse of power, or disguise abuse in procedural forms. It can promote equality, or sustain inequality. Despite the resiliency and power of law, it seems unable to eradicate the tension between legality and justice: even in a society of (legal) equals, some still remain more equal than others. But diversion from the legal system is likely to accentuate that inequality. Without legal power the imbalance between aggrieved individuals and corporations, or government agencies, cannot be redressed. In American society, as Laura Nader has observed, "disputing without the force of law ... [is| doomed to fail."7 Instructive examples document the deleterious effect of coerced informality (even if others demonstrate the creative possibilities of indigenous experimentation). Freed slaves after the Civil War and factory workers at the turn of the century, like inner-city poor people now, have all been assigned places in informal proceedings that offer substantially weaker safeguards than law can provide. Legal institutions may not provide equal justice under law, but in a society ruled by law it is their responsibility.¶ It is chimerical to believe that mediation or arbitration can now accomplish what law seems powerless to achieve. The American deification of individual rights requires an accessible legal system for their protection. Understandably, diminished faith in its capacities will encourage the yearning for alternatives. But the rhetoric of "community" and "justice" should not be permitted to conceal the deterioration of community life and the unraveling of substantive notions of justice that has accompanied its demise. There is every reason why the values that historically are associated with informal justice should remain compelling: especially the preference for trust, harmony, and reciprocity within a communal setting. These are not, however, the values that American society encourages or sustains; in their absence there is no effective alternative to legal institutions.¶ The quest for community may indeed be "timeless and universal."8 In this century, however, the communitarian search for justice without law has deteriorated beyond recognition into a stunted off-shoot of the legal system. The historical progression is clear: from community justice without formal legal institutions to the rule of law, all too often without justice. But injustice without law is an even worse possibility, which misguided enthusiasm for alternative dispute settlement now seems likely to encourage. Our legal culture too accurately expresses the individualistic and materialistic values that most Americans deeply cherish to inspire optimism about the imminent restoration of communitarian purpose. For law to be less conspicuous Americans would have to moderate their expansive freedom to compete, to acquire, and to possess, while simultaneously elevating shared responsibilities above individual rights. That is an unlikely prospect unless Americans become, in effect, un-American. Until then, the pursuit of justice without law does incalculable harm to the prospect of equal justice.

#### Rejecting sovereignty exacerbates inequalities and prevents emancipation

Tara McCormack 10, Lecturer in International Politics at the University of Leicester, PhD in IR from the University of Westminster, “Critique, Security and Power: The Political Limits to Emancipatory Approaches,” p139, google books

Critics of critical and emancipatory theory have raised pertinent problems in terms both of the idealism of critical approaches and their problematic relationship to contemporary liberal intervention. Critical theorists themselves are aware that their prescriptions seem to be hard to separate from contemporary discourses and practices of power, yet critical theorists do not seem to be able to offer any understanding of why this might be. However, the limitations to critical and emancipatory approaches cannot be overcome by distinguishing themselves from liberal internationalist policy. In fact a closer engagement with contemporary security policies and discourse would show the similarities with critical theory and that both suffer from the same limitations.¶ The limitations of critical and emancipatory approaches are to be found in critical prescriptions in the contemporary political context. Jahn is right to argue that critical theory is idealistic, but this needs to be explained why. Douzinas is right to argue that critical theory becomes a justification for power and this needs to be explained why. The reasons for this remain undertheorised. I argue here that critical and emancipatory approaches lack a fundamental understanding of what is at stake in the political realm. For critical theorists the state and sovereignty represent oppressive structures that work against human freedom. There is much merit to this critique of the inequities of the state system. However, the problem is that freedom or emancipation are not simply words that can breathe life into international affairs but in the material circumstances of the contemporary world must be linked to political constituencies, that is men and women who can give content to that freedom and make freedom a reality. ¶ Critical and emancipatory theorists fail to understand that there must be a political content to emancipation and new forms of social organisation. Critical theorists seek emancipation and argue for new forms of political community above and beyond the state, yet there is nothing at the moment beyond the state that can give real content to those wishes. There is no democratic world government and it is simply nonsensical to argue that the UN, for example, is a step towards global democracy. Major international institutions are essentially controlled by powerful states. To welcome challenges to sovereignty in the present political context cannot hasten any kind of more just world order in which people really matter (to paraphrase Lynch). Whatever the limitations of the state, and there are many, at the moment the state represents the only framework in which people might have a chance to have some meaningful control over their lives.

