## 1nc

### 1NC

#### Immigration reform will pass now – tons of momentum and the GOP is getting on board but capital is key to a compromise

Hawkings 1/15/14 (David, Roll Call, Hawkings Here, "This Year's Legislative Acid Test: Immigration Rewrite")

And if the 2014 legislative effort comes up empty, it will reaffirm not only the president’s significantly shrunken legislative sway, but also the GOP’s interest in cultivating its most conservative fringes at the expense of all else.¶ Framed in those stark terms, it should be tough to predict that impasse is the likely outcome. That’s why advocates of a big bill, not only in the Hispanic community but also in the business world, are stoking every inkling of momentum.¶ All the attention remains, of course, on the House Republican leadership. It’s been there now for seven months, [since 68 senators voted for a measure](http://blogs.rollcall.com/wgdb/immigration-overhaul-passes-senate/) combining a staggering border security beef-up with creation of a 13-year pathway to citizenship for the 11.5 million immigrants in the United States illegally.¶ The GOP leaders all want to put this issue behind them as quickly as practical — to get their party on the right side of demographic history before the nation’s fastest-growing ethnic group altogether abandons Republicans for a generation. (Mitt Romney took 27 percent of the Hispanic presidential vote last time, so there is still room for further decline.)¶ Word is that Speaker John A. Boehner, his three top leadership deputies and Judiciary Chairman Robert W. Goodlatte of Virginia will unveil a set of [vaguely worded policy goals](http://blogs.rollcall.com/218/boehner-says-gop-immigration-principles-to-be-released-soon/) for any bill during the next fortnight. The goal is two-fold: To signal, in advance of Obama’s State of the Union address, that their team is still interested in getting a bill, and to gauge how many in their own caucus are willing to at least keep an open mind on the matter.¶ The timing will then put the onus on the president to somehow respond in his speech. Obama and his aides are sending unmistakable signs that this year’s address will propose dead-on-arrival legislation designed to appeal to his party’s populist base during the campaign season while [he advances his agenda](http://www.rollcall.com/news/white_house_looks_past_congress_for_its_agenda-229990-1.html) almost entirely through regulations and public advocacy.¶ But “the pen, the phone and the podium,” to use the White House’s phrase, are not sufficient to change immigration policy. A jumpstart to that effort would come from Obama telling Congress on Jan. 28 how he is ready to compromise.¶ Ultimately, any deal would turn on the citizenship issue. Only if it gets resolved will there be any drive to solve disagreements about border security, the treatment of guest workers and increasing the number of visas for the highly skilled — or to decide if all immigration matters should be rolled into one bill or handled piecemeal.¶ Obama would need to back away from his desire to make a course toward citizenship as generous as the Senate’s, and then convince plenty of House Democrats to do the same in the name of partially solving a problem that would otherwise fester for years to come. House GOP leaders would need to persuade a few dozen of their own (a majority of the majority appearing out of the question) to abandon the position that any such pathway amounts to “amnesty” or “special treatment.”¶ And then at least 60 senators would need to acquiesce in whatever compromise was passed by the House.¶ The boundaries of this middle ground are getting clear to see. They are very close to what some House GOP leaders are talking about. And, according to a report this week from the National Foundation for American Policy, the result means about half the total number of current illegal residents would eventually get on a path to citizenship.¶ Goodlatte is now open to giving illegal immigrants provisional legal status, then permitting those with longstanding employment or with children or spouses who are citizens to seek a “green card” through existing channels. A green card means permanent legal residency and comes with its own timetable for becoming a citizen, usually within five years.¶ The nonpartisan research group’s study estimates 3.5 million to 5 million people could benefit from this approach, as would another 800,000 to 1.5 million if the law is changed to provide green cards to younger undocumented immigrants who arrived as children — the group now known as Dreamers.

#### The plan is a huge loss for Obama –Democrats cracking down on war powers makes Obama look weak

Paterno 6/23/2013 (Scott, Writer for Rock the Capital, “Selfish Obama” http://www.rockthecapital.com/06/23/selfish-obama/)

Now we have a Democratic president who wants to make war and does not want to abide by the War Powers Resolution. But rather than truly test the constitutionality of the measure, he is choosing to simply claim that THIS use of US military power is not applicable.¶ This is an extraordinarily selfish act, and one liberals especially should fear. POTUS is setting a precedent that subsequent presidents will be able to use – presidents that the left might not find so “enlightened.” Left as is, President Obama has set a standard where the president can essentially attack anywhere he wants without congressional approval for as long as he wants so long as he does not commit ground forces.¶ That is an extraordinarily selfish act. Why selfish? Because the president is avoiding congress because he fears a rebuke – from his own party, no less. The politically safe way to both claim to be decisive and to not face political defeat at the hands of Democrats – a defeat that would signal White House weakness – is to avoid congress all together. Precedent be damned, there is an election to win after all.

#### Capital’s key but limited – the plan disrupts Obama’s careful strategy

Eilperin and Tumulty 12/10 (Juliet, House of Representatives reporter for Washington Post, and Karen, national political correspondent for The Washington Post, “Podesta, Schiliro to return to White House,”<http://www.washingtonpost.com/politics/podesta-schiliro-to-return-to-white-house/2013/12/10/194b22f4-61a7-11e3-94ad-004fefa61ee6_story.html>)

President Obama is embarking on his biggest organizational overhaul of the White House since 2010, bringing in Washington veterans and rethinking the way he approaches some of the most pressing policy decisions he will make during the remainder of his second term. The decision to enlist influential Democratic strategist John D. Podesta, just days after bringing back his former legislative affairs chief Phil Schiliro, signals a larger shift in how the White House will operate in coming months. Eager to salvage his landmark health-care law and advance climate-change policy before he leaves office, Obama and his aides are open to empowering a handful of advisers with broader policy portfolios to ensure the administration achieves its goals. The president and his aides have been discussing a possible reorganization with some trusted outside advisers for at least a month, according to a senior White House official, who spoke on the condition of anonymity because of the topic’s sensitive nature. The staff ­changes will continue in the coming weeks, the official said. The moves mark a recognition by the White House that it needed to change its operations in light of the botched Oct. 1 rollout of the health-care law, particularly given that Pete Rouse, the president’s longest-serving aide, will be leaving by the end of the year. Obama has been hesitant to replace many within his small inner circle operating in the West Wing, in part because his limited time in Washington before the presidency left him with relatively few trusted advisers. While he replaced several key members of his Cabinet after his 2012 re­election — including his secretaries of state, Treasury and defense — it is a measure of how static White House staff has been that the recruitment of two former advisers, on a temporary basis, amounts to a staff shake-up. “Obama still has an opportunity to get one or two major initiatives through Congress, possibly immigration reform, but he doesn’t have much gas left in the tank,” New York University public affairs professor Paul C. Light wrote in an e-mail. “Podesta and Schiliro may be able to ration Obama’s declining political capital, and hold the line on House Republican attacks. The door is closing on Obama’s presidency — these two advisers know how to do it as well as it can be done.” The White House’s handling of the health-care law’s implementation, Obama’s lack of knowledge about the scope of the National Security Agency’s eavesdropping program and other missteps have damaged the president’s credibility and raised questions about the West Wing’s competence. Republican critics and Democratic allies have called on Obama to fire at least one senior staff member, a step Obama has so far resisted. Podesta has done multiple stints on Capitol Hill and served twice in the Clinton White House, taking over as chief of staff in 1998 and steering the ship through Clinton’s House impeachment. After Clinton left office, Podesta founded the Center for American Progress (CAP), a liberal think tank, and managed Obama’s transition team in 2008. Obama officials emphasized that the two recent hires were distinct: Schiliro will serve only for a few months and is focused exclusively on steering the administration’s health-care policy. But the moves, along with Rouse’s imminent departure, mark one of the most significant shifts in White House staffing since the ­changes Obama made in the wake of Democratic losses in the 2010 midterms. After that election, senior aides David Axelrod, Jim Messina and Mona Sutphen left and the political director’s job occupied by Patrick Gaspard was eliminated. Obama political strategist David Plouffe came on as a senior adviser, and William Daley took over as chief of staff. Former White House deputy senior adviser Stephanie Cutter, now a partner at the consulting firm Precision Strategies, wrote in an e-mail that adding the two advisers “brings some fresh thinking and brain power, because they haven’t been in the foxhole these last several months or even years.” “They also bring institutional knowledge of the workings of the West Wing” and other parts of Washington, she added. Several former administration officials and Obama supporters said the realignment amounts to an acknowledgment that the current policy and legislative affairs operations have key vulnerabilities. The president felt the need to quiet “the chattering classes” who have suggested his team needs “more inside Washington experience,” the senior White House aide said. One former White House official, who asked for anonymity in order to speak frankly, said the ­changes reflect a recognition that the White House’s insular leadership was no longer capable of managing the administration’s myriad problems. Much of the key decision making rests with White House Chief of Staff Denis McDonough, Rouse and senior adviser Valerie Jarrett. Several White House officials said recruiting Podesta was McDonough’s idea. Schiliro will be focused on bolstering the administration’s relationship with lawmakers who are nervous about the health-care law’s impact and head off any further problems with the law’s implementation. The decision to bring in Podesta reflects the president’s intent to exercise his executive authority on several key fronts. White House communications director Jennifer Palmieri said Podesta will help the administration strategize about “how do you leverage all the resources you have in the federal government to advance your agenda in a political year.” In an interview with The Washington Post this fall, Podesta said Obama’s “path to success is going to come through every single place that you can squeeze some authority which he has. That is where you’ve got to focus your attention and where you could spend your political capital.”

#### Comprehensive immigration reform is key to solve structural and violence against immigrant communities and turns all of their impacts

Banuelas 10 Arturo, "The lies are killing us: The need for immigration reform," US Catholic, October, [www.uscatholic.org/culture/social-justice/2010/10/lies-are-killing-us-need-immigration-reform](http://www.uscatholic.org/culture/social-justice/2010/10/lies-are-killing-us-need-immigration-reform)

Immigrants like Marisol show us that immigration reform is more than simply a matter of human rights for undocumented immigrants. It is a matter of survival for the poorest. No child of God should ever have to leave her family at 5 years of age to be able to eat and survive in our world. Like the majority of people who cross the border, these are not terrorists or drug smugglers but our brothers and sisters.¶ The growing anti-immigrant sentiment in our country since 9/11 did not happen because people suddenly wanted to become cruel and heartless. It began because people started believing a lie about who we Latinos are, both documented and undocumented.¶ This is why immigration is a defining issue that is about us—all of us Latinos—and about how we will shape the future of our church and our country. There is a saying in Spanish, "La mentira nos trae la muerte." Lies bring death.¶ The lie is that immigrants, and by association all of us Latinos, are disposable as human beings and not worthy of human dignity and respect. And this lie is killing us.¶ An immigrant recently told me, "I've been sacrificing myself for my family, but in this country I am worth nothing." Latinos and immigrants encounter racism, resentment, and extreme hostilities against them, and they masquerade as patriotism and now also as national security.¶ By now we are familiar with the countless problems immigrants endure as a result of this lie: an increase in border deaths to more than 400 a year; raids, arrests, and deportations separating families; a backlog in family reunification and visa requests; militarization of the border; sexual exploitation of women immigrants traveling north; abuses in detention centers.¶ Arizona has recently made national headlines for passing harsh anti-immigrant laws, but today more than 20 states have introduced even harsher laws than Arizona. The solutions these laws propose perpetuate lies, persecute innocent people, expose all of us Latinos to racial profiling, and cause death and suffering to the poor. Those who say that they are not against immigrants yet support such oppressive laws are practicing backdoor racism at its worst.¶ Sure, every nation has a right to protect its borders against impending threats, but immigrants working to feed their children are not a threat to anyone. Their presence is not a threat, it is a human right; and we support their right to a better life.¶ Many today scapegoat the poor for self-serving political gain, for economic greed, and security fears. Their lies blind people from seeing Christ in others and keep them from hearing the gospel call to hospitality of the stranger among us. These lies are being used to justify injustice and foster racism that causes pervasive exploitation of immigrants, who are demonized as illegal, as alien, as suspicious human beings.¶ Since the majority of the more than 90 nationalities that daily cross our borders are from the Americas, it is our Latinidad itself that is being attacked. We know that the root causes of immigration include extreme poverty, unemployment, political and military corruption, and government instability in the countries of origin. However, we Latinos and Latinas throughout the Americas also know that the United States shares in the responsibility for these conditions that drive immigrants north across our borders.¶ It is not a secret that once the estimated 12 to 20 million currently undocumented immigrants become citizens, our country will be different. This process has already begun, but wait until we get to vote, buy homes, graduate from universities, and become elected officials.¶ Es mentira, it is a lie that immigrants will not learn English. In our parish we have some 100 people learning English to become citizens, and similar programs exist all over.¶ Es mentira that all immigrants are here illegally. The truth is that the majority are here on some type of visa.¶ Es mentira that stronger enforcement along the U.S.-Mexico border will stop immigrants from crossing the border. It is jobs that bring immigrants to the United States.¶ Es mentira that immigrants are draining our health care and educational systems. The fact is that immigrants contribute about $90 billion in taxes, much more than the $5 billion they use in services.¶ Despite these lies I feel optimistic because this is our time, this is Latino time. We are coming of age, and we want to help fashion a new nation: one that is more just, equal, and free for all citizens, especially the poorest.¶ But we will need to do this the Latino way, grounded in a new vision we inherited from our indigenous ancestors, who said, "Tu eres mi otro yo," you are my other self. This is a profound spiritual vision of life, an economic program for justice, a cultural solution for peace, and an authentic reform for human dignity.¶ Tu eres mi otro yo is the Latino way. We are all linked as one. We stand together, or we fall together. We are each other, and we need to help each other. Our ancestors teach us: If I despise you, I despise myself. And if I promote the good in you, I promote the goodness in me and everyone else.¶ Our fathers, mothers, and abuelos have always taught what Christ teaches us: that we were made good and for good. When we see life from this decidedly Latino worldview, we discover that there are more good people in the world than bad, that the world is in truth moving toward this oneness. This is the Latino good news.¶ I believe that our greatest meaning in life comes from our solidarity with others, especially the struggling poorest among us. As long as they do not eat, have health care, get a good education, live in decent housing, get treated with respect and dignity, then we all remain incomplete in ourselves and as a nation.¶ In a time of such propaganda, lies, drastic poverty, violence, racism, and war, in this time when human life seems so dirt cheap, we must proclaim that each person matters, that they matter enormously to us because tu eres mi otro yo.¶ As a Latino from the border I have reason to feel optimistic about life and our future because in us we carry this deep Latino desire to live out our God-given oneness; at the end of all our human struggles, we will see that it is our oneness that will win over lies, divisions, hate, and racism. In the end the glory will go to those who know how to embrace tu eres mi otro yo. In the end victory comes in our togetherness.¶ I look at our Latino history in terms of the biblical story of the Exodus: Some have crossed the sea into the Promised Land of no more borders. Others are still in the water trying to make it to land. And some arrived late and are still wandering in the desert. Moses told them to be at the edge of the sea by 10 a.m., but, being Latino, they arrived at noon. They are still out there dreaming and wondering what it will be like when they get to the other side. Some of them are dying without water, acceptance, lack of health care, food, or shelter.¶ But today we say, "Come, venganse," we are with you because our ministries represent solidarity in the struggle for human rights for all people.¶ The divisive border wall exists also in our hearts. When the border fence went up, I was part of a march protesting it. I remember walking up to the ugly steel barrier. I put my fingers through the fence, and I felt deep anger. I wanted to tear it down with my bare hands.¶ I kept remembering the Raramuri children in our parish missions in Mexico's northern Sierra Tarahumara, who do not have enough to eat, whose fathers and brothers search for ways to feed their families. Holding the fence I remembered their empty stomachs. I could hear Ester ask her mother, "Are we going to eat today?"¶ Holding the fence in my hands, I said a prayer. I asked Jesus to forgive us. And I asked la Virgen de Guadalupe to protect her children. What the fence says is: "I don't want you to be my other self."¶ Those of us who live on the border question whether the racial make-up of our families has anything to do with the fact that Canada and the Atlantic and Pacific coasts do not have disgusting walls, yet their combined border miles far exceed our 2,000-mile-long southwest border.¶ This immoral wall along our border and in our nation's heart is causing moral damage to the nation's soul with long-term consequences far beyond the fears we have of terrorists. It says that we have stopped dreaming of the possibilities to help each other as human beings in the land of the free. It says that we have given in to smallness of our hearts because of the fear-filled lies that claim doom when we welcome the strangers in our midst.¶ This ugly $242 billion wall is a wake-up call that our national leadership has failed to help us and that it is time for us to offer a better vision for national problems. We need to stop the further construction of this wall, tear it down, and make good use of the materials. What we need instead is just, comprehensive immigration reform, which will help America become a decent nation.¶ This is an historic moment for us. We have never been this close to immigration reform, and we are not backing down because we are not afraid of those who oppose us. I have seen in the faces of Latinos all over the country that we are ready to show our resolve, our conviction, and our dedication to the immigrants and to reform. We want to do what it takes because we deeply believe that justice will triumph over hate, that love will conquer racism, and that common compassion will overcome the lies.