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#### Decline causes nuclear war-only the US has the motive and capability to provide public goods that reduce incentive for war.

**Kagan, Brookings senior fellow, 2012**

(Robert, “Why the World Need America”, 2-11, <http://online.wsj.com/article/SB10001424052970203646004577213262856669448.html>, ldg)

With the outbreak of World War I, the age of settled peace and advancing liberalism—of European civilization approaching its pinnacle—collapsed into an age of hyper-nationalism, despotism and economic calamity. The once-promising spread of democracy and liberalism halted and then reversed course, leaving a handful of outnumbered and besieged democracies living nervously in the shadow of fascist and totalitarian neighbors. The collapse of the British and European orders in the 20th century did not produce a new dark age—though if Nazi Germany and imperial Japan had prevailed, it might have—but the horrific conflict that it produced was, in its own way, just as devastating. Would the end of the present American-dominated order have less dire consequences? A surprising number of American intellectuals, politicians and policy makers greet the prospect with equanimity. There is a general sense that the end of the era of American pre-eminence, if and when it comes, need not mean the end of the present international order, with its widespread freedom, unprecedented global prosperity (even amid the current economic crisis) and absence of war among the great powers. American power may diminish, the political scientist G. John Ikenberry argues, but "the underlying foundations of the liberal international order will survive and thrive." The commentator Fareed Zakaria believes that even as the balance shifts against the U.S., rising powers like China "will continue to live within the framework of the current international system." And there are elements across the political spectrum—Republicans who call for retrenchment, Democrats who put their faith in international law and institutions—who don't imagine that a "post-American world" would look very different from the American world. If all of this sounds too good to be true, it is. The present world order was largely shaped by American power and reflects American interests and preferences. If the balance of power shifts in the direction of other nations, the world order will change to suit their interests and preferences. Nor can we assume that all the great powers in a post-American world would agree on the benefits of preserving the present order, or have the capacity to preserve it, even if they wanted to. Take the issue of democracy. For several decades, the balance of power in the world has favored democratic governments. In a genuinely post-American world, the balance would shift toward the great-power autocracies. Both Beijing and Moscow already protect dictators like Syria's Bashar al-Assad. If they gain greater relative influence in the future, we will see fewer democratic transitions and more autocrats hanging on to power. The balance in a new, multipolar world might be more favorable to democracy if some of the rising democracies—Brazil, India, Turkey, South Africa—picked up the slack from a declining U.S. Yet not all of them have the desire or the capacity to do it. What about the economic order of free markets and free trade? People assume that China and other rising powers that have benefited so much from the present system would have a stake in preserving it. They wouldn't kill the goose that lays the golden eggs. Unfortunately, they might not be able to help themselves. The creation and survival of a liberal economic order has depended, historically, on great powers that are both willing and able to support open trade and free markets, often with naval power. If a declining America is unable to maintain its long-standing hegemony on the high seas, would other nations take on the burdens and the expense of sustaining navies to fill in the gaps? Even if they did, would this produce an open global commons—or rising tension? China and India are building bigger navies, but the result so far has been greater competition, not greater security. As Mohan Malik has noted in this newspaper, their "maritime rivalry could spill into the open in a decade or two," when India deploys an aircraft carrier in the Pacific Ocean and China deploys one in the Indian Ocean. The move from American-dominated oceans to collective policing by several great powers could be a recipe for competition and conflict rather than for a liberal economic order. And do the Chinese really value an open economic system? The Chinese economy soon may become the largest in the world, but it will be far from the richest. Its size is a product of the country's enormous population, but in per capita terms, China remains relatively poor. The U.S., Germany and Japan have a per capita GDP of over $40,000. China's is a little over $4,000, putting it at the same level as Angola, Algeria and Belize. Even if optimistic forecasts are correct, China's per capita GDP by 2030 would still only be half that of the U.S., putting it roughly where Slovenia and Greece are today. Although the Chinese have been beneficiaries of an open international economic order, they could end up undermining it simply because, as an autocratic society, their priority is to preserve the state's control of wealth and the power that it brings. They might kill the goose that