### 1NC

#### The Counsel to the President of the United States should request to the Office of Legal Counsel for legal counsel and coordination on the President’s war powers authority. The Office of Legal Counsel should advise the President that he should require that persons detained indefinitely receive either civilian trials or be released.

#### CP is competitive and solves the case ---- Coordination with OLC can ensure executive action

BORRELLI et al 2000 - Professor of Government Chair of the Government and International Relations Department, Connecticut College (Maryanne Borrelli, Karen Hult, Nancy Kassop, “The White House Counsel’s Office”, http://whitehousetransitionproject.org/files/counsel/Counsel-OD.PDF)

The White House Counsel’s Office is at the hub of all presidential activity. Its mandate is to be watchful for and attentive to legal issues that may arise in policy and political contexts in which the president plays a role. To fulfill this responsibility, it monitors and coordinates the presidency’s interactions with other players in and out of government. Often called “the president’s lawyer,” the Counsel’s Office serves, more accurately, as the “presidency’s lawyer,” with tasks that extend well beyond exclusively legal ones. These have developed over time, depending on the needs of different presidents, on the relationship between a president and a Counsel, and on contemporary political conditions. The Office carries out many routine tasks, such as vetting all presidential appointments and advising on the application of ethics regulations to White House staff and executive branch officials, but it also operates as a “command center” when crises or scandals erupt. Thus, the more sharply polarized political atmosphere in recent years has led to greater responsibility and demands, as well as heightened political pressure and visibility, on the traditionally low-profile Counsel’s Office. The high-stakes quality of its work has led to a common sentiment among Counsels and their staff that there is “zero tolerance” for error in this office.

In sum, the Counsel’s Office might be characterized as a monitor, a coordinator, a negotiator, a recommender, and a translator: it monitors ethics matters, it coordinates the president’s message and agenda with other executive branch units, it negotiates with a whole host of actors on the president’s behalf (not the least of which is Congress), it recommends myriad actions to the president, and it translates or interprets the law (whether it is the Constitution, federal rules and regulations, treaties or legislation) for all executive branch officials. Past Counsels have lamented that there is no job description for this office, while the opening quote from Peter Wallison makes clear that even if there was, it would be all-consuming and all-inclusive of everything that goes in and out of the president’s office.

In simple terms, the Counsel’s Office performs five basic categories of functions: (1) advising on the exercise of presidential powers and defending the president’s constitutional prerogatives; (2) overseeing presidential nominations and appointments to the executive and judicial branches; (3) advising on presidential actions relating to the legislative process; (4) educating White House staffers about ethics rules and records management and monitoring adherence; and (5) handling department, agency and White House staff contacts with the Department of Justice (see Functions section). In undertaking these responsibilities, the Counsel’s Office interacts regularly with, among others, the president, the Chief of Staff, the White House Office of Personnel, the Press Secretary, the White House Office of Legislative Affairs, the Attorney General, the Office of Management and Budget (on the legislative process), the General Counsels of the departments and agencies, and most especially, the Office of Legal Counsel in the Department of Justice (see Relationships section). In addition to the Counsel, the Office usually consists of one or two Deputy Counsels, a varying number of Associate and Assistant Counsels, a Special Counsel when scandals arise, a Senior Counsel in some administrations, and support staff. Tasks are apportioned to these positions in various ways, depending on the Counsel’s choices, though most Counsels expect all Office members to share the ongoing vetting for presidential appointments (see Organization and Operations section).

Certain responsibilities within the Office are central at the very start of an administration (e.g., vetting for initial nominations and shepherding the appointment process through the Senate), while others have a cyclical nature to them (e.g., the annual budget, the State of the Union message), and still others follow an electoral cycle (e.g., determining whether presidential travel and other activities are partisan/electoral/campaign or governmental ones) (see Organization and Operations). There is, of course, the always unpredictable (but almost inevitable) flurry of scandals and crises, in which all eyes turn to the Counsel’s Office for guidance and answers. Watergate, Iran-contra, Whitewater, the Clinton impeachment, and the FBI files and White House Travel Office matters were all managed from the Counsel’s Office, in settings that usually separated scandal management from the routine work of the Office, so as to permit ongoing operations to continue with minimal distraction. Among the more regular tasks that occur throughout an administration are such jobs as directing the judicial nomination process, reviewing legislative proposals (the president’s, those from departments and agencies, and bills Congress has passed that need the Counsel’s recommendation for presidential signature or veto), editing and clearing presidential statements and speeches, writing executive orders, and determining the application of executive privilege (see both Relationships and Organization and Operations sections).

Perhaps, the most challenging task for the Counsel is being the one who has the duty to tell the president “no,” especially when it comes to defending the constitutional powers and prerogatives of the presidency. Lloyd Cutler, Counsel for both Presidents Carter and Clinton, noted that, in return for being “on the cutting edge of problems,” the Counsel needs to be someone who has his own established reputation…someone who is willing to stand up t o the President, to say, “No, Mr. President, you shouldn’t do that for these reasons.” There is a great tendency among all presidential staffs to be very sycophantic, very sycophantic. It’s almost impossible to avoid, “This man is the President of the United States and you want to stay in his good graces,” even when he is about to do something dumb; you don’t tell him that. You find some way to put it in a very diplomatic manner. (Cutler interview, pp. 3-4)

LAW, POLITICS AND POLICY

A helpful way to understand the Counsel’s Office is to see it as sitting at the intersection of law, politics and policy. Consequently, it confronts the difficult and delicate task of trying to reconcile all three of these without sacrificing too much of any one. It is the distinctive challenge of the Counsel’s Office to advise the president to take actions that are both legally sound and politically astute. A 1994 article in Legal Times warned of the pitfalls: Because a sound legal decision can be a political disaster, the presidential counsel constantly sacrifices legal ground for political advantage. (Bendavid, 1994, p. 13) For example, A.B. Culvahouse recalled his experience upon arriving at the White House as counsel and having to implement President Reagan’s earlier decision to turn over his personal diaries to investigators during the Iran-contra scandal.

Ronald Reagan’s decision to turn over his diary - that sits at the core of the presidency. …You’re setting up precedents and ceding a little power. But politically, President Reagan wanted to get it behind him. (Bendavid, 1994, p. 13)

Nonetheless, Culvahouse added, the Counsel is “the last and in some cases the only protector of the President’s constitutional privileges. Almost everyone else is willing to give those away in part inch by inch and bit by bit in order to win the issue of the day, to achieve compromise on today’s thorny issue. So a lot of what I did was stand in the way of that process...” (Culvahouse interview, p. 28)

Because of this blend of legal, political and policy elements, the most essential function a Counsel can perform for a president is to act as an “early warning system” for potential legal trouble spots before **(**and, ultimately, after) they erupt. For this role, a Counsel must keep his or her “antennae” constantly attuned. Being at the right meetings at the right time and knowing which people have information and/or the necessary technical knowledge and expertise in specific policy or legal areas are the keys to insuring the best service in this part of the position. C. Boyden Gray, Counsel for President Bush, commented: “As Culvahouse said -- I used to say that the meetings I was invited to, I shouldn’t go to. …It’s the meetings I wasn’t invited to that I’d go to.” (Gray interview, p. 26) Lloyd Cutler noted that

….the White House Counsel will learn by going to the staff meetings, et cetera, that something is about to be done that has buried within it a legal issue which the people who are advocating it either haven’t recognized or push under the rug. He says, “Wait a minute. We’ve got to check this out,” and goes to the Office of Legal Counsel and alerts them and gets their opinion. But for the existence of the White House Counsel, the Office of Legal Counsel would never have learned about the problem until it was too late. (Cutler interview, p. 4)

One other crucial part of the job where the legal overlaps with the policy and the political -- and which can spell disaster for Counsels who disregard this -- is knowing when to go to the Office of Legal Counsel for guidance on prevailing legal interpretations and opinions on the scope of presidential authority. It is then up to the White House Counsel to sift through these legal opinions, and to bring into play the operative policy and political considerations in order to offer the president his or her best recommendation on a course of presidential action. Lloyd Cutler described how this process works:

They [OLC staffers] are where the President has to go or the President’s counsel has to go to get an opinion on whether something may properly be done or not. For example, if you wish to invoke an executive privilege not to produce documents or something, the routine now is you go to the Office of Legal Counsel and you get their opinion that there is a valid basis for asserting executive privilege in this case. ...You’re able to say [to the judge who is going to examine these documents] the Office of Legal Counsel says we have a valid basis historically for asserting executive privilege here. (Cutler interview, p. 4)

C. Boyden Gray underscored the critical importance of OLC’s relationship to the Counsel’s Office: They [OLC] were the memory…We paid attention to what they did. [Vincent] Foster never conferred with them. When they [the Clinton Counsel’s Office] filed briefs on executive privilege, they had the criminal division, the civil division and some other division signing on the brief; OLC wasn’t on the brief… In some ways they [OLC] told us not to do things but that was helpful. They said no to us… I can give you a million examples. They would have said to Vince Foster, “Don’t go in and argue without thinking about it.” They would have prevented the whole healthcare debacle [referring to the Clinton Counsel’s Office’s position that Hillary Rodham Clinton was a government official for FACA purposes] …[T]he ripple effect of that one decision is hard to exaggerate: it’s hard to calculate. (Gray interview,

#### OLC deflects loss/blame on the President

POSNER 2011 - Kirkland & Ellis Professor, University of Chicago Law School (Eric A. Posner, “Deference To The Executive In The United States After September 11: Congress, The Courts, And The Office Of Legal Counsel”, http://www.harvard-jlpp.com/wp-content/uploads/2012/01/PosnerFinal.pdf)

However, there is an important twist that complicates the analysis. The president may choose to publicize OLC’s opinions. Naturally, the president will be tempted to publicize only favorable opinions. When Congress 22 claims that a policy is illegal, the president can respond that his lawyers advised him that the policy is legal. This response at least partially deflects blame from the president. There are two reasons for this. First, the Senate consented to the appointment of these lawyers; thus, if the lawyers gave bad advice, the Senate is partly to blame, and so the blame must be shared. Second, OLC lawyers likely care about their future prospects in the legal profession, which will turn in part on their ability to avoid scandals and to render plausible legal advice; they may also seek to maintain the office’s reputation. When OLC’s opinions are not merely private advice, but are used to justify actions, then OLC takes on a quasi-judicial function. Presidents are not obliged to publicize OL C’s opinions, but clearly they see an advantage to doing so, and they have in this way given OLC quasi-judicial status.

### 1NC

#### The aff results in catastrophic terrorism---releases terrorists and kills intel gathering

Jack Goldsmith 9, Henry L. Shattuck Professor at Harvard Law School, 2/4/09, “Long-Term Terrorist Detention and Our National Security Court,” http://www.brookings.edu/~/media/research/files/papers/2009/2/09%20detention%20goldsmith/0209\_detention\_goldsmith.pdf

These three concerns challenge the detention paradigm. They do nothing to eliminate the need for detention to prevent detainees returning to the battlefield. But many believe that we can meet this need by giving trials to everyone we want to detain and then incarcerating them under a theory of conviction rather than of military detention. I disagree. For many reasons, it is too risky for the U.S. government to deny itself the traditional military detention power altogether, and to commit itself instead to try or release every suspected terrorist. ¶ For one thing, military detention will be necessary in Iraq and Afghanistan for the foreseeable future. For another, we likely cannot secure convictions of all of the dangerous terrorists at Guantánamo, much less all future dangerous terrorists, who legitimately qualify for non-criminal military detention. The evidentiary and procedural standards of trials, civilian and military alike, are much higher than the analogous standards for detention. With some terrorists too menacing to set free, the standards will prove difficult to satisfy. Key evidence in a given case may come from overseas and verifying it, understanding its provenance, or establishing its chain of custody in the manners required by criminal trials may be difficult. This problem is exacerbated when evidence was gathered on a battlefield or during an armed skirmish. The problem only grows when the evidence is old. And perhaps most importantly, the use of such evidence in a criminal process may compromise intelligence sources and methods, requiring the disclosure of the identities of confidential sources or the nature of intelligence-gathering techniques, such as a sophisticated electronic interception capability. ¶ Opponents of non-criminal detention observe that despite these considerations, the government has successfully prosecuted some Al Qaeda terrorists—in particular, Zacharias Moussaoui and Jose Padilla. This is true, but it does not follow that prosecutions are achievable in every case in which disabling a terrorist suspect represents a surpassing government interest. Moreover, the Moussaoui and Padilla prosecutions highlight an under-appreciated cost of trials, at least in civilian courts. The Moussaoui and Padilla trials were messy affairs that stretched, and some observers believe broke, our ordinary criminal trial conceptions of conspiracy law and the rights of the accused, among other things. The Moussaoui trial, for example, watered down the important constitutional right of the defendant to confront witnesses against him in court, and the Padilla trial rested on an unprecedentedly broad conception of conspiracy.15 An important but under-appreciated cost of using trials in all cases is that these prosecutions will invariably bend the law in ways unfavorable to civil liberties and due process, and these changes, in turn, will invariably spill over into non-terrorist prosecutions and thus skew the larger criminal justice process.16¶ A final problem with using any trial system, civilian or military, as the sole lawful basis for terrorist detention is that the trials can result in short sentences (as the first military commission trial did) or even acquittal of a dangerous terrorist.17 In criminal trials, guilty defendants often go free because of legal technicalities, government inability to introduce probative evidence, and other factors beyond the defendant's innocence. These factors are all exacerbated in terrorist trials by the difficulties of getting information from the place of capture, by classified information restrictions, and by stale or tainted evidence. One way to get around this problem is to assert the authority, as the Bush administration did, to use non-criminal detention for persons acquitted or given sentences too short to neutralize the danger they pose. But such an authority would undermine the whole purpose of trials and would render them a sham. As a result, putting a suspect on trial can make it hard to detain terrorists the government deems dangerous. For example, the government would have had little trouble defending the indefinite detention of Salim Hamdan, Osama Bin Laden's driver, under a military detention rationale. Having put him on trial before a military commission, however, it was stuck with the light sentence that Hamdan is completing at home in Yemen.¶ As a result of these considerations, insistence on the exclusive use of criminal trials and the elimination of non-criminal detention would significantly raise the chances of releasing dangerous terrorists who would return to kill Americans or others. Since noncriminal military detention is clearly a legally available option—at least if it is expressly authorized by Congress and contains adequate procedural guarantees—this risk should be unacceptable. In past military conflicts, the release of an enemy soldier posed risks. But they were not dramatic risks, for there was only so much damage a lone actor or small group of individuals could do.18 Today, however, that lone actor can cause far more destruction and mayhem because technological advances are creating ever-smaller and ever-deadlier weapons. It would be astounding if the American system, before the advent of modern terrorism, struck the balance between security and liberty in a manner that precisely reflected the new threats posed by asymmetric warfare. We face threats from individuals today that are of a different magnitude than threats by individuals in the past; having government authorities that reflect that change makes sense.