lays the golden eggs because they can't figure out how to keep both it and themselves alive. Finally, what about the long peace that has held among the great powers for the better part of six decades? Would it survive in a post-American world? Most commentators who welcome this scenario imagine that American predominance would be replaced by some kind of multipolar harmony. But multipolar systems have historically been neither particularly stable nor particularly peaceful. Rough parity among powerful nations is a source of uncertainty that leads to **miscalculation**. Conflicts erupt as a result of fluctuations in the delicate power equation. War among the great powers was a common, if not constant, occurrence in the long periods of multipolarity from the 16th to the 18th centuries, culminating in the series of enormously destructive Europe-wide wars that followed the French Revolution and ended with Napoleon's defeat in 1815. The 19th century was notable for two stretches of great-power peace of roughly four decades each, punctuated by major conflicts. The Crimean War (1853-1856) was a mini-world war involving well over a million Russian, French, British and Turkish troops, as well as forces from nine other nations; it produced almost a half-million dead combatants and many more wounded. In the Franco-Prussian War (1870-1871), the two nations together fielded close to two million troops, of whom nearly a half-million were killed or wounded. The peace that followed these conflicts was characterized by increasing tension and competition, numerous war scares and massive increases in armaments on both land and sea. Its climax was World War I, the most destructive and deadly conflict that mankind had known up to that point. As the political scientist Robert W. Tucker has observed, "Such stability and moderation as the balance brought rested ultimately on the threat or use of force. War remained the essential means for maintaining the balance of power." There is little reason to believe that a return to multipolarity in the 21st century would bring greater peace and stability than it has in the past. The era of American predominance has shown that **there is no better recipe for** great-power **peace than certainty about who holds the upper hand**. President Bill Clinton left office believing that the key task for America was to "create the world we would like to live in when we are no longer the world's only superpower," to prepare for "a time when we would have to share the stage." It is an eminently sensible-sounding proposal. But can it be done? For particularly in matters of security, the rules and institutions of international order rarely survive the decline of the nations that erected them. They are like scaffolding around a building: They don't hold the building up; the building holds them up. Many foreign-policy experts see the present international order as the inevitable result of human progress, a combination of advancing science and technology, an increasingly global economy, strengthening international institutions, evolving "norms" of international behavior and the gradual but inevitable triumph of liberal democracy over other forms of government—forces of change that transcend the actions of men and nations. Americans certainly like to believe that our preferred order survives because it is right and just—not only for us but for everyone. We assume that the triumph of democracy is the triumph of a better idea, and the victory of market capitalism is the victory of a better system, and that both are irreversible. That is why Francis Fukuyama's thesis about "the end of history" was so attractive at the end of the Cold War and retains its appeal even now, after it has been discredited by events. The idea of inevitable evolution means that there is no requirement to impose a decent order. It will merely happen. But international order is not an evolution; it is an imposition. It is the domination of one vision over others—in America's case, the domination of free-market and democratic principles, together with an international system that supports them. The present order will last only as long as those who favor it and benefit from it retain the will and capacity to defend it. There was nothing inevitable about the world that was created after World War II. No divine providence or unfolding Hegelian dialectic required the triumph of democracy and capitalism, and there is no guarantee that their success will outlast the powerful nations that have fought for them. Democratic progress and liberal economics have been and can be reversed and undone. The ancient democracies of Greece and the republics of Rome and Venice all fell to more powerful forces or through their own failings. The evolving liberal economic order of Europe collapsed in the 1920s and 1930s. The better idea doesn't have to win just because it is a better idea. It requires great powers to champion it. If and when American power declines, the institutions and norms that American power has supported will decline, too. Or more likely, if history is a guide, they may collapse altogether as we make a transition to another kind of world order, or to disorder. We may discover then that the U.S. was essential to keeping the present world order together and that the alternative to American power was not peace and harmony but **chaos and catastrophe**—which is what the world looked like right before the American order came into being.