**High risk of nuke terror---escalates and turns the case because civil-liberties crackdowns**

Vladimir Z. **Dvorkin 12** Major General (retired), doctor of technical sciences, professor, and senior fellow at the Center for International Security of the Institute of World Economy and International Relations of the Russian Academy of Sciences. The Center participates in the working group of the U.S.-Russia Initiative to Prevent Nuclear Terrorism, 9/21/12, "What Can Destroy Strategic Stability: Nuclear Terrorism is a Real Threat," belfercenter.ksg.harvard.edu/publication/22333/what\_can\_destroy\_strategic\_stability.html

Hundreds of scientific papers and reports have been published on nuclear terrorism. International conferences have been held on this threat with participation of Russian organizations, including IMEMO and the Institute of U.S. and Canadian Studies. Recommendations on how to combat the threat have been issued by the International Luxembourg Forum on Preventing Nuclear Catastrophe, Pugwash Conferences on Science and World Affairs, Russian-American Elbe Group, and other organizations. The UN General Assembly adopted the International Convention for the Suppression of Acts of Nuclear Terrorism in 2005 and cooperation among intelligence services of leading states in this sphere is developing.¶ At the same time, these efforts fall short for a number of reasons, partly because various acts of nuclear terrorism are possible. Dispersal of radioactive material by detonation of conventional explosives (“dirty bombs”) is a method that is most accessible for terrorists. With the wide spread of radioactive sources, raw materials for such attacks have become much more accessible than weapons-useable nuclear material or nuclear weapons. The use of “**dirty bombs**” will not cause many immediate casualties, but it will result into long-term radioactive contamination, contributing to the spread of **panic and socio-economic destabilization**.¶ Severe **consequences can be caused by sabotaging nuclear power plants, research reactors, and radioactive materials storage facilities. Large cities are especially vulnerable to such attacks. A large city may host dozens of research reactors with a nuclear power plant or a couple of spent nuclear fuel storage facilities and dozens of large radioactive materials storage facilities located nearby.** The past few years have seen significant efforts made to enhance organizational and physical aspects of security at facilities, especially at nuclear power plants. Efforts have also been made to improve security culture. But these efforts do not preclude the possibility that **well-trained terrorists may be able to penetrate nuclear facilities**.¶ Some estimates show that sabotage of a research reactor in a metropolis may expose hundreds of thousands to high doses of radiation. A formidable part of the city would become uninhabitable for a long time.¶ Of all the scenarios, it is building an improvised nuclear device by terrorists that poses the maximum risk. **There are no engineering problems that cannot be solved if terrorists decide to build a simple “gun-type” nuclear device.** Information on the design of such devices, as well as implosion-type devices, is available in the public domain. It is the acquisition of weapons-grade uranium that presents the sole serious obstacle. Despite numerous preventive measures taken, we cannot rule out the possibility that such materials can be bought on the black market. **Theft of weapons-grade uranium is also possible**. Research reactor fuel is considered to be particularly vulnerable to theft, as it is scattered at sites in dozens of countries. There are about 100 research reactors in the world that run on weapons-grade uranium fuel, according to the International Atomic Energy Agency (IAEA).¶ A terrorist “gun-type” uranium bomb can have a yield of least 10-15 kt, which is **comparable to the yield of the bomb dropped on Hiroshima**. The explosion of such a bomb in a modern metropolis can kill and wound hundreds of thousands and cause serious economic damage. There will also be long-term sociopsychological and political consequences.¶ The vast majority of states have introduced unprecedented security and surveillance measures at transportation and other large-scale public facilities after the terrorist attacks in the United States, Great Britain, Italy, and other countries. These measures have proved burdensome for the countries’ populations, but the public has accepted them as necessary. A nuclear terrorist attack will make the public accept further measures meant to enhance control even if these measures significantly restrict the democratic liberties they are accustomed to. Authoritarian states could be expected to adopt even more restrictive measures.¶ If a nuclear terrorist act occurs, nations will delegate tens of thousands of their secret services’ best personnel to investigate and attribute the attack. Radical Islamist groups are among those capable of such an act. We can imagine what would happen if they do so, given the anti-Muslim sentiments and resentment that conventional terrorist attacks by Islamists have generated in developed democratic countries. Mass deportation of the non-indigenous population and severe sanctions would follow such an attack in what will cause **violent protests in the Muslim world**. **Series of armed clashing terrorist attacks may follow**. The prediction that Samuel Huntington has made in his book “The Clash of Civilizations and the Remaking of World Order” may come true. Huntington’s book clearly demonstrates that it is not Islamic extremists that are the cause of the Western world’s problems. Rather there is a deep, intractable conflict that is rooted in the fault lines that run between Islam and Christianity. This is especially dangerous for Russia because these fault lines run across its territory. To sum it up, the political leadership of Russia has every reason to revise its list of factors that could undermine strategic stability.  BMD does not deserve to be even last on that list because its effectiveness in repelling massive missile strikes will be extremely low. BMD systems can prove useful only if deployed to defend against launches of individual ballistic missiles or groups of such missiles. Prioritization of other destabilizing factors—that could affect global and regional stability—merits a separate study or studies. But even without them I can conclude that nuclear terrorism should be placed on top of the list. **The threat of nuclear terrorism is real, and a successful nuclear terrorist attack would lead to a radical transformation of the global order**.  All of the threats on the revised list must become a subject of thorough studies by experts. States need to work hard to forge a common understanding of these threats and develop a strategy to combat them.

**Terrorism causes extinction---hard-line responses are key**

Nathan **Myhrvold '13**, Phd in theoretical and mathematical physics from Princeton, and founded Intellectual Ventures after retiring as chief strategist and chief technology officer of Microsoft Corporation , July 2013, "Stratgic Terrorism: A Call to Action," The Lawfare Research Paper Series No.2, <http://www.lawfareblog.com/wp-content/uploads/2013/07/Strategic-Terrorism-Myhrvold-7-3-2013.pdf>

Several powerful trends have aligned to profoundly change the way that the world works. Technology ¶ now allows stateless groups to organize, recruit, and fund ¶ themselves in an unprecedented fashion. That, coupled ¶ with the extreme difficulty of finding and punishing a stateless group, means that stateless groups are positioned to be ¶ lead players on the world stage. They may act on their own, ¶ or they may act as proxies for nation-states that wish to ¶ duck responsibility. Either way, stateless groups are forces ¶ to be reckoned with.¶ At the same time, a different set of technology trends ¶ means that small numbers of people can obtain incredibly ¶ lethal power. Now, for the first time in human history, a ¶ small group can be as lethal as the largest superpower. Such ¶ a group could execute an attack that could kill millions of ¶ people. It is technically feasible for such a group to kill billions of people, to end modern civilization—perhaps even ¶ to drive the human race to extinction. Our defense establishment was shaped over decades to ¶ address what was, for a long time, the only strategic threat ¶ our nation faced: Soviet or Chinese missiles. More recently, ¶ it has started retooling to address tactical terror attacks like ¶ those launched on the morning of 9/11, but the reform ¶ process is incomplete and inconsistent. A real defense will ¶ require rebuilding our **military and intelligence capabilities** from the ground up. Yet, so far, strategic terrorism has ¶ received relatively little attention in defense agencies, and ¶ the efforts that have been launched to combat this existential threat seem fragmented.¶ History suggests what will happen. The only thing that shakes America out of complacency is a direct threat from a determined adversary that confronts us with our shortcomings by **repeatedly attacking** us or hectoring **us for decades**.

#### Terrorism studies are epistemologically and methodologically valid---our authors are self-reflexive

Michael J. Boyle 8, School of International Relations, University of St. Andrews, and John Horgan, International Center for the Study of Terrorism, Department of Psychology, Pennsylvania State University, April 2008, “A Case Against Critical Terrorism Studies,” Critical Studies On Terrorism, Vol. 1, No. 1, p. 51-64

Jackson (2007c) calls for the development of an explicitly CTS on the basis of what he argues preceded it, dubbed ‘Orthodox Terrorism Studies’. The latter, he suggests, is characterized by: (1) its poor methods and theories, (2) its state centricity, (3) its problemsolving orientation, and (4) its institutional and intellectual links to state security projects. Jackson argues that the major defining characteristic of CTS, on the other hand, should be ‘a skeptical attitude towards accepted terrorism “knowledge”’. **An implicit presumption from this is that terrorism scholars have laboured for all of these years without being aware that their area of study has an implicit bias, as well as definitional and methodological** **problems**. In fact**, terrorism scholars are not only well aware of these problems, but also have provided their own** searching **critiques** of the field at various points during the last few decades (e.g. Silke 1996, Crenshaw 1998, Gordon 1999, Horgan 2005, esp. ch. 2, ‘Understanding Terrorism’). **Some of those scholars** most associated with the critique of empiricismimplied in ‘Orthodox Terrorism Studies’ **have also engaged in deeply critical examinations of the nature of sources, methods, and data in the study of terrorism**. For example, Jackson (2007a) regularly cites the handbook produced by **Schmid and Jongman** (1988) to support his claims that theoretical progress has been limited. But this fact was well recognized by the authors; indeed, in the introduction of the second edition they **point out** that they have not revised their chapter on theories of terrorism from the first edition, because the **failure to address** persistent conceptual and **data problems** has undermined progress in the field. The point of their handbook was to sharpen and make more comprehensive the result of research on terrorism, not to glide over its methodological and definitional failings (Schmid and Jongman 1988, p. xiv). Similarly, **Silke’s** (2004) **volume on the state of the field of terrorism research performed a similar function**, highlighting the shortcomings of the field, in particular the lack of rigorous primary data collection. **A non-reflective community of scholars does not produce such scathing indictments of its own work.**

### **1NC**

The 1ACs cosmopolitan response to the war on terror masks it’s original intention of creating a peaceful world – this necessitates the same form of eradication as the war on terror in an impossible attempt to assert perpetual peace

Odysseos, 2004 (Louiza, Department of Politics and International Studies, Faculty of Law and Social Sciences, School of Oriental and African Studies, University of London, “UBER DIE LINIE? CARL SCHMITT AND MARTIN HEIDEGGER ON THE LINE(S) OF COSMOPOLITANISM AND THE WAR ON TERROR,” Section 11 of the Fifth Pan-European International Relations Conference, September)

That the cosmopolitans are outraged is obviousand sincere. Indeed, manyscholars of politics agree with their disquiet aboutUS political choices and the political environment created by the war on terror. There is, though, a growing sense in whichmany feel a different sort of disquiet, arising from a historical, as well astheoretical/philosophical critique of liberal modernity in which the cosmopolitanvision of the erasure of lines through the promotion of universal humanity issituated.75 There is an acknowledgement, furthermore, that it is important to locate the cosmopolitan perspective and the war on terror within the philosophical current that forms their conditions of possibility, rather than continue to protest that the war on terror is the very antithesis of cosmopolitanism.Of course, this latter endeavour is hardly new and it is important to acknowledge that such questions about the relationship between war and liberalism/liberal cosmopolitanism have been historically posed either from a traditional power-political(political realist) perspective or, alternatively, from a historical materialist perspective.76 The former disregards the liberal nature of these wars, suggesting thatliberal values are often used to obscure a power political reality, thus paying scantattention to the ways in which liberalism, in seeking to disavow war, promotes it andintensifies the ways in which it is fought. The latter has customarily sought to interrogate both the ways in which the use of force is promoted within liberal zones of peace but also the ways in which liberalism involves a modernist disciplining of those political endeavours which contradict its key tenets or even seek to provide alternatives to its worldview.17 More recently, moreover, poststructuralist accounts have suggested understanding liberalism as a strategy for the gradual dissemination of principles that derive from war within the power relations that pervade the societies it governs. Comprehending liberalismfirst and foremost as a strategy of power is, I argue, to deepen and broaden ourunderstanding of the relations between war and modernity in ways that can help usmake sense of the profoundly logistical orientation of liberal societies today.78This section examines the claim that the war on terror does not indicate a crisis incosmopolitanism but rather is the quintessential liberal cosmopolitan war; but itpursues this claim in a different way than the critiques noted above. 79 It suggests that,despite the prominent sense in which the war on terror is portrayed as the antithesis of cosmopolitan orientations and achievements, there are strong relationships between cosmopolitanism and the pursuit of the war on terror. This section examines these inturn.The first relationship arises from their joint location in a long line of thought and policy aiming to articulate an outlook and a political programme of the modern world in which violence and war dissipate, in which war is gradually replaced by rules and principled behaviour. 80 This, Hans Joas has eloquently called, `the dream of a modernity without violence'.81 That cosmopolitanism seeks `perpetual' peace, is often acknowledged through the debts that cosmopolitan thinking owes to Immanuel Kant's understanding of cosmopolitan law. 82 That the war on terror is located in thisunderstanding of modernity is less apparent, but nevertheless becomes obvious in theapocalyptic-sounding framing of the Bush Administration's understanding of the fighton terrorism as a fight that will not be abandoned until terrorism is rooted out. The occurrence of September 11`h in the seat of this dream, the United States of America,was an unforgivable affront to this liberal modernist vision of perpetual peace. Therefore, both the war on terror and liberal cosmopolitanism are located within a modernist vision of the end of war. At the same time, however, the war on terror is central to the very paradox of liberal modernity and war which that has preoccupied realist, Marxist and poststructuralist thought. A recent articulation of this paradox isoffered by Julian Reid who notes this disturbing paradox:[a] political project based concretely upon an ideal of `peace' has continually produced its nemesis, war. Not only does the recurrence of war throughout modernity serve to underline its paradoxical character. But the very forms of war that recur are of such increasing violence and intensity as to threaten the very sustainability of the project of modernity understood in terms of the pursuit of perpetual peace.83Schmitt's own assessment of prior liberal attempts to abolish war, as those undertakenby the League of Nations, is similar: `any abolition of war without true bracketing[has historically] resulted only in new, perhaps even worse types of war, such asreversions to civil war and other types of wars of annihilation' (NE 246). And, howelse can we understand the war on terror if not in a sequence of changing types of war,yet another evolution after the one noted by Mary Kaldor in the late 1990s?84A new type ofwar alsorequires a new type ofenemy: `it is an apparent fact',Rasch argues,`that the liberal and humanitarian attempt to construct a world of universal friendship produces, as if by internal necessity, ever new enemies'.85 As we discussedabove, the discourse of humanity enables the creation of `a category of political nonpersons, since those who fall outside of these delineations become... subject to a demonization which permits not simply their defeat, but their elimination'.86 In thecase of the war on terror, the `freedom-hating' recalcitrant others, those subjects of other `modernities' entangled with the liberal one,87 become those to be excised from the global liberal order**.** The notion of enemy used by the war on terror is problematic because it denies any rationality or justice to its opponents**.** As Schmitt argued in theNomos, the notion ofjustus hostis which the interstate order had developed, alongsidethe notion of non-discriminatory war, was what allowed war to be limited in naturebut also peace to be made with enemies. When enemies are denied this procedural kind of `justness', then peace cannot be made with them, nor are they allowed a right of resistance and self-defence. The notion of an unjust enemy in the war on terrorrelies on the reintroduction of the notion ofjust cause for one's own side and points to an `other' who has to be fought until there is no more resistance.The second relationship is that the war on terror is connected to cosmopolitanism inthat it is a set of practices, which intends to produce and spread modern liberalsubjectivity. Given the commitment to the individual - which sets into place norms and practices that prohibit the torturing of the subject's body, making physical violence in principle illegitimate (if sometimes inevitable) - war in the present stage of liberal modernity becomes an activity that spreads modern subjectivity and subjectivist socio-political practices. The type of violence that becomes possible in aliberal cosmopolitan age is that which promulgates modern subjectivity, which makesincrementally real the ideal of universal humanity; which abstracts human politicaldiversity from its local constructions and retains only its cultural and aestheticspectre.88 The war on terror should be seen as the latest form of a longer project of subjectivising peoples who have only partially been subjectivised through colonialism, through the extensions of global capitalism, through the international biopolitical operations of the UN system in the last half of the 20th century and through other kinds of wars prominent since the end of the Cold War.89As to the means of this war to spread the modern liberal subject, the war on terrorcontains what were traditionally recognisable as `war practices', but also newlyinserts `peace practices' into its set of operations. Peace and War `must be understood in accordance with a substitutive value that makes the two terms absolutely contemporary with one another, starting with the inversion both of their functions and of their "classical" relations'. 90

\*\*\*\*The affirmatives denial of our violent nature is a denial of the potential for enemies. Although this sounds nice, it only means that violence becomes pathological and offenders of the new liberal order must be punished on behalf of all humanity

Rasch, 2005(Professor and Chair of Germanic Studies @ Indiana University & Ph.D. University of Washington/Seattle. 2k5. (William Henry. “Lines in the Sand: Enmity as a Structuring Principle.” Can be found in the South Atlantic Quarterly, Spring 2005

In The Concept of the Political, Schmitt concludes that ʻʻall genuine political theories presuppose man to be evil, i.e., by nomeans an unproblematic but a dangerous and dynamic being.ʼʼ2 This anthropological fiction—and Schmitt is aware of the claimʼs fictional status—serves as the logical premise that secures Schmittʼs definition of the political as thefriend/enemy distinction. We live in a world, he says, in which associations with likeminded others are our only means of security and happiness. Indiscriminate concourse of all with all cannot be the foundation for necessary political discriminations. Thus, the anthropological presupposition of evil, guilt, and violence isdesigned to expose what Schmitt sees as the duplicity of liberal theory, which consists in using the promise of formal equality to camouflage political power by displacing it inthe realms of economics and morality. Liberal theory denies original enmityby assuming the innate goodnessof the human being. Those—communitarians and liberalsalike— who say there is no war presuppose a counterfactual ʻʻontological priority of non-violence,ʼʼ a ʻʻstate of total peaceʼʼ 3 that invites universal inclusion based on the ʻʻessential homogeneity and natural virtue of mankind.ʼʼ 4 If, in such a benign state of nature, violence were to break out,such common Equity.ʼʼ Such a ʻʻCriminalʼʼ has ʻʻdeclared War against all Mankind, and therefore may be destroyed as a Lyon or a Tyger, one of those wild SavageBeasts, with whom Men can have no Society nor Security.ʼʼ 5 The violence would be considered a perversion and, if all else were to fail, would have to be extirpated by an even greater violence. To cite John Locke, this ʻʻState of perfect Freedomʼʼ and universal ʻʻEquality,ʼʼ governed solely by reason and natural law, can be disturbed only by an ʻʻOffenderʼʼ who ʻʻdeclares himself to live by another Rule, than that of reason and political, on this view, emerges onlyas the result of the Fall—that is, emerges only to fight the war against war, a war always initiated by a sinful or bestial other. It seeks tomake itself superfluous by restoring or, more progressively, establishing for the first time this natural order of peace.Should one demur and find the perfect state to be less than advertised, then oneʼs demurral would most assuredly be recognized not as legitimate political opposition, but rather as evidence of greed, moral perversity, or some other pathological behavior. With its pacific presuppositions,liberalism, according to Schmitt, dissolves the specificity of the political and hides the necessarilyasymmetric power relations that mark all political maneuverings. By way of an anthropologicalsleight of hand, liberalism represents itself as an ethos, a moral and economic emancipation, and not as what it really is, namely, a power-political regime with traditional power-political aims. ForSchmitt, distinctions, rather than the effacement of distinctions, structure the space within which we live, including the space of the political. Only within structured space, space literally marked by human activities, by humangroupings and the boundaries they draw, do terms achieve their meanings. Norms, he repeatedly stated,are derived from situations, normal situations; they are not derived logically from underived firstprinciples. Categories like ʻʻlibertyʼʼ and ʻʻequalityʼʼ can have political significance only when defined and delineated within the sphere of the political. They are neithernatural nor innately human qualities; they are not self-evident truths. Consequently, Schmittʼs suspicion of liberalism, pacifism, or any otherism that denies an initial and therefore ever-present potential war of all against all is a suspicion of those who wish to make their operative distinctions invisible, and thus incontestable, by claiming the immorality or illegality of all distinction. Schmittʼs insistence, then, on ourʻʻevilʼʼ nature is evidence neither of his existential misanthropy nor even, necessarily, of his conservativeauthoritarianism, but rather of his desire to secure the autonomy and necessity of that humanmechanism called ʻʻthe political.ʼʼ To the question of whether there is a war, Schmitt emphatically answers ʻʻyesʼʼ—by which he means to affirm not armed conflict or bloodshed as a virtue in and of itself, but rather the necessity of the view that the proverbial state of nature is, as Hobbes knew, a state marked by imperfection, and that this imperfection manifests itself as violence and the guilt associated with it.