### Environement !

**Hance, Mongabay senior writer, 2013**

(Jeremy, “Warnings of global ecological tipping points may be overstated”, 3-5, <http://news.mongabay.com/2013/0305-hance-tipping-points.html#r2IbUBDMyux2eU7i.99>, ldg)

There's little evidence that the Earth is nearing a global ecological tipping point, according to a new Trends in Ecology and Evolution paper that is bound to be controversial. The authors argue that despite numerous warnings that the Earth is headed toward an ecological tipping point due to environmental stressors, such as habitat loss or climate change, it's unlikely this will occur anytime soon—at least not on land. The paper comes with a number of caveats, including that a global tipping point could occur in marine ecosystems due to ocean acidification from burning fossil fuels. In addition, regional tipping points, such as the Arctic ice melt or the Amazon rainforest drying out, are still of great concern. "When others have said that a planetary critical transition is possible/likely, they've done so without any underlying model (or past/present examples, apart from catastrophic drivers like asteroid strikes)," lead author Barry Brook and Director of Climate Science at the University of Adelaide told mongabay.com. "It’s just speculation and we’ve argued [...] that this conjecture is not logically grounded. No one has found the opposite of what we suggested—they’ve just proposed it." According to Brook and his team, a truly global tipping point must include an impact large enough to spread across the entire world, hitting various continents, in addition to causing some uniform response. "These criteria, however, are very unlikely to be met in the real world," says Brook. The idea of such a tipping point comes from ecological research, which has shown that some ecosystems will flip to a new state after becoming heavily degraded. But Brook and his team say that tipping points in individual ecosystems should not be conflated with impacts across the Earth as a whole. Even climate change, which some scientists might consider the ultimate tipping point, does not fit the bill, according to the paper. Impacts from climate change, while global, will not be uniform and hence not a "tipping point" as such. "Local and regional ecosystems vary considerably in their responses to climate change, and their regime shifts are therefore likely to vary considerably across the terrestrial biosphere," the authors write. Barry adds that, "from a planetary perspective, this diversity in ecosystem responses creates an essentially gradual pattern of change, without any identifiable tipping points." The paper further argues that biodiversity loss on land may not have the large-scale impacts that some ecologists argue, since invasive species could potentially take the role of vanishing ones. "So we can lose the unique evolutionary history (bad, from an intrinsic viewpoint) but not necessarily the role they impart in terms of ecosystem stability or provision of services," explains Brook. The controversial argument goes against many scientists' view that decreased biodiversity will ultimately lessen ecological services, such as pollination, water purification, and carbon sequestration.

### ALT

Alt fails- can’t change international politics

**McCormack 10** (Tara, is Lecturer in International Politics at the University of Leicester and has a PhD in International Relations from the University of Westminster. 2010, (Critique, Security and Power: The political limits to emancipatory approaches, page 59-61)

In chapter 7 I engaged with the human security framework and some of the problematic implications of ‘emancipatory’ security policy frameworks. In this chapter I argued that the shift away from the pluralist security framework and the elevation of cosmopolitan and emancipatory goals **has served to** **enforce international power inequalities rather than lessen them**. Weak or unstable states are subjected to greater international scrutiny and international institutions and other states have greater freedom to intervene, but the citizens of these states have **no way of controlling or influencing** these international institutions or powerful states. This shift away from the pluralist security framework **has not challenged the status quo**, which may help to explain why major international institutions and states **can easily adopt** a more cosmopolitan rhetoric in their security policies. As we have seen, the shift away from the pluralist security framework has entailed a shift towards a more openly hierarchical international system, in which states are differentiated according to, for example, their ability to provide human security for their citizens or their supposed democratic commitments. In this shift, the old pluralist international norms of (formal) international sovereign equality, non-intervention and ‘blindness’ to the content of a state are overturned. Instead, international institutions and states have more freedom to intervene in weak or unstable states in order to ‘protect’ and emancipate individuals globally. Critical and emancipatory security theorists argue that the goal of the emancipation of the individual means that security must be reconceptualised away from the state. As the domestic sphere is understood to be the sphere of insecurity and disorder, the international sphere represents greater emancipatory possibilities, as Tickner argues, ‘if security is to start with the individual, its ties to state sovereignty must be severed’ (1995: 189). For critical and emancipatory theorists there must be a shift towards a ‘cosmopolitan’ legal framework, for example Mary Kaldor (2001: 10), Martin Shaw (2003: 104) and Andrew Linklater (2005). For critical theorists, one of the fundamental problems with Realism is that it is unrealistic. Because it prioritises order and the existing status quo, Realism attempts to impose a particular security framework onto a complex world, ignoring the myriad threats to people emerging from their own governments and societies. Moreover, traditional international theory serves to obscure power relations and omits a study of why the system is as it is: [O]mitting myriad strands of power amounts to exaggerating the simplicity of the entire political system. Today’s conventional portrait of international politics thus too often ends up looking like a Superman comic strip, whereas it probably should resemble a Jackson Pollock. (Enloe, 2002 [1996]: 189) Yet as I have argued, contemporary critical security theorists seem to show a marked lack of engagement with their problematic (whether the international security context, or the Yugoslav break-up and wars). **Without concrete engagement and analysis**, however, **the critical project is undermined and critical theory becomes nothing more than a request that people behave in a nicer way to each other**. Furthermore, whilst contemporary critical security theorists argue that they present a more realistic image of the world, through exposing power relations, for example, their lack of concrete analysis of the problematic considered **renders them actually unable to engage** with existing power structures and the way in which power is being exercised in the contemporary international system. For critical and emancipatory theorists the central place of the values of the theorist mean that it cannot fulfil its promise to critically engage with contemporary power relations and emancipatory possibilities. Values must be joined with engagement with the material circumstances of the time.