\*\*\*The alternative is to establish clear political enemies. The affirmative’s rejection of lines drawn in the sand is the exact wrong approach to war – we cannot eliminate violence and exclusion, so the affirmative merely pushes these excesses of human nature underground where they become unlimited. The alternative allows for management of war which prevents total and unconditional violence

Rasch, 2005(Professor and Chair of Germanic Studies @ Indiana University & Ph.D. University of Washington/Seattle. 2k5 (William Henry. “Lines in the Sand: Enmity as a Structuring Principle.” Can be found in the South Atlantic Quarterly, Spring 2005. 255-61

Schmitt, then, starts from the premise of imperfection and acknowledges an ontological priority of violence. If, he reasons, one starts with the rather biblical notions of sin and guilt, not natural innocence, then homogeneity, being contingent, historical, and not the least natural, must be predicated on heterogeneity. That is, citizenship or participation or community must be constructed, not assumed, and can only be local, circumscribed, not global. One recognizes one’s own in the face of the other and knows the comfort of inclusion only as the necessary result of exclusion—though in modern, functionally differentiated society, those inclusions and exclusions may be multiple, contradictory, and not necessarily tied to place. ‘‘An abso- lute human equality,’’ Schmitt writes in his Crisis of Parliamentary Democ- racy, ‘‘would be an equality without the necessary correlate of inequality and as a result conceptually and practically meaningless, an indifferent equality. . . . Substantive inequalities would in no way disappear from the world and the state; they would shift into another sphere, perhaps separated from the political and concentrated in the economic, leaving this area to take on a new, disproportionately decisive importance.’’6 This, Schmitt’s, is not a popular sentiment, even if it echoes somewhat the Marxist distinc- tion between a political and a social democracy, between a formal and sub- stantial equality. But if one acknowledges that at least within modernity all inclusion requires exclusion, that inclusions and exclusions in addition to being unavoidable are also contingent and malleable, then rather than react with dismay, one might see in this ‘‘logical fact,’’ if fact it is, both the condition for the possibility of dissent and the condition for the possibility of recognizing in the one who resists and disagrees a fellow human being and thus legitimate political opponent, not aLyon or Tyger or other Savge Beast.For it is not that exclusions are miraculously made absent once distinc- tions are not formally drawn. On the contrary, unacknowledged distinctions, and those who are distinguished by them, simply go underground, become invisible, and grow stronger, more absolute, in their violent and explosive force. When the retrograde and condemned distinction between the ‘‘Greek’’ and the ‘‘barbarian’’ becomes a simple, sanguine affirmation of humanity, this ideal affirmation actually turns out to be nothing other than a distinction drawn between all those who, by their right behavior, show themselves to be truly ‘‘human’’ and those who, alas, by their per- verse dissent, have revealed themselves to be evildoers, to be ‘‘inhuman.’’ Deliberate, visible, ‘‘external’’ distinctions that demarcate a space in which a ‘‘we’’ can recognize its difference from a ‘‘they,’’ preferably without marking that difference in a necessarily asymmetrical manner, are to be preferre**d**, in Schmitt’s world, to the invisible and unacknowledged distinctions that mark those who are exemplary humans from those who, by their political dissent, show themselves to be gratuitously perverse. For reasons, then, of making difference visible, Schmitt favors lines drawn in the sand, or, in the ‘‘mythical language’’ used in The Nomos of the Earth, ‘‘firm lines’’ in the ‘‘soil,’’ ‘‘whereby definite divisions become apparent,’’ and, above them,n the ‘‘solid ground of the earth,’’ ‘‘fences, enclosures, boundaries, walls, houses, and other constructs,’’ so that the ‘‘orders and orientations of human social life become apparent’’ and the ‘‘forms of power and domination be- come visible.’’7 In Nomos, Schmitt describes the now much maligned and seldom mourned European nation-state system as ‘‘the highest form of order within the scope of human power’’ (187). Historically, the territorial state devel- oped as a response to the religious civil wars of the sixteenth and early seventeenth centuries. Once thought of as a unity called Christendom, Europe became fractured by the events of the Reformation and Counter- Reformation. The old asymmetrical distinction between believers and non- believers that governed the relationship not only between Christians and non-Christians, but also between Christian orthodoxy and heresy, now threatened to regulate the distinction between Catholics and Protestants. Yet, miraculously (one might be tempted to say), with the conclusion of religious warfare in 1648, a symmetrical relationship among the European nation-states prevailed—in theory, if not always in fact. It is this symmetri- cal ordering of internally differentiated Europe that Schmitt highlights. In effect—and Hobbes had already described it in these terms—the war of all individuals against all individuals in the state of nature, which perennially threatens to resurface within the state as civil discord, is elevated into a war of all states against all states in a second-order state of nature. In theory and practice, then, the individual is protected from arbitrary and irrational, because incalculable, violence by states acting as moral persons living in an unregulated but serendipitously achieved balance of power. We might best update Schmitt’s description of this order as an ideally anarchic, self-regulating coexistence of antagonistic powers, an emergent, horizontal self-organization of sovereign systems with no one system serv- ing as sovereign over all the others—a plurality of states that refused to coalesce into one single state but rather achieved relative security without relinquishing autonomy. The ‘‘medium’’ of this self-organization was vio- lence (war); yet, by virtue of mechanisms of reciprocity, by virtue, that is, of a similarly emergent self-regulation of violence called international law (the jus publicum Europaeum of which Schmitt sings his praises), the conduct of warfare among European states was restrained and controlled. Thus, the nation-state way of organizing early modern Europe served as the katechon, the political as restrainer, establishing relative stability and peace to stave off chaos and civil war. How is this possible? Despite its internal self-differentiation, Europe still saw itself as a unity because of a second major distinction, the one be- tween Europe and the New World, where New World denotes the entire non-European world, but especially the newly ‘‘discovered’’ regions of the globe following Columbus’s three voyages. This distinction was asymmet- rical; on the one side we find Christianity and culture, on the other only pagan ‘‘barbarians.’’ How did Europeans mark this difference between a self-differentiated ‘‘us’’ and a homogenous ‘‘them’’? Through violence. Only now, violence was regulated hierarchically by the traditional ‘‘just war’’ doc- trine. Schmitt clearly marks the difference between symmetrical and asym- metrical modes of warfare (thus the difference between warfare ‘‘this side’’ versus the ‘‘other side’’ of so-called amity lines that separated Old Europe from the New World) as the difference between wars fought against ‘‘just enemies’’ and those fought for a ‘‘just cause.’’ The former recognize a com- monality among combatants that allows for reciprocity; the latter does not.Wars fought against enemies one respects as occupiers of the same cultural ‘‘space,’’ no matter how subdivided, allows for the desirable constraints on the conduct of war. Wars fought against infidels, pagans, and barbarians, whether these barbarians deny the one God, the laws of nature, the truth of reason, or the higher morality of liberalism, are wars fought against those who are not to be respected or accorded the rights granted equals.8 To be in possession of truth, no matter how much that truth is debated internally, allows one to stand over against the other as a conglomerated unity. This self-differentiated unity can assume the restrained and restraining order of civilization because it has inoculated itself against outbreaks of ‘‘natu- ral’’ and lawless violence by displacing them in the New World. America, as Hobbes and others imagined it, was the preeminent site of the feared state of nature; thus Europe was spared any recurrence of the civil wars that had previously ravaged it. What Schmitt describes as an enviable achievement—that is, the bal- anced order of restrained violence within Europe—presupposed the con- signment of unrestrained violence to the rest of the world. That is, desired restraint was founded upon sanctioned lack of restraint. If Schmitt, by con- centrating on the development of European international law after the reli- gious civil wars, highlights an admirable local result of a disagreeable global process, this can be attributed to his explicit Eurocentrism. But even non- Eurocentrics may be dismayed by the twentieth-century reintroduction of unrestricted violence within Europe itself. The epitome of this return of the epressed may be the midcentury death camp, as Giorgio Agamben main- tains,9 but its initial breakthrough is the Great War of the century’s sec- ond decade. For how else can one explain that a traditional European power struggle that started in 1914 as a war fought for state interest should end in 1918–19 as a war fought by ‘‘civilization’’ against its ‘‘barbarian’’ other? And how else can one explain that we have been so eager to replicate this dis- tinction in every war we have fought ever since? If, in other words, we are rightly horrified by the distinction between civilized and uncivilized when it is used to describe the relationship of Old Europe and its colonial subjects, and if we are rightly horrified by the distinction between the human and the in- or subhuman when it is used to discriminate against blacks, Jews, Gyp- sies, and other so-called undesirables, then why do we persist today in using these very distinctions when combating our latest enemies? Is it merely ironic or in fact profoundly symptomatic that those who most vehemently affirm universal symmetry (equality, democracy) are also more often than not the ones who opt for the most asymmetrical means of locating enemies and conducting war—that is, just wars fought for a just cause? But how are we to respond? For those who say there is no war and who yet find themselves witnessing daily bloodshed, Adornoian asceticism (refrain- ing from participating in the nihilism of the political) or Benjaminian weak, quasi, or other messianism (waiting for the next incarnation of the his- torical subject [the multitudes?] or the next proletarian general strike [the event?]) would seem to be the answer. To this, however, those who say there is a war can respond only with bewilderment. Waiting for a ‘‘com- pletely new politics’’10 and completely new political agents, waiting for the event and the right moment to name it, or waiting for universal ontological redemption feels much like waiting for the Second Coming, or, more accu- rately, for Godot. And have we not all grown weary of waiting? The war we call ‘‘the political,’’ whether nihilist or not, happily goes on while we watch Rome burn. As Schmitt wrote of the relationship of early Christianity to the Roman Empire, ‘‘The belief that a restrainer holds back the end of the world provides the only bridge between the notion of an eschatological paralysis of all human events and a tremendous historical monolith like that of the Christian empire of the Germanic kings’’ (60). One does not need to believe in the virtues of that particular ‘‘historical monolith’’ to understand the dan- gers of eschatological paralysis. But as Max Weber observed firsthand, ascetic quietude leads so often, so quickly, and so effortlessly to the chiliastic violence that knows no bounds;11 and as we have lately observed anew, the millennial messianism of imperial rulers and nomadic partisans alike dominates the contemporary political landscape. The true goal of those who say there is no war is to eliminate the war that actually exists by eliminating those Lyons and Tygers and other Savage Beasts who say there is a war. This war is the truly savage war. It is the war we witness today. No amount of democratization, pacification, or Americanization will mollify its effects, because democratization, pacification, and Americanization are among the weapons used by those who say there is no war to wage their war to end all war.What is to be done**?** If you are one who says there isa war, and if you say it not because you glory in it but because you fear it and hate it,then your goal is to limit it and its effects, not eliminate it, which merely intensifies it, but limit it by drawing clear lines within which it can be fought, and clear lines between those who fight it and those who don’t, lines between friends, enemies, and neutrals, lines between combatants and noncombat- ants. There are, of course, legitimate doubts about whether those ideal lines could ever be drawn again; nevertheless, the question that we should ask is not how can we establish perpetual peace, but rather a more modest one: Can symmetrical relationships be guaranteed only by asymmetrical ones? According to Schmitt, historically this has been the case. ‘‘The tradi- tional Eurocentric order of international law is foundering today, as is the old nomos of the earth. This order arose from a legendary and unforeseen discovery of a new world, from an unrepeatable historical event. Only in fantastic parallels can one imagine a modern recurrence, such as men on their way to the moon discovering a new and hitherto unknown planet that could be exploited freely and utilized effectively to relieve their struggles on earth’’ (39). We have since gone to the moon and have found nothing on the way there to exploit. We may soon go to Mars, if current leaders have their way, but the likelihood of finding exploitable populations seems equally slim. Salvation through spatially delimited asymmetry, even were it to be desired, is just not on the horizon. And salvation through globalization, that is, through global unity and equality, is equally impossible, because today’s asymmetry is not so much a localization of the exception as it is an invisible generation of the exception from within that formal ideal of unity, a generation of the exception as the difference between the human and the inhuman outlaw, the ‘‘Savage Beast, with whom Men can have no Society nor Security.’’ We are, therefore, thrown back upon ourselves, which is to say, upon those artificial ‘‘moral persons’’ who act as our collective political identities. They used to be called states. What they will be called in the future remains to be seen. But, if we think to establish a differentiated unity of dis- crete political entities that once represented for Schmitt ‘‘the highest form of order within the scope of human power,’’ then we must symmetrically manage the necessary pairing of inclusion and exclusion without denying the ‘‘forms of power and domination’’ that inescapably accompany human ordering.We must think the possibility of roughly equivalent power rela- tions rather than fantasize the elimination of power from the political uni- verse. This, conceivably, was also Schmitt’s solution. Whether his idea of the plurality of Großräume could ever be carried out under contemporary cir- cumstances is, to be sure, more than a little doubtful, given that the United States enjoys a monopoly on guns, goods, and the Good, in the form of a supremely effective ideology of universal ‘‘democratization.’’ Still, we would do well to devise vocabularies that do not just emphatically repeat philo- sophically more sophisticated versions of the liberal ideology of painless, effortless, universal equality. The space of the political will never be created by a bloodless, Benjaminian divine violence. Nor is it to be confused with the space of the simply human. To dream the dreams of universal inclusion may satisfy an irrepressible human desire, but it may also always produce recurring, asphyxiating political nightmares of absolute exclusion.

### Case

#### Civilian trials are rigged- the State gets the results it wants

Silverglate 10-6-13 [Harvey Silverglate, a Boston criminal defense and civil liberties lawyer, is the author, most recently, of "Three Felonies a Day: How the Feds Target the Innocent" (Encounter Books, updated second edition 2011), “How Prosecutors Rig Trials by Freezing Assets,” <http://online.wsj.com/article/SB10001424127887324110404578630561814823892.html>]

On Oct. 16, the Supreme Court will hear oral arguments on a claim brought by husband and wife Brian and Kerri Kaley. The Kaleys are asking the high court to answer a serious and hotly contested question in the federal criminal justice system: Does the Constitution allow federal prosecutors to seize or freeze a defendant's assets before the prosecution has shown at a pretrial hearing that those assets were illegally obtained?¶ Such asset freezes often prevent a defendant from hiring the trial counsel of his choice to mount a vigorous defense, thus increasing the likelihood of the government extracting a guilty plea or verdict. Because asset forfeiture almost automatically follows conviction, a pretrial freeze ultimately enables the Justice Department to grab the frozen assets for use by executive-branch law enforcement agencies. It is a neat, vicious circle. What crimes are the Kaleys charged with? Kerri Kaley was a sales representative for a subsidiary of Johnson & Johnson JNJ +1.90% . Beginning in 2005, the fedsin Florida investigated her, her husband Brian, and other sales reps for reselling medical devices given to them by hospitals. The hospitals had previously bought and stocked the devices but no longer needed or wanted the overstock since the company was offering new products. Knowing that the J&J subsidiary had already been paid for the now-obsolete products and was focused instead on selling new models, the sales reps resold the old devices and kept the proceeds.¶ The feds had various theories for why this "gray market" activity was a crime, even though prosecutors could not agree on who owned the overstocked devices and, by extension, who were the supposed victims of the Kaleys' alleged thefts. The J&J subsidiary never claimed to be a victim.¶ The Kaleys were confident that they would prevail at trial if they could retain their preferred lawyers. A third defendant did go to trial with her counsel of choice and was acquitted. But the Justice Department made it impossible for the Kaleys to pay their chosen lawyers for trial.¶ The government insisted that as long as the Kaleys' assets—including bank accounts and their home—could be traced to the sale of the medical devices, all of those assets could be frozen. The Kaleys were not allowed to go a step further and show that their activities were in no way criminal, since this would be determined by a trial. But the Kaleys insisted that if the government wanted to freeze their funds, the court had to hold a pretrial hearing on the question of the legality of how the funds were earned.¶ The Kaleys complained that the asset freeze effectively deprived them of their Sixth Amendment right to the counsel of their choice—the couple couldn't afford to hire the defense that they wanted. Prosecutors and the trial judge responded that the Kaleys could proceed with a public defender. This wouldn't have been an encouraging prospect for them, for while public counsel is often quite skilled, such legal aid wouldn't meet the requirements the Kaleys believed they needed for this complex defense. Choice of counsel in a free society, one would think, lies with the defendant, not with the prosecutor or the judge. (The Kaleys' chosen trial lawyers have agreed to stick with the case during the pretrial tussling over the asset-freeze question, but trying the case before a jury would be much more expensive and would require the frozen funds.)¶ Federal asset-forfeiture statutes like the one the Kaleys are fighting are actually a relatively recent invention. Before 1970, when Congress adopted the first provisions seeking to strip organized-crime figures of ill-gotten racketeering gains, there were no such laws (with the exception of the Civil War-era Confiscation Acts providing for the forfeiture of property of Confederate soldiers).¶ Since 1970, however, such federal statutes have expanded to cover a breathtaking number of crimes, from the sale of fraudulent passports and contraband cigarettes right up to murder and drug trafficking. An authoritative treatise, the 4th edition of the encyclopedia "Federal Practice & Procedure," asserts that federal forfeiture is now available "for almost every crime." In January, the New York Times quoted Manhattan U.S. Attorney Preet Bharara as saying that asset forfeiture is "an important part of the culture" and "an example of the government being efficient and bringing home the bacon." In 2012 alone, federal prosecutors seized more than $4 billion in assets. The Justice Department is allowed by law to put that bacon to use however prosecutors wish—to pay informants, provide snazzy cars to cooperating witnesses, whatever.¶ The Kaleys are hardly alone. The recently completed prosecution of Conrad Black indicates starkly how such seizures can torpedo a defendant's chance of getting a fair trial. In his 2007 high-profile case, Mr. Black, a former newspaper publisher indicted for alleged fraud and related crimes in the sale of Hollinger International, endured a federal freeze of his major unencumbered asset, the cash proceeds from the sale of his New York City apartment. That freeze prevented him from being able to retain the legal counsel upon whom he had relied before the asset freeze.¶ Mr. Black ultimately was convicted on two counts, winning on all the others in a shifting array of counts that numbered more than a dozen. Last year, having served his 42-month prison sentence, he filed a petition in federal court seeking to vacate his convictions on the ground that the government's asset-forfeiture tactics had deprived him of his counsel of choice. That effort foundered when the judge concluded that Mr. Black's trial counsel—not his counsel of choice, it must be noted, but rather the counsel he could afford after the asset freeze—had failed to properly raise and hence preserve the issue for later appellate review.¶ The Supreme Court has now threatened to upset the game that is so lucrative for the government and disabling for defendants. On March 18, the court agreed to consider the Kaleys' claim that the asset freeze without a hearing on the merits of the underlying criminal charge violated their constitutional rights. At oral argument in mid-October, the broader question will be whether, after four decades of federal asset seizures, the high court will put a freeze on the Justice Department.

#### Obama empirically exploits detention loopholes

Calabresi ’11 [Massimo Calabresi joined the Washington bureau of TIME in 1999 and has covered the CIA, State, Justice, Treasury, Congress and the White House. He covered the wars in Bosnia, Croatia and Kosovo as TIME's Central Europe bureau chief from 1995 to 1999 and the collapse of the Soviet Union as a freelancer in Moscow in 1991, “Why Obama Is Threatening to Veto a Defense Bill Over Detention Policy,” Nov. 18, <http://swampland.time.com/2011/11/18/why-obama-is-threatening-to-veto-a-defense-bill-over-detention-policy/>]

The White House is threatening to veto a long-awaited defense funding bill over a perennial policy dispute: whether the President can prosecute terrorists in civilian courts, or must transfer them to military custody. The battle has raged since the very first day of Barack Obama’s presidency, but this time Obama’s opponent is not the GOP. It’s the powerful Democratic chairman of the Senate Armed Services Committee, Carl Levin of Michigan.¶ Originally, Levin worked with the SASC’s conservative Democrats (like Joe Lieberman) and GOP members (like John McCain and Lindsey Graham) to produce a bill that would have mandated transfer of captured terrorists to military custody. The White House briefed wary liberals two weeks ago not to worry, though, that they were engaged in negotiations with Levin and the GOP to change the language. “They were very optimistic that they were going to get an agreement,” says one Senate aide.¶ But last Tuesday, Levin marked up the bill in private and moved it straight to the Senate floor, where Senate majority leader Harry Reid promptly scheduled it for debate. And while Levin had responded to some of the White House’s concerns, he didn’t give it much of what it wanted, and even hawkish national security lawyers are objecting.¶ Levin says he accepted White House changes to a section that for the first time gives legislative authority for the indefinite detention of Americans in the U.S. And he inserted several loopholes that he says soften the requirement that al-Qaeda terrorists arrested in the U.S. must be transferred to military custody.¶ The administration in response issued a four-page “Statement of Administration Policy” (pdf) Thursday, stating that the bill “would tie the hands of our intelligence and law enforcement professionals” and would be “inconsistent with the fundamental American principle that our military does not patrol our streets.” Further, the administration said, Levin’s loopholes—particularly a provision allowing the Administration to issue a waiver–“fails to address these concerns.”¶ Said the White House: “Any bill that challenges or constraines the President’s critical authorities to collect intelligence, incapacitate dangerous terrorists, and protect the Nation would prompt the President’s senior advisers to recommend a veto.”¶ On the floor of the Senate Friday, Levin said he’d accepted all of the Administration’s changes regarding indefinite detention, and that the requirement to transfer suspects to military detention “does not mandate military custody” because of the waiver. “Nothing is automatic,” Levin said.¶ “The White House got rolled,” says the Senate aide, who admits the bill is nevertheless likely to pass. “The votes don’t exist to change it,” the aide says. Moreover, the White House veto threat is significantly more vague than previous ones on the subject of detention, declining to refer specifically to the authorization bill itself, and leaving the Administration a way out if it decides it doesn’t want to continue this fight with a veto in an election year.

#### Turn: America 1st-The affirmative operates from an America 1st ontology. Demanding that we recognize our own vulnerability replicates first world privilege and denies a true ethical understanding of the precariousness of all life.

Peterson 06 [Christopher, “The Return of the Body: Judith Butler’s Dialectical Corporealsim” Discourse Spring & Fall 2006]

Butler's more recent work, in particular *Precarious Life* (2004), turns once again to the problem of corporeality, but does so in the wake of the violence and mourning spawned by 9/11.[29](http://muse.jhu.edu/journals/discourse/v028/28.2-3.peterson.html" \l "f29) She asks what it might mean to acknowledge a shared "corporeal vulnerability" as the condition of the human. Whereas her earlier work tacitly relied on the figure of the living body, *Precarious Life* at first seems to promise a shift away from the presumption of self-presence by asking how the loss of first-world privilege and the protection from injury and death that it seemed to ensure might give way to an acknowledgement that we are not only physically dependent on one another, but physically vulnerable to one another as well. This recognition of mutual vulnerability is inflected by a Levinasian approach to ethics that begins by affirming the precariousness of the other. Following Levinas, Precarious Life maintains that one ought not "extrapolate from an understanding of [one's] own precariousness . . . an understanding of another's precarious life" (134). For Levinas, the other always comes first. The precariousness of the other is anterior to my own. To begin with my own corporeal vulnerability would be to assert my ontological priority before the other—an egological formation that, for Levinas, is antithetical to ethics.

#### Turn: Binary Creation – Focus on American vulnerability reinscribes a binary of US-THEM as if there are TWO separate groups one being vulnerable to the other – this reinforces the very sense of security they criticize

Peterson 06 [Christopher, “The Return of the Body: Judith Butler’s Dialectical Corporealsim” Discourse Spring & Fall 2006]

Faithful to Levinasian ethics, Butler maintains that the cry for war occasioned by the violent acts of 9/11 is exacerbated by the inability of Americans to recognize the precariousness of non American (particularly Muslim) lives. They are always already dead, and therefore cannot be killed. But if Americans routinely view Muslims as expendable, what does it mean to affirm their precariousness as anterior to our own? Does not posing their precariousness as prior to our own risk repeating the gesture that secures the ontology of Americans at the expense of Muslim lives? Indeed, I would argue that the construction of the Muslim other as already dead, and therefore incapable of being killed, is conditioned by a peculiarly American disavowal of vulnerability and mortality, which means that the Levinasian insistence on the anteriority of the other's precariousness reinscribes the very dialectic of being/non-being that the turn toward ethics is intended to correct.

#### Don’t be fooled by their ethical mumbo jumbo --- Butler’s ethics is nothing but utilitarianism that prioritizes the other first. Means they link to all their util and aggregate calculations bad arguments & you still weigh our offense.

Boucher 06, Geoff Boucher, lecturer in literary studies at Deakin University, Australia, Parrhesia, 2006, No. 1, p. 136-137

If Butler seeks to challenge the supposed supremacy of the political individual by dethroning the moral narcissism of the sovereign ego, then the resources she has at her disposal are limited by her insistence on the pre-social character of the ultra-ethical relation to the other. As usual, Butler seems to pre-empt criticism of her position by taking refuge in a damagingly abstract conception of moral action; nonetheless, it is possible to say of this position that any combination of constrained agency and infinite responsibility that demands that the subject act for the (unknown) good of the other must result in something close to paralysis. Indeed, the consequentialist position that she presently advocates 95 seems to oscillate. According to Butler, although divided by power and condemned to a permanent nucleus of opacity installed in the very heart of the speaking "I" by its ambiguous sociality, the melancholy subject must – despite all of the constraints on agency outlined in the various revisions of the theory of performativity – take responsibility for the incalculable consequences of its actions upon the other, even, indeed especially, when the subject accuses the other of being a persecutor. On the one hand, this might be read as an ultra-ethical stance that negatively limits the formulation of moral maxims by prescribing that "thou shalt not kill," but providing no concrete guidance on how to modify any concrete set of historical circumstances (thus voiding the force of the consequentialist argument, which relies upon the eminent practicality of its moral calculus). On the other hand, it might mean that the moral calculus performed by the self applies only to another individual, on the basis of the potentially condescending idea of acting so as to maximise the good of the other person. But all this is, finally, not a real challenge to moral and political individualism, for a consequentialism that acts for the good of others, taken one-by-one, is finally just a means for aggregating preferences based on the best guess about the other's interests, rights and values. In summary, Butler's theory of performativity, seeking to outline a "stylistics of existence" based on individual subversion of cultural norms, lands in an oscillation between voluntarism and determinism. Butler's resolution of this problem tends to evacuate institutional determinacy from the theory and produces a politics of performativity that is unsatisfactory in terms of its abstract individualism. This problem is compounded by a deconstructive understanding of speech acts and an idealist ontology of performative materialisation. Butler's effort to ground her politics in an ethics of alterity results in an ethics that swings between a pre-ethical openness to the other incapable of generating new moral norms, and an endorsement of consequentialism based in the potentially condescending ideal of the good of the other. The methodological individualism that all this suggests constrains Butler's account of the social field to the classical opposition between individual and society, generating a perspective that conceptualises marginal subversion in terms of the resistance of the individual to hegemonic norms and ethical alterity in terms of the duty of one individual towards another. Ultimately, for all her hostility to liberal political philosophy, her own alternative seems to be only another, somewhat more radical version of moral and political individualism.

#### The prisoners are not bare life—there are rules that prevent true reduction

Halit Tagma 09, Professor of Political Science, Arizona State , “Homo Sacer vs. Homo Soccer Mom: Reading Agamben and Foucault in the War on Terror,” Alternatives: Global, Local, Political, Vol. 34, No. 4 (Oct.-Dec. 2009), pp. 407-435

Thus in some respects, prisoners of the "war on terror" might be understood as homo sacer. However, there are also particularities in the way the prisoners are handled that call for a critical re-evaluation of the (non) space of Guántanamo. If in the classical Foucauldian teminology sovereign power is about "taking or granting life," and biopower is about "letting live and making life," then what can be said about the power operating in Guántanamo that "forces to live" when prisoners are carefully controlled to prevent them from committing suicide. Indeed, the prisoners of Guántanamo are force fed and even given mandatory health checks so as to insure they are kept, barely, alive. Unlike the homo sacer who may be killed but not sacrificed, the prisoners in Guantánamo may not be killed or sacrificed. In fact, extensive efforts are spent to keep the prisoners at Guantánamo alive, such as the creation of operating rooms for major health emergencies as well as facilities for dentistry. The prisoners are given health treatment similar to that provided to the troops at the base.60 No doubt the display of such "health benefits" could be read as window dressing conducted by the camp administrators. However, it is important to note that there are indeed serious efforts to keep the prisoners (often barely, but nevertheless) alive. Furthermore, punishment and interro- gation are orchestrated so that the use of violence does not result in death. Extensive efforts are made to prevent the prisoners from com- mitting suicide. In other cases, hunger-striking inmates have met with brutal forced feeding.61 Thus, in a striking unclassified army document that outlines procedures in Guántanamo Bay, guards are ordered to "defend detainees as you would yourself against a hostile act or intent, death, or serious bodily harm."62 Therefore it is correct to say that what goes in Guantánamo Bay is neither "letting live" nor "taking life," but instead "making live," or even "forcing to live."¶ Agamben argues that camps are places where sovereign "power confronts nothing but pure life."63 Guantánamo Bay, declared as being beyond the reach of law, is, in fact, regulated by many petty regulations that are characteristic of disciplinary power. Reading the re- ports of the Joint Task Force and prisoner testimonies, one comes to the conclusion that there is a plethora of rules and procedures that govern the treatment of Guántanamo prisoners.64 Whereas Agamben's statement on "zones of indistinction" would lead us to think that any- thing goes in the camp, this is far from the reality of Guántanamo. Every minuscule element of the lives of Guántanamo prisoners been planned and is, for the most part, regulated by a written a code of conduct. Many foreseeable and probable occurrences that would be expected in a prison population have been forethought and written into a manual. Titled Standard Operating Procedures this 250-page manual outlines the rules, regulations, and procedures for treatment of prisoners in many probable circumstances.65 The manual outlines, for example, what to do if there is a petty riot, when and how to spray pepper spray on rioters, religious burials rituals for prisoners, and so on.66 This clearly hints that it is not just an exceptional sovereign power at work in Guántanamo, as exemplified in Rumsfeldian rhetorical salvos on "exceptional times requiring exceptional measures." In- stead, there are multiple technologies of power that are at work in the day-to-day administration of this space.67

## **2nc**

Genetic tendencies towards hierarchy mean authoritarian organizations are inevitable. Only way to preserve any semblance of democratic politics is to face this fact and abandon the quest for an end to hierarchy – alternative is extinction

Need hierarchy and exclusion to create democracy

Violence is innate – human biology

Somit and Peterson, 1997 (Albert, Distinguished Service Professor Emeritus at Southern Illinois University, and Steven A., Professor of Political Science at Alfred University, *Darwinism, Dominance & Democracy: The biological bases of authoritarianism,* Pages 3-5)

**No matter the**century or **era, we see the same pattern—authoritarian regimes are notable by their presence and persistence, democracies by their infrequency and impermanence**. This has unarguably been the case in the past; an objective assessment of today's some two hundred polities compels the conclusion that, even in what is hailed as an "Age of Democracy," it still remains essentially the case today.'The consistency of this pattern raises two very troublesome questions. First and most obvious: Why are authoritarian governments so common and enduring—and democracies, in painful contrast, so rare and, all too often, so fragile? To this question, many answers have been offered; as their sheer number and variety testifies, none has yet been particularly persuasive.In this book we address the same issue but advance a quite different explanation. **Although other factors are undoubtedly also operative, the most important reason for the rarity of democracy is that evolution has endowed our species, as it has the other social primates, with a predisposition for hierarchically structured social and political systems**. In the pages that follow, we will try both to explain why and how this has occurred and,equally important, to anticipate the objections that likely will (and certainly should) be raised to such an unattractive thesis.The proposed explanation promptly triggers the second question: How, then, can we account for the undeniable occasional emergence of demo­cratic polities? Many of those who have wrestled with this problem find the answer in some unique concatenation of economic, social, historical, and political "facilitating" factors. These factors undoubtedly play a role. None­theless, paradoxically enough, we must again turn to evolutionary theory for the necessary, though not sufficient, condition that makes democracy sometimes possible.Although it shares the proclivity of its fellow social primates for hierar­chical social organization, **Homo sapiens is the only species capable of creating and, under some circumstances, acting in accordance with cultural beliefs that actually run counter to its innate behavioral tendencies///////MARKEDD AT TENDENCIES**