#### Thinking differently about national security isn’t enough

David Cole 12, professor of law at Georgetown, “Confronting the Wizard of Oz: National Security,

Expertise, and Secrecy” 44 Conn. L. Rev. 1617-1625 (2012), <http://scholarship.law.georgetown.edu/facpub/1085>)

Rana is right to focus our attention on the assumptions that frame modern Americans’ conceptions about national security, but his assessment raises three initial questions. First, it seems far from clear that there ever was a “golden” era in which national security decisions were made by the common man, or “the people themselves,” as Larry Kramer might put it.8 Rana argues that neither Hobbes nor Locke would support a worldview in which certain individuals are vested with superior access to the truth, and that faith in the superior abilities of so-called “experts” is a phenomenon of the New Deal era.9 While an increased faith in scientific solutions to social problems may be a contributing factor in our current overreliance on experts,10 I doubt that national security matters were ever truly a matter of widespread democratic deliberation. Rana notes that in the early days of the republic, every able-bodied man had to serve in the militia, whereas today only a small (and largely disadvantaged) portion of society serves in the military.11 But serving in the militia and making decisions about national security are two different matters. The early days of the Republic were at least as dominated by “elites” as today. Rana points to no evidence that decisions about foreign affairs were any more democratic then than now. And, of course, the nation as a whole was far less democratic, as the majority of its inhabitants could not vote at all.12 Rather than moving away from a golden age of democratic decision-making, it seems more likely that we have simply replaced one group of elites (the aristocracy) with another (the experts). Second, to the extent that there has been an epistemological shift with respect to national security, it seems likely that it is at least in some measure a response to objective conditions, not just an ideological development. If so, it’s not clear that we can solve the problem merely by “thinking differently” about national security. The world has, in fact, become more interconnected and dangerous than it was when the Constitution was drafted. At our founding, the oceans were a significant buffer against attacks, weapons were primitive, and travel over long distances was extremely arduous and costly. The attacks of September 11, 2001, or anything like them, would have been inconceivable in the eighteenth or nineteenth centuries. Small groups of non-state actors can now inflict the kinds of attacks that once were the exclusive province of states. But because such actors do not have the governance responsibilities that states have, they are less susceptible to deterrence. The Internet makes information about dangerous weapons and civil vulnerabilities far more readily available, airplane travel dramatically increases the potential range of a hostile actor, and it is not impossible that terrorists could obtain and use nuclear, biological, or chemical weapons.13 The knowledge necessary to monitor nuclear weapons, respond to cyber warfare, develop technological defenses to technological threats, and gather intelligence is increasingly specialized. The problem is not just how we think about security threats; it is also at least in part objectively based.