#### No Oversimplification or naturalization-

Prozorov, 2006 (Sergei, Professor of International Relations at Petrozavodsk State University, “Liberal Enmity: the figure of the foe in the Political ontology of liberalism,” Millennium)

Extreme Alterity: Revisiting the Friend–Enemy Distinction Let us begin with revisiting Schmittʼs concept of the friend–enemydistinction in order to isolate the singular modality of enmity that was targeted by Schmittʼs criticism and yet remains attributed tohim even by the more sympathetic readers. In an insightful adaptation of Schmittʼs critique of liberal democracy for the purposes of contemporary critical theory, Chantal **Mouffe notes as the fundamental weakness of Schmittʼs thought his ʻessentialisationʼ of the friend–enemy distinction**. ʻHis distinction between us and them isnot really politically constructed; it is merely a recognition of already-existing borders.ʼ14 Thus,while Mouffe correctly dissociates Schmitt from contemporary ʻneoconservatismʼ, she remains committed to the image of the friend–enemy distinction as an essentially static concept, a reflection of theallegedly existing state of affairs, rather than a contingent political act**. It is,** however, **difficult to find support for this reading in Schmittʼs work**, particularly insofar as we read ʻThe Concept of the Politicalʼ in conjunction with ʻPolitical Theologyʼ, understanding the act of the friend–enemy distinction as the prime expression of thesovereign decision on exception. From this perspective, **the friend–enemy distinction is an unfounded yet foundational act of the sovereign decision, which logically ʻemanates from nothingnessʼ and therefore cannot find ground or support in the anterior reality and draw on substantive**(economic,moral or aesthetic) **criteria to define the enemy**.15 This purely formal decisionism famously led Leo Strauss tocharacterise Schmittʼs conception of the political as ʻliberalism preceded by a minus signʼ.16 Similarly, Slavoj Zizek argues thatSchmittʼs decisionism is entirely heterogeneous to any form of traditional conservatism but rather unfolds in the thoroughlydisenchanted space of nihilism: This is the first feature of modern conservatism, which sharply distinguishes it from every kind of traditionalism: modern conservatism, even more than liberalism, assumes the lesson of the dissolution of the traditional set of values and/or authorities – **there is no longer any positive content which could be presupposed as the universally accepted frame of reference**.17In this context of ʻmodern conservatismʼ, **Mouffeʼs reading of Schmitt as an essentialist is hardly plausibl MARKED AT PLAUSIBLE**

#### **Schmitt’s enemy is not an identity permanently ascribed to a particular group of people—it is a political decision made only when faced by a direct threat.**

Odysseos 02 – Senior Lecturer in International Relations at the University of Sussex, UK (Louiza “Dangerous Ontologies: The Ethos of Survival and Ethical Theorizing in International Relations” Review of International Studies, Vol. 28, No. 2 (Apr., 2002), pp. 403-418 Published by: Cambridge University Press, JSTOR, p. 411-413, MT)

This antithesis revokes the notion of transcendence by restricting the occurrence of the state of nature to the moment when the political distinction between friend and enemy is made. For Schmitt, the distinction between friend and enemy is decided only in the extreme case, that is, it is an exception rather than the norm. **The enemy is not omnipresent but can only be decided as an enemy if he poses an existential threat**. The enemy, Schmitt writes, is 'the other, the stranger; and it is sufficient for his nature that he is, in a specially intense way, existentially something different and alien, so that in the extreme case conflicts with him are possible'.50 However, the enemy is not defined as every other one encounters in coexisting; on the contrary, Schmitt's reference to 'enemy' is to the public enemy, decided upon by the state and restricted to another collectivity. 'An enemy exists only when, at least potentially, one fighting collectivity of people confronts a similar collectivity.'51 The enemy is *hostis*, not *inimicus*, and, therefore, everyday political adversaries cannot be 'enemies'. **The political antithesis of friend/enemy is only drawn when a distinct political entity is faced with the possibility of dying and of killing**. By allowing the political to coalesce around the extreme case, Schmitt challenged the possibility of transcending the state of nature in international politics and, hence, **called into question the very possibility that** the **liberal practice of law and** the establishment of **international institutions could promote peace and prevent war**. If the state of nature can be transcended then 'the political' is threatened.52 The affirmation of the primacy of 'the political' in the extreme case eliminates, then, the possibility of transcendence. The impossibility of transcendence is further strengthened by the fact that, although every distinction draws upon other distinctions to reinforce itself, the political distinction remains autonomous. The friend/enemy distinction may be asserted without such recourse to the moral, the aesthetic, the economic, the religious: the state is able to distinguish who is the enemy solely by judging whether the other 'intends to negate his opponent's way of life and therefore must be repulsed'.53 Thus, 'the political' has an objective and autonomous nature in the thinking of Schmitt, such that it can distinguish and act with regard to the friend/enemy distinction without needing to refer to other antitheses, such as moral or aesthetic considerations. With regards to 'morality', moreover, **'the political' is conceived as the moment of decision between friend/enemy**, which is exempt from all justifications, where there is 'justification by mere existence'.54 The existential threat of the enemy makes the political **devoid of all other concerns**: 'the political' does not need to justify its existence by reference to other concerns. It is justified by the mere existence of an existential threat. The enemy raises the question of whether the collectivity, the 'we', wants to take responsibility for its existence. Again, the **affirmation of 'the political'** **animates and validates** the **responsibility to survive**. It is the collectivity's continued survival that justifies, 'by mere existence', the possibility of physical killing. Once the decision is taken, **the enemy's presence accentuates the fact that the political entity has a responsibility to survive**. Again, it must be noted that survival is not merely existential but ethical.55 Since this existentially threatening moment is not embodied in an omnipresent enemy, as in Hobbes's thought, but rather is the exception to the rule, it cannot be transcended. It is important, at this stage, to note briefly that in IR Schmitt's thought has the view that survival is an existential concern. Yet, misreading Schmitt, political realists claimed that the existentially threatening other is that which evacuates 'the political' from any need for justification. Schmitt, inadvertently, enabled political realism to assume a stance against 'ethics', largely understood as morality. In thinkers influenced by Schmitt, such as Hans Morgenthau and Henry Kissinger,56 this presumed non-ethics became itself prescriptive in a prohibitive way: that the enemy is not to be accorded ethical significance.57 Extrapolating further, the realist conception became that, in international politics, 'the ethical' is a realm best left alone, lest it obscure the political decision of who the enemy is in the extreme case. Schmitt reinstated the state of nature by restricting its occurrence in the extreme case, that is, when a collectivity is faced with an existential threat, whence springs its responsibility to survive. For Schmitt, the autonomy of 'the political' is based on the recognition of the existentially threatening enemy, which brings to the fore the collectivity's responsibility to survive and by recourse to which the distinction between friend/enemy is drawn. In realism, however, the argument for the autonomy of the political distinction is taken to prescribe that 'the ethical' should not be allowed to obscure 'the political'. In political realism, then, the autonomy of 'the political', or 'the international', becomes divorced from its ethico-relational justification, namely, the state's responsibility towards the group's survival. To reiterate, Schmitt's refutation of the possibility of transcendence and his reformulation that 'the state of nature' occurs only in an extreme case, perpetuates and refines the ethos of survival as the mode of encountering and being with others at the interstate level. The ethos of survival as the relationality established by the acceptance of the dangerous ontology is discussed in greater detail below.

#### Civilian trials allow Obama flexibility to charge detainees however he wants- overwhelming conviction rate

**Wheeler ’10** [Marcy, PhD, political commentator, “The 390 Terrorists Convicted in Civilian Courts,” <http://emptywheel.firedoglake.com/2010/03/26/the-390-terrorists-convicted-in-civilian-courts/>]

The Department of Justice has just sent a letter to the Senate Judiciary Committee answering early questions about how many terrorists have been convicted or plead guilty in civilian courts. Between those convicted of terrorism-related crimes (150) and individuals with ties to international terrorism convicted of other crimes (like obstruction or perjury–the total here is 240), 390 people have been sent to prison using our civilian courts.¶ As you might recall, there has been some debate over what the “real” number of terrorists convicted in civilian courts is. After the Obama Administration used the same number the Bush Administration had–a number which combines terrorist charges with non-terrorist charges–Republicans squawked.¶ But as DOJ points out, having other charges available is one of the advantages to the civilian courts:¶ The second category includes a variety of other statutes (like fraud, firearms offenses, false statements, or obstruction of justice) where the investigation involved an identified link to international terrorism. There have been more than 240 individuals charged in such cases since September 11, 2001. Examples of the international terrorism nexus identified in some of these cases have also been provided for your review.Prosecuting terror-related targets using these latter offenses is often an effective method—and sometimes the only available method—of deterring and disrupting potential terrorist planning and support activities. Indeed, one of the great strengths of the criminal justice system is the broad range of offenses that are available to arrest and convict individuals believed to be linked to terrorism, even if a terrorism offense cannot be established. Of course, an aggressive and wide-ranging terrorism investigation will net individuals with varying degrees of culpability and involvement in terrorist activity, as the NSD chart reflects. Arresting and convicting both major and minor operatives, supporters, and facilitators can have crippling effects on terrorists’ ability to carry out their plans. [my emphasis]¶ This is a point David Kris made in Congressional testimony last year–there are actually charges you can’t use in a military commission but which you can use in a civilian court (though the Obama Administration appears prepared to press the limits of MCs anyway).

#### Obama will circumvent Congress and the courts

**Kumar 3-19**-13 [Anita, White House correspondent for McClatchy Newspapers, former writer for The Washington Post, covering Virginia politics and government, and spent a decade at the St. Petersburg Times, writing about local, state and federal government both in Florida and Washington, “Obama turning to executive power to get what he wants,” <http://www.mcclatchydc.com/2013/03/19/186309/obama-turning-to-executive-power.html#.Ue18CdK1FSE>]

“The expectation is that they all do this,” said Ken Mayer, a political science professor at the University of Wisconsin-Madison who wrote “With the Stroke of a Pen: Executive Orders and Presidential Power.” “That is the typical way of doing things.”¶ But, experts say, Obama’s actions are more noticeable because as a candidate he was critical of Bush’s use of power. In particular, he singled out his predecessor’s use of signing statements, documents issued when a president signs a bill that clarifies his understanding of the law.¶ “These last few years we’ve seen an unacceptable abuse of power at home,” Obama said in an October 2007 speech.. “We’ve paid a heavy price for having a president whose priority is expanding his own power.”¶ Yet Obama’s use of power echoes that of his predecessors. For example, he signed 145 executive orders in his first term, putting him on track to issue as many as the 291 that Bush did in two terms.¶ John Yoo, who wrote the legal opinions that supported an expansion of presidential power after the 2001 terrorist attacks, including harsh interrogation methods that some called torture, said he thought that executive orders were sometimes appropriate – when conducting internal management and implementing power given to the president by Congress or the Constitution – but he thinks that Obama has gone too far.¶ “I think President Obama has been as equally aggressive as President Bush, and in fact he has sometimes used the very same language to suggest that he would not obey congressional laws that intrude on his commander-in-chief power,” said Yoo, who’s now a law professor at the University of California at Berkeley. “This is utterly hypocritical, both when compared to his campaign stances and the position of his supporters in Congress, who have suddenly discovered the virtues of silence.”¶ Most of Obama’s actions are written statements aimed at federal agencies that are published everywhere from the White House website to the Federal Register. Some are classified and hidden from public view.¶ “It seems to be more calculated to prod Congress,” said Phillip J. Cooper, the author of “By Order of the President: The Use and Abuse of Executive Direct Action.” “I can’t remember a president being that consistent, direct and public.”¶ Bush was criticized for many of his actions on surveillance and interrogation techniques, but attention has focused on Obama’s use of actions mostly about domestic issues.¶ In his first two years in the White House, when fellow Democrats controlled Capitol Hill, Obama largely worked through the regular legislative process to try to achieve his domestic agenda. His biggest achievements – including a federal health care overhaul and a stimulus package designed to boost the economy –came about with little or no Republican support.¶ But Republicans took control of the House of Representatives in 2010, making the task of passing legislation all the more difficult for a man with a detached personality who doesn’t relish schmoozing with lawmakers. By the next year, Obama wasn’t shy about his reasons for flexing his presidential power.¶ In fall 2011, he launched the “We Can’t Wait” campaign, unveiling dozens of policies through executive orders – creating jobs for veterans, adopting fuel efficiency standards and stopping drug shortages – that came straight from his jobs bills that faltered in Congress.¶ “We’re not waiting for Congress,” Obama said in Denver that year when he announced a plan to reduce college costs. “I intend to do everything in my power right now to act on behalf of the American people, with or without Congress. We can’t wait for Congress to do its job. So where they won’t act, I will.”¶ When Congress killed legislation aimed at curbing the emissions that cause global warming, Obama directed the Environmental Protection Agency to write regulations on its own incorporating some parts of the bill.¶ When Congress defeated pro-union legislation, he had the National Labor Relations Board and the Labor Department issue rules incorporating some parts of the bill.¶ “The president looks more and more like a king that the Constitution was designed to replace,” Sen. Charles Grassley, R-Iowa, said on the Senate floor last year.¶ While Republicans complain that Obama’s actions cross a line, experts say some of them are less aggressive than they appear.¶ After the mass shooting in Newtown, Conn., in December, the White House boasted of implementing 23 executive actions to curb gun control. In reality, Obama issued a trio of modest directives that instructed federal agencies to trace guns and send information for background checks to a database.¶ In his State of the Union address last month, Obama instructed businesses to improve the security of computers to help prevent hacking. But he doesn’t have the legal authority to force private companies to act.¶ “The executive order can be a useful tool but there are only certain things he can do,” said Melanie Teplinsky, an American University law professor who’s spoken extensively on cyber-law.¶ Executive actions often are fleeting. They generally don’t settle a political debate, and the next president, Congress or a court may overturn them.¶ Consider the so-called Mexico City policy. With it, Reagan banned federal money from going to international family-planning groups that provide abortions. Clinton rescinded the policy. George W. Bush reinstated it, and Obama reversed course again.¶ But congressional and legal action are rare. In 1952, the Supreme Court threw out Harry Truman’s order authorizing the seizure of steel mills during a series of strikes. In 1996, the District of Columbia Court of Appeals dismissed an order by Clinton that banned the government from contracting with companies that hire workers despite an ongoing strike.¶ Obama has seen some pushback.¶ Congress prohibited him from spending money to move inmates from the Guantanamo Bay U.S. naval base in Cuba

#### Equating vulnerability with femininity reinforces traditional gender roles and obscures the root of violence. Demanding the insertion of vulnerability into the conception of the masculine obscures the physical threat of domination and sexual violence present in the lives of the women. Using a top down approach does nothing to deal with the primary source of vulnerability and violence and lures people into a false sense of safety, increasing the likelihood for violence.

Hollander 01 [Jocelyn A. “Vulnerability and Dangerousness: The Construction of Gender through Conversation about Violence” Gender and Society, Vol. 15, No, 1 February 2001 pg. 84]

These two quotes summarize one of the most pervasive differences between the lives of women and men in the contemporary United States. As many researchers have found, women tend to report far more fear of violence than do men, in a far wider range of circumstances (Gordon and Riger 1989; Madriz 1997; Warr 1985). Paradoxically, reported patterns of victimization do not correspond to these pat- terns of fear (Pain 1997). According to official statistics, men's risk of experiencing violence is much higher than women's, both overall and for every type of violence except sexual assault. Moreover, there is a disjuncture between the situations women report fearing most (assault by a stranger, away from home, at night, and outside) and the situations in which they are most likely to be at risk (in or near the home, with intimates) (Koss 1988; Tjaden and Thoennes 1998).1 As Valentine (1992, 22) writes, there seems to be "a mismatch between the geography of violence and the geography of fear." In this article, I suggest that another, more subtle source of differences in fear has been overlooked. I argue that widely shared conceptions of gender4 associate femi- ninity with vulnerability and masculinity with dangerousness. Stanko (1995, 50) writes that "the reality of sexual violence ... is a core component of being female and is experienced through a wide range of everyday, mundane situations." I make a similar argument, but with respect to potential danger, not actual engagement with violence: Vulnerability to violence is a core component of femininity, but not masculinity. Relatedly, potential dangerousness is associated with masculinity, but not femininity. As I will show below, these ideas are pervasive, widely shared, and constructed through interaction: through routine patterns of behavior and communication that replicate and reinforce existing ideas about gender.

#### An ethic of survival allows for flexible policy making and is the pre-requisite for the enjoyment of other values. Their absolute truths force trade-offs impossible to resolve.

Joseph Nye, PhD Political Science from Harvard University. 1986. From “Nuclear Ethics.” Pg. 44-5

Free Press; London: Collier Macmillan

Is there any end that could justify a nuclear war that threatens the survival of the species? Is not all-out nuclear war just as self contradictory in the real world as pacifism is accused of being? Some people argue that "we are required to undergo gross injustice that will break many souls sooner than ourselves be the authors of mass murder."73 Still others say that "when a person makes survival the highest value, he has declared that there is nothing he will not betray. But for a civilization to sacrifice itself makes no sense since there are not survivors to give meaning to the sacrifical [sic] act. In that case, survival may be worth betrayal." Is it possible to avoid the "moral calamity of a policy like unilateral disarmament that forces us to choose between being dead or red (while increasing the chances of both)"?74 How one judges the issue of ends can be affected by how one poses the questions. If one asks "what is worth a billion lives (or the survival of the species)," it is natural to resist contemplating a positive answer. But suppose one asks, "**is it possible to imagine any threat to our civilization and values that would justify raising the threat to a billion lives from one in ten thousand to one in a thousand for a specific period?**" Then there are several plausible answers, including a democratic way of life and cherished freedoms that give meaning to life beyond mere survival. When we pursue several values simultaneously, we face the fact that they often conflict and that we face difficult tradeoffs. If we make one value absolute in priority, we are likely to get that value and little else. **Survival is a necessary condition for the enjoyment of other values**, but that does not make it sufficient. Logical priority does not make it an absolute value. Few people act as though survival were an absolute value in their personal lives, or they would never enter an automobile. We can give survival of the species a very high priority without giving it the paralyzing status of an absolute value. Some degree of risk is unavoidable if individuals or societies are to avoid paralysis and enhance the quality of life beyond mere survival. The degree of that risk is a justifiable topic of both prudential and moral reasoning.

#### Systemic threats do not outweigh extinction—the availability heuristic causes us to underestimate both magnitude and probability

YUDKOWSKY 2006 (Eliezer, Singularity Institute for Artificial Intelligence, “Cognitive biases potentially affecting judgment of global risks,” forthcoming in *Global Catastrophic Risks*, August 31)

A general principle underlying the heuristics-and-biases program is that human beings use methods of thought - heuristics - which quickly return good approximate answers in many cases; but which also give rise to systematic errors called biases. An example of a heuristic is to judge the frequency or probability of an event by its availability, the ease with which examples of the event come to mind. R appears in the third-letter position of more English words than in the first-letter position, yet it is much easier to recall words that begin with "R" than words whose third letter is "R". Thus, a majority of respondents guess that words beginning with "R" are more frequent, when the reverse is the case. (Tversky and Kahneman 1973.) Biases implicit in the availability heuristic affect estimates of risk. A pioneering study by Lichtenstein et. al. (1978) examined absolute and relative probability judgments of risk. People know in general terms which risks cause large numbers of deaths and which cause few deaths. However, asked to quantify risks more precisely, people severely overestimate the frequency of rare causes of death, and severely underestimate the frequency of common causes of death. Other repeated errors were also apparent: Accidents were judged to cause as many deaths as disease. (Diseases cause about 16 times as many deaths as accidents.) Homicide was incorrectly judged a more frequent cause of death than diabetes, or stomach cancer. A followup study by Combs and Slovic (1979) tallied reporting of deaths in two newspapers, and found that errors in probability judgments correlated strongly (.85 and .89) with selective reporting in newspapers. People refuse to buy flood insurance even when it is heavily subsidized and priced far below an actuarially fair value. Kunreuther et. al. (1993) suggests underreaction to threats of flooding may arise from "the inability of individuals to conceptualize floods that have never occurred... Men on flood plains appear to be very much prisoners of their experience... Recently experienced floods appear to set an upward bound to the size of loss with which managers believe they ought to be concerned." Burton et. al. (1978) report that when dams and levees are built, they reduce the frequency of floods, and thus apparently create a false sense of security, leading to reduced precautions. While building dams decreases the frequency of floods, damage per flood is so much greater afterward that the average yearly damage increases. It seems that people do not extrapolate from experienced small hazards to a possibility of large risks; rather, the past experience of small hazards sets a perceived upper bound on risks. A society well-protected against minor hazards will take no action against major risks (building on flood plains once the regular minor floods are eliminated). A society subject to regular minor hazards will treat those minor hazards as an upper bound on the size of the risks (guarding against regular minor floods but not occasional major floods). Risks of human extinction may tend to be underestimated since, obviously, humanity has never yet encountered an extinction event.2

#### Ignoring consequences when pursing ethics is dismissive of the choices that other nation states make to uphold survival & is complicit with the highest forms of immorality.

Joseph Nye, Harvard University Distinguished Service Professor. 1986. From “Nuclear Ethics.” Pg. 32-34.

Free Press; London: Collier Macmillan

The third approach stresses the common nature of humanity. States and boundaries exist, but their existence does not endow them with moral significance. Ought does not follow from is. David Luban has written, "The rights of security and subsistence... are necessary for the enjoyment of any other rights at all. No one can do without them. Basic rights, therefore, are universal. They are not respecters of political boundaries, and require a universalist politics to implement them; even when this means breaching the wall of state sovereignty." 53 Many citizens hold multiple loyalties to several communities at the same time. They may wish their governments to follow policies that give expression to the rights and duties engendered by other communities in addition to those structured at the national level. While the cosmopolitan approach has the virtue of accepting transnational realities and avoids the sanctification of the nation-state, an unsophisticated cosmopolitanism also has serious drawbacks. First, if morality is about choice, then to underestimate the significance of states and boundaries is to fail to take into account the main features of the real setting in which choices must be made**. To pursue individual justice at the cost of survival or to launch human rights crusades that cannot hope to be fulfilled, yet interfere with prudential concerns about order, may lead to immoral consequences. And if such actions**, for example the promotion of human rights in Eastern Europe, **were to lead to crises and an unintended nuclear war,** the consequences might be the ultimate immorality. Applying ethics to foreign policy is more than merely constructing philosophical arguments; it must be relevant to the international domain in which moral choice is to be exercised. The other problem with an unsophisticated cosmopolitan approach is ethical; it discards the moral dimension of national politics. As Stanley Hoffmann has written, "States may be no more than collections of individuals and borders may be mere facts. But a moral significance is attached to them." 54 People wish to live in historic communities and autonomously to express their own political choices. A pure cosmopolitan view that ignores those rights of self-determination fails to do justice to the difficult job of balancing rights in the international realm. One of the reasons that states have nuclear weapons is that peoples wish to defend their sovereign autonomy as independent moral communities at this stage in human history.

#### All lives are infinitely valuable. The only ethical option is to maximize the number saved.

David Cummisky, Professor of Philosophy @ Bates College. 1996. “Kantian Consequentialism.” Pg. 131.

Finally, even if one grants that saving two persons with dignity cannot outweigh and compensate for killing one-because dignity cannot be added and summed in this way-this point still does not justify deontological constraints. On the extreme interpretation, **why would not killing one person be a stronger obligation than saving two persons**? If I am **concerned with the priceless dignity of each**, it would seem that I may still save two; it is just that my reason cannot be that the two compensate for the loss of one. Consider Hill's example of a priceless object: If I can save two of three priceless statues only by destroying one, then I cannot claim that saving two makes up for the loss of the one. But similarly, the loss of the two is not outweighed by the one **that was not destroy yed**. Indeed, even if dignity cannot be simply summed up, how is the extreme interpretation inconsistent with the idea that I should save as many priceless objects as possible? Even if two do not simply outweigh and thus compensate for the loss of the one, each is priceless; thus, I have good reason to save as many as I can. In short, it is not clear how the extreme interpretation justifies the killing/letting-die distinction or even how it conflicts with the conclusion that the more persons with dignity who are saved, the better.

#### Patriarchy isn’t the root cause of war

Goldstein, IR prof, 1—Professor of International Relations at American University, 2001 (Joshua S., War and Gender: How Gender Shapes the War System and Vice Versa, pp.411-412)

I began this book hoping to contribute in some way to a deeper understanding of war – an understanding that would improve the chances of someday achieving real peace, by deleting war from our human repertoire. In following the thread of gender running through war, I found the deeper understanding I had hoped for – a multidisciplinary and multilevel engagement with the subject. Yet I became somewhat more pessimistic about how quickly or easily war may end. The war system emerges, from the evidence in this book, as relatively ubiquitous and robust. Efforts to change this system must overcome several dilemmas mentioned in this book. First, peace activists face a dilemma in thinking about causes of war and working for peace. Many peace scholars and activists support the approach, “if you want peace, work for justice.” Then, if one believes that sexism contributes to war, one can work for gender justice specifically (perhaps among others) in order to pursue peace. This approach brings strategic allies to the peace movement (women, labor, minorities), but rests on the assumption that injustices cause war. The evidence in this book suggests that causality runs at least as strongly the other way. War is not a product of capitalism, imperialism, gender, innate aggression, or any other single cause, although all of these influence wars’ outbreaks and outcomes. Rather, war has in part fueled and sustained these and other injustices. So, “if you want peace, work for peace.” Indeed, if you want justice (gender and others), work for peace. Causality does not run just upward through the levels of analysis, from types of individuals, societies, and governments up to war. It runs downward too. Enloe suggests that changes in attitudes towards war and the military may be the most important way to “reverse women’s oppression.” The dilemma is that peace work focused on justice brings to the peace movement energy, allies, and moral grounding, yet, in light of this book’s evidence, the emphasis on injustice as the main cause of war seems to be empirically inadequate.

#### The prisoners are not bare life—there are rules that prevent true reduction

Halit Tagma 09, Professor of Political Science, Arizona State , “Homo Sacer vs. Homo Soccer Mom: Reading Agamben and Foucault in the War on Terror,” Alternatives: Global, Local, Political, Vol. 34, No. 4 (Oct.-Dec. 2009), pp. 407-435

Thus in some respects, prisoners of the "war on terror" might be understood as homo sacer. However, there are also particularities in the way the prisoners are handled that call for a critical re-evaluation of the (non) space of Guántanamo. If in the classical Foucauldian teminology sovereign power is about "taking or granting life," and biopower is about "letting live and making life," then what can be said about the power operating in Guántanamo that "forces to live" when prisoners are carefully controlled to prevent them from committing suicide. Indeed, the prisoners of Guántanamo are force fed and even given mandatory health checks so as to insure they are kept, barely, alive. Unlike the homo sacer who may be killed but not sacrificed, the prisoners in Guantánamo may not be killed or sacrificed. In fact, extensive efforts are spent to keep the prisoners at Guantánamo alive, such as the creation of operating rooms for major health emergencies as well as facilities for dentistry. The prisoners are given health treatment similar to that provided to the troops at the base.60 No doubt the display of such "health benefits" could be read as window dressing conducted by the camp administrators. However, it is important to note that there are indeed serious efforts to keep the prisoners (often barely, but nevertheless) alive. Furthermore, punishment and interro- gation are orchestrated so that the use of violence does not result in death. Extensive efforts are made to prevent the prisoners from com- mitting suicide. In other cases, hunger-striking inmates have met with brutal forced feeding.61 Thus, in a striking unclassified army document that outlines procedures in Guántanamo Bay, guards are ordered to "defend detainees as you would yourself

against a hostile act or intent, death, or serious bodily harm."62 Therefore it is correct to say that what goes in Guantánamo Bay is neither "letting live" nor "taking life," but instead "making live," or even "forcing to live."¶ Agamben argues that camps are places where sovereign "power confronts nothing but pure life."63 Guantánamo Bay, declared as being beyond the reach of law, is, in fact, regulated by many petty regulations that are characteristic of disciplinary power. Reading the re- ports of the Joint Task Force and prisoner testimonies, one comes to the conclusion that there is a plethora of rules and procedures that govern the treatment of Guántanamo prisoners.64 Whereas Agamben's statement on "zones of indistinction" would lead us to think that any- thing goes in the camp, this is far from the reality of Guántanamo. Every minuscule element of the lives of Guántanamo prisoners been planned and is, for the most part, regulated by a written a code of conduct. Many foreseeable and probable occurrences that would be expected in a prison population have been forethought and written into a manual. Titled Standard Operating Procedures this 250-page manual outlines the rules, regulations, and procedures for treatment of prisoners in many probable circumstances.65 The manual outlines, for example, what to do if there is a petty riot, when and how to spray pepper spray on rioters, religious burials rituals for prisoners, and so on.66 This clearly hints that it is not just an exceptional sovereign power at work in Guántanamo, as exemplified in Rumsfeldian rhetorical salvos on "exceptional times requiring exceptional measures." In- stead, there are multiple technologies of power that are at work in the day-to-day administration of this space.67

## 1nr

### ov

**Terrorism outweighs and acting to solve it is ethical**

**Issac 02** [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]

WHAT WOULD IT mean for the American left right now to take seriously the centrality of means in politics? First, it would mean taking seriously the specific means employed by the September 11 attackers--terrorism. There is a tendency in some quarters of the left to assimilate the death and destruction of September 11 to more ordinary (and still deplorable) injustices of the world system--the starvation of children in Africa, or the repression of peasants in Mexico, or the continued occupation of the West Bank and Gaza by Israel. But this assimilation is only possible by ignoring the specific modalities of September 11. It is true that in Mexico, Palestine, and elsewhere, too many innocent people suffer, and that is wrong. It may even be true that the experience of suffering is equally terrible in each case. But neither the Mexican nor the Israeli government has ever hijacked civilian airliners and deliberately flown them into crowded office buildings in the middle of cities where innocent civilians work and live, with the intention of killing thousands of people. Al-Qaeda did precisely this. That does not make the other injustices unimportant. It simply makes them different. It makes the September 11 hijackings distinctive, in their defining and malevolent purpose--to kill people and to create terror and havoc. This was not an ordinary injustice. It was an extraordinary injustice. The premise of terrorism is the sheer superfluousness of human life. This premise is inconsistent with civilized living anywhere. It threatens people of every race and class, every ethnicity and religion. Because it threatens everyone, and threatens values central to any decent conception of a good society, it must be fought. And it must be fought in a way commensurate with its malevolence. Ordinary injustice can be remedied. Terrorism can only be stopped. Second, it would mean frankly acknowledging something well understood, often too eagerly embraced, by the twentieth century Marxist left--that it is often politically necessary to employ morally troubling means in the name of morally valid ends. A just or even a better society can only be realized in and through political practice; in our complex and bloody world, it will sometimes be necessary to respond to barbarous tyrants or criminals, with whom moral suasion won't work. In such situations our choice is not between the wrong that confronts us and our ideal vision of a world beyond wrong. It is between the wrong that confronts us and the means--perhaps the dangerous means--we have to employ in order to oppose it. In such situations there is a danger that "realism" can become a rationale for the Machiavellian worship of power. But equally great is the danger of a righteousness that translates, in effect, into a refusal to act in the face of wrong. What is one to do? Proceed with caution. Avoid casting oneself as the incarnation of pure goodness locked in a Manichean struggle with evil. Be wary of violence. Look for alternative means when they are available, and support the development of such means when they are not. And never sacrifice democratic freedoms and open debate. Above all, ask the hard questions about the situation at hand, the means available, and the likely effectiveness of different strategies.

**Terror attack turns the entire case---fear would cause public acquiescence to rights-violations and government crackdowns that outweigh the case by an order of magnitude --- causes patriarchy and bare life**

Peter **Beinart 8**, associate professor of journalism and political science at CUNY, The Good Fight; Why Liberals – and only Liberals – Can Win the War on Terror and Make America Great Again, 110-1

Indeed, while the Bush administration bears the blame for these hor- rors, White House officials exploited a shift in public values after 9/11. When asked by Princeton Survey Research Associates in 1997 whether stopping terrorism required citizens to cede some civil liberties, less than one-t hird of Americans said yes. By the spring of 2002, that had grown to almost three- quarters. Public support for the government’s right to wire- tap phones and read people’s mail also grew exponentially. In fact, polling in the months after the attack showed Americans less concerned that the Bush administration was violating civil liberties than that **it wasn’t violating them enough**. What will happen the next time? It is, of course, impossible to predict the reaction to any particular attack. But in 2003, the Center for Public Integrity got a draft of something called the Domestic Security Enhance- ment Act, quickly dubbed Patriot II. According to the center’s executive director, Charles Lewis, **it expanded government power** five or **ten times as much as its predecessor**. One provision permitted the government to strip native-born Americans of their citizenship, allowing them to be indefinitely imprisoned without legal recourse if they were deemed to have provided any support—even nonviolent support—to groups designated as terrorist. After an outcry, the bill was shelved. But it offers a hint of what this administration—or any administration—might do if the United States were hit again. ¶ When the CIA recently tried to imagine how the world might look in 2020, it conjured four potential scenarios. One was called the “cycle of fear,” and it drastically inverted the assumption of security that C. Vann Woodward called central to America’s national character. The United States has been attacked again and the government has responded with “large- scale intrusive security measures.” In this dystopian future, two arms dealers, one with jihadist ties, text- message about a potential nuclear deal. One notes that terrorist networks have “turned into mini-s tates.” The other jokes about the global recession sparked by the latest attacks. And he muses about how terrorism has changed American life. “That new Patriot Act,” he writes, “went **way beyond anything imagined after 9/11**.” “The fear cycle generated by an increasing spread of WMD and terrorist attacks,” comments the CIA report, “once under way, would be one of the **hardest to break**.” And the more entrenched that fear cycle grows, the less free America will become. Which is why a new generation of American liberals must make the fight against this new totalitarianism their own.