### Impact D

**Gray Card**

**Epstein, Chicago law professor, 1996**

(Richard, “SYMPOSIUM: THE TORT/CRIME DISTINCTION: A GENERATION LATER”, Februrary/April, 76 B.U.L. Rev. 1, lexis, ldg)

Similarly, on questions of method, I believe that the deontological approach is wrong insofar as it claims that its normative conclusions can be denied only on pain of self-contradiction. Today many writers believe that the protection of individual autonomy is not a primary goal of legal rules, but that, to the contrary, any "natural" distribution of talents is determined largely by luck and hence morally arbitrary. n5 Given this perspective, it follows that legal rules should introduce certain measures of sharing across individuals, if not by forced labor, then by systems of taxation and regulation that redistribute the fruits of individual labor. n6 One can argue against these views, but hardly on the ground that they are self-contradictory, or even that they are morally suspect in their effort to raise [\*3] the level of the least fortunate closer to the level enjoyed by those who have a greater share of natural abilities and endowments. A defense of the older regime of individual liberties and properties cannot rest on a simple assertion that people have rights and that other individuals are not allowed to do actions that violate those rights. n7 One has to show why any given configuration of rights is superior to its rival conceptions, an undertaking that typically requires an appeal to consequences, less for particular cases, and more for some overall assessment of how alternative legal regimes play out in the long run. In a word, one has to become a utilitarian of some stripe to justify rules in terms of the consequences they bring about. n8

#### Utilitarian consequences first

**Issac 2**—Professor of Political Science at Indiana-Bloomington, Director of the Center for the Study of Democracy and Public Life, PhD from Yale (Jeffery C., Dissent Magazine, Vol. 49, Iss. 2, “Ends, Means, and Politics,” p. Proquest)

As a result, the most important political questions are simply not asked. It is assumed that U.S. military intervention is an act of "aggression," but no consideration is given to the aggression to which intervention is a response. The status quo ante in Afghanistan is not, as peace activists would have it, peace, but rather terrorist violence abetted by a regime--the Taliban--that rose to power through brutality and repression. This requires us to ask a question that most "peace" activists would prefer not to ask: What should be done to respond to the violence of a Saddam Hussein, or a Milosevic, or a Taliban regime? What means are likely to stop violence and bring criminals to justice? Calls for diplomacy and international law are well intended and important; they implicate a decent and civilized ethic of global order. But they are also vague and empty, because they are not accompanied by any account of how diplomacy or international law can work effectively to address the problem at hand. The campus left offers no such account. To do so would require it to contemplate tragic choices in which moral goodness is of limited utility. Here what matters is not purity of intention but the intelligent exercise of power. Power is not a dirty word or an unfortunate feature of the world. It is the core of politics. Power is the ability to effect outcomes in the world. Politics, in large part, involves contests over the distribution and use of power. To accomplish anything in the political world, one must attend to the means that are necessary to bring it about. And to develop such means is to develop, and to exercise, power. To say this is not to say that power is beyond morality. It is to say that power is not reducible to morality. As writers such as Niccolo Machiavelli, Max Weber, Reinhold Niebuhr, and Hannah Arendt have taught, an unyielding concern with moral goodness undercuts political responsibility. The concern may be morally laudable, reflecting a kind of personal integrity, but it suffers from three fatal flaws: (1) It fails to see that the purity of one's intention does not ensure the achievement of what one intends. Abjuring violence or refusing to make common cause with morally compromised parties may seem like the right thing; but if such tactics entail impotence, then it is hard to view them as serving any moral good beyond the clean conscience of their supporters; (2) it fails to see that in a world of real violence and injustice, moral purity is not simply a form of powerlessness; it is often a form of complicity in injustice. This is why, from the standpoint of politics--as opposed to religion--pacifism is always a potentially immoral stand. In categorically repudiating violence, it refuses in principle to oppose certain violent injustices with any effect; and (3) it fails to see that politics is as much about unintended consequences as it is about intentions; it is the effects of action, rather than the motives of action, that is most significant. Just as the alignment with "good" may engender impotence, it is often the pursuit of "good" that generates evil. This is the lesson of communism in the twentieth century: it is not enough that one's goals be sincere or idealistic; it is equally important, always, to ask about the effects of pursuing these goals and to judge these effects in pragmatic and historically contextualized ways. Moral absolutism inhibits this judgment. It alienates those who are not true believers. It promotes arrogance. And it undermines political effectiveness.