**Evaluate using particularity---no “root cause” or sweeping takeouts to our specific claims**

PRICE ‘98

(RICHARD PRICE is a former prof in the Department of Anthropology at Yale University. Later, he moved to Johns Hopkins University to found the Department of Anthropology, where he served three terms as chair. A decade of freelance teaching (University of Minnesota, Stanford University, Princeton University, University of Florida, Universidade Federal da Bahia), ensued. This article is co-authored with CHRISTIAN REUS-SMIT – Monash University – European Journal of International Relations Copyright © 1998 via SAGE Publications – <http://www.arts.ualberta.ca/~courses/PoliticalScience/661B1/documents/PriceReusSmithCriticalInternatlTheoryConstructivism.pdf>)

One of the central departures of critical international theory from positivism is the view that we cannot escape the interpretive moment. As George (1994: 24) argues, ‘the world is always an interpreted “thing”, and it is always interpreted in conditions of disagreement and conflict, to one degree or another’. For this reason, ‘there can be no common body of observational or tested data that we can turn to for a neutral, objective knowledge of the world. There can be no ultimate knowledge, for example, that actually corresponds to reality per se.’ This proposition has been endorsed wholeheartedly by constructivists, who are at pains to deny the possibility of making ‘Big-T’ Truth claims about the world and studiously avoid attributing such status to their findings. This having been said, after undertaking sustained empirical analyses of aspects of world politics constructivists do make ‘small-t’ truth claims about the subjects they have investigated. That is, they claim to have arrived at logical and empirically *plausible* interpretations of actions**,** events or processes**,** and they appeal to the weight of evidence to sustain such claims. While admitting that their claims are always contingent and partial interpretations of a complex world, Price (1995, 1997) claims that his genealogy provides the best account to date to make sense of anomalies surrounding the use of chemical weapons, and Reus-Smit (1997) claims that a culturalist perspective offers the best explanation of institutional differences between historical societies of states. Do such claims contradict the interpretive ethos of critical international theory? For two reasons, we argue that they do not. First, the interpretive ethos of critical international theory is driven, in large measure, by a normative rejection of totalizing discourses, of general theoretical frameworks that privilege certain perspectives over others. One searches constructivist scholarship in vain, though, for such discourses. With the possible exception of Wendt’s problematic flirtation with general systemic theory and professed commitment to ‘science’, constructivist research is at its best when and because it is question driven, with self-consciously contingent claims made specifically in relation to *particular* phenomena, at a *particular* time, based on *particular* evidence, and always open to alternative interpretations. Second, the rejection of totalizing discourses based on ‘big-T’ Truth claims does not foreclose the possibility, or even the inevitability, of making ‘small-t’ truth claims. In fact, we would argue that as soon as one observes and interacts in the world such claims are unavoidable, either as a person engaged in everyday life or as a scholar. As Nietzsche pointed out long ago, we cannot help putting forth truth claims about the world. The individual who does not cannot act, and the genuinely unhypocritical relativist who cannot struggles for something to say and write. In short, if constructivists are not advancing totalizing discourses, and if making ‘small-t’ truth claims is inevitable if one is to talk about how the world works, then it is no more likely that constructivism per se violates the interpretive ethos of critical international theory than does critical theory itself.

**Maximizing all lives is the only way to affirm equality**

**Cummiskey 90** – Professor of Philosophy, Bates (David, Kantian Consequentialism, Ethics 100.3, p 601-2, p 606, jstor)

We must not obscure the issue by characterizing this type of case as the sacrifice of individuals for some abstract "social entity." It is not a question of some persons having to bear the cost for some elusive "overall social good." Instead, the question is whether some persons must bear the inescapable cost for the sake of other persons. Nozick, for example, argues that "to use a person in this way does not sufficiently respect and take account of the fact that he is a separate person, that his is the only life he has."30 Why, however, is this not equally true of all those that we do not save through our failure to act? By emphasizing solely the one who must bear the cost if we act, one fails to sufficiently respect and take account of the many other separate persons, each with only one life, who will bear the cost of our inaction. In such a situation, what would a conscientious Kantian agent, an agent motivated by the unconditional value of rational beings, choose? We have a duty to promote the conditions necessary for the existence of rational beings, but both choosing to act and choosing not to act will cost the life of a rational being. Since the basis of Kant's principle is "rational nature exists as an end-in-itself' (GMM, p. 429), the reasonable solution to such a dilemma involves promoting, insofar as one can, the conditions necessary for rational beings. If I sacrifice some for the sake of other rational beings, I do not use them arbitrarily and I do not deny the unconditional value of rational beings. **Persons** may **have "dignity**, an unconditional and incomparable value" that transcends any market value (GMM, p. 436), **but**, as rational beings, persons **also** have **a fundamental equality which dictates that some must** sometimes **give way for the sake of others.** The formula of the end-in-itself thus does not support the view that we may never force another to bear some cost in order to benefit others. If one focuses on the equal value of all rational beings, then equal consideration dictates that one sacrifice some to save many. [continues] According to Kant, the objective end of moral action is the existence of rational beings. Respect for rational beings requires that, in deciding what to do, one give appropriate practical consideration to the unconditional value of rational beings and to the conditional value of happiness. Since agent-centered constraints require a non-value-based rationale, the most natural interpretation of the demand that one give equal respect to all rational beings lead to a consequentialist normative theory. We have seen that there is no sound Kantian reason for abandoning this natural consequentialist interpretation. In particular, a consequentialist interpretation does not require sacrifices which a Kantian ought to consider unreasonable, and it does not involve doing evil so that good may come of it. It simply requires an uncompromising commitment to the equal value and equal claims of all rational beings and a recognition that, in the moral consideration of conduct, one's own subjective concerns do not have overriding importance.

**Ethical policymaking requires calculation of consequences**

**Gvosdev 5** – Rhodes scholar, PhD from St. Antony’s College, executive editor of The National Interest (Nikolas, The Value(s) of Realism, SAIS Review 25.1, pmuse,)

As the name implies, realists focus on promoting policies that are achievable and sustainable. In turn, the morality of a foreign policy action is judged by its results, not by the intentions of its framers. A foreign policymaker must weigh the consequences of any course of action and assess the resources at hand to carry out the proposed task. As Lippmann warned, Without the controlling principle that the nation must maintain its objectives and its power in equilibrium, its purposes within its means and its means equal to its purposes, its commitments related to its resources and its resources adequate to its commitments, it is impossible to think at all about foreign affairs.8 Commenting on this maxim, Owen Harries, founding editor of The National Interest, noted, "This is a truth of which Americans—more apt to focus on ends rather than means when it comes to dealing with the rest of the world—need always to be reminded."9 In fact, Morgenthau noted that "there can be no political morality without prudence."10 This virtue of prudence—which Morgenthau identified as the cornerstone of realism—should not be confused with expediency. Rather, it takes as its starting point that it is more moral to fulfill one's commitments than to make "empty" promises, and to seek solutions that minimize harm and produce sustainable results. Morgenthau concluded: [End Page 18] Political realism does not require, nor does it condone, indifference to political ideals and moral principles, but it requires indeed a sharp distinction between the desirable and the possible, between what is desirable everywhere and at all times and what is possible under the concrete circumstances of time and place.11 This is why, prior to the outbreak of fighting in the former Yugoslavia, U.S. and European realists urged that Bosnia be decentralized and partitioned into ethnically based cantons as a way to head off a destructive civil war. Realists felt this would be the best course of action, especially after the country's first free and fair elections had brought nationalist candidates to power at the expense of those calling for inter-ethnic cooperation. They had concluded—correctly, as it turned out—that the United States and Western Europe would be unwilling to invest the blood and treasure that would be required to craft a unitary Bosnian state and give it the wherewithal to function. Indeed, at a diplomatic conference in Lisbon in March 1992, the various factions in Bosnia had, reluctantly, endorsed the broad outlines of such a settlement. For the purveyors of moralpolitik, this was unacceptable. After all, for this plan to work, populations on the "wrong side" of the line would have to be transferred and resettled. Such a plan struck directly at the heart of the concept of multi-ethnicity—that different ethnic and religious groups could find a common political identity and work in common institutions. When the United States signaled it would not accept such a settlement, the fragile consensus collapsed. The United States, of course, cannot be held responsible for the war; this lies squarely on the shoulders of Bosnia's political leaders. Yet Washington fell victim to what Jonathan Clarke called "faux Wilsonianism," the belief that "high-flown words matter more than rational calculation" in formulating effective policy, which led U.S. policymakers to dispense with the equation of "balancing commitments and resources."12 Indeed, as he notes, the Clinton administration had criticized peace plans calling for decentralized partition in Bosnia "with lofty rhetoric without proposing a practical alternative." The subsequent war led to the deaths of tens of thousands and left more than a million people homeless. After three years of war, the Dayton Accords—hailed as a triumph of American diplomacy—created a complicated arrangement by which the federal union of two ethnic units, the Muslim-Croat Federation, was itself federated to a Bosnian Serb republic. Today, Bosnia requires thousands of foreign troops to patrol its internal borders and billions of dollars in foreign aid to keep its government and economy functioning. Was the aim of U.S. policymakers, academics and journalists—creating a multi-ethnic democracy in Bosnia—not worth pursuing? No, not at all, and this is not what the argument suggests. But aspirations were not matched with capabilities. As a result of holding out for the "most moral" outcome and encouraging the Muslim-led government in Sarajevo to pursue maximalist aims rather than finding a workable compromise that could have avoided bloodshed and produced more stable conditions, the peoples of Bosnia suffered greatly. In the end, the final settlement was very close [End Page 19] to the one that realists had initially proposed—and the one that had also been roundly condemned on moral grounds.

### at: no l

#### Weak detention responses emboldens terrorists

Andrew McCarthy 09, Director of the Center for Law & Counterterrorism at the Foundation for the Defense of Democracies. From 1985 through 2003, he was a federal prosecutor at the U.S. Attorney’s Office for the Southern District of New York, and was the lead prosecutor in the seditious conspiracy trial against Sheikh Omar Abdel Rahman and eleven others, described subsequently. AND Alykhan Velshi, a staff attorney at the Center for Law & Counterterrorism, where he focuses on the international law of armed conflict and the use of force, 8/20/09, “Outsourcing American Law,” AEI Working Paper, http://www.aei.org/files/2009/08/20/20090820-Chapter6.pdf

3. Terrorism prosecutions create the conditions for more terrorism. The treatment of a national security problem as a criminal justice issue has consequences that imperil Americans. To begin with, there are the obvious numerical and motivational results. As noted above, the justice system is simply incapable, given its finite resources, of meaningfully countering the threat posed by international terrorism. Of equal salience, prosecution in the justice system actually increases the threat because of what it conveys to our enemies. Nothing galvanizes an opposition, nothing spurs its recruiting, like the combination of successful attacks and a conceit that the adversary will react weakly. (Hence, bin Laden’s well-known allusion to people’s instinctive attraction to the “strong horse” rather than the “weak horse,” and his frequent citation to the U.S. military pullout from Lebanon after Hezbollah’s 1983 attack on the marine barracks, and from Somalia after the 1993 “Black Hawk Down” incident). For militants willing to immolate themselves in suicide-bombing and hijacking operations, mere prosecution is a provocatively weak response. Put succinctly, where they are the sole or principal response to terrorism, trials in the criminal justice system inevitably cause more terrorism: they leave too many militants in place and they encourage the notion that the nation may be attacked with relative impunity.

#### Intelligence cooperation’s key to solve WMD use

John Yoo 4, Emanuel S. Heller Professor of Law @ UC-Berkeley Law, visiting scholar @ the American Enterprise Institute, former Fulbright Distinguished Chair in Law @ the University of Trento, served as a deputy assistant attorney general in the Office of Legal Council at the U.S. Department of Justice between 2001 and 2003, received his J.D. from Yale and his undergraduate degree from Harvard, “War, Responsibility, and the Age of Terrorism,” UC-Berkeley Public Law and Legal Theory Research Paper Series, http://works.bepress.com/cgi/viewcontent.cgi?article=1015&context=johnyoo

Third, the nature of warfare against such unconventional enemies may well be different from the set-piece battlefield matches between nation-states. Gathering intelligence, from both electronic and human sources, about the future plans of terrorist groups may be the only way to prevent September 11-style attacks from occurring again. Covert action by the Central Intelligence Agency or unconventional measures by special forces may prove to be the most effective tool for acting on that intelligence. Similarly, the least dangerous means for preventing rogue nations from acquiring WMD may depend on secret intelligence gathering and covert action, rather than open military intervention. A public revelation of the means of gathering intelligence, or the discussion of the nature of covert actions taken to forestall the threat by terrorist organizations or rogue nations, could render the use of force ineffectual or sources of information useless. Suppose, for example, that American intelligence agencies detected through intercepted phone calls that a terrorist group had built headquarters and training facilities in Yemen. A public discussion in Congress about a resolution to use force against Yemeni territory and how Yemen was identified could tip-off the group, allowing terrorists to disperse and to prevent further interception of their communications.

### at: cts

#### Critical terror studies are garbage --- Jackson’s wrong

Jones and Smith 9 - \* University of Queensland, Queensland, Australia AND \*\* King's College, University of London, London, UK (David and M.L.R.,“We're All Terrorists Now: Critical—or Hypocritical—Studies “on” Terrorism?,” Studies in Conflict & Terrorism, Volume 32, Issue 4 April 2009 , pages 292 **–** 302**,** Taylor and Francis)

The journal, in other words, is not intended, as one might assume, to evaluate critically those state or non-state actors that might have recourse to terrorism as a strategy. Instead, the journal's ambition is to deconstruct what it views as the ambiguity of the word “terror,” its manipulation by ostensibly liberal democratic state actors, and the complicity of “orthodox” terrorism studies in this authoritarian enterprise. Exposing the deficiencies in any field of study is, of course, a legitimate scholarly exercise, but what the symposium introducing the new volume announces questions both the research agenda and academic integrity of journals like *Studies in Conflict and Terrorism* and those who contribute to them. Do these claims, one might wonder, have any substance?¶ Significantly, the original proposal circulated by the publisher Routledge and one of the editors, Richard Jackson, suggested some uncertainty concerning the preferred title of the journal. *Critical Studies on Terrorism* appeared last on a list where the first choice was *Review of Terror Studies*. Evidently, the concision of a review fails to capture the critical perspective the journal promotes. Criticism, then, is central to the new journal's philosophy and the adjective connotes a distinct ideological and, as shall be seen, far from pluralist and inclusive purpose. So, one might ask, what exactly does a critical approach to terrorism involve?¶ What it Means to be Critical¶ The editors and contributors explore what it means to be “critical” in detail, repetition, and opacity, along with an excessive fondness for italics, in the editorial symposium that introduces the first issue, and in a number of subsequent articles. The editors inform us that the study of terrorism is “a growth industry,” observing with a mixture of envy and disapproval that “literally thousands of new books and articles on terrorism are published every year” (pp. l-2). In adding to this literature the editors premise the need for yet another journal on their resistance to what currently constitutes scholarship in the field of terrorism study and its allegedly uncritical acceptance of the Western democratic state's security perspective.¶ Indeed, to be critical requires a radical reversal of what the journal assumes to be the typical perception of terrorism and the methodology of terrorism research. To focus on the strategies practiced by non-state actors that feature under the conventional denotation “terror” is, for the critical theorist, misplaced. As the symposium explains, “acts of clandestine non-state terrorism are committed by a tiny number of individuals and result in between a few hundred and a few thousand casualties *per year over the entire world*” (original italics) (p. 1). The United States's and its allies' preoccupation with terrorism is, therefore, out of proportion to its effects.1 At the same time, the more pervasive and repressive terror practiced by the state has been “silenced from public and … academic discourse” (p. 1).¶ The complicity of terrorism studies with the increasingly authoritarian demands of Western, liberal state and media practice, together with the moral and political blindness of established terrorism analysts to this relationship forms the journal's overriding assumption and one that its core contributors repeat ad nauseam. Thus, Michael Stohl, in his contribution “Old Myths, New Fantasies and the Enduring Realities of Terrorism” (pp. 5-16), not only discovers ten “myths” informing the understanding of terrorism, but also finds that these myths reflect a “state centric security focus,” where analysts rarely consider “the violence perpetrated by the state” (p. 5). He complains that the press have become too close to government over the matter. Somewhat contradictorily Stohl subsequently asserts that media reporting is “central to terrorism and counter-terrorism as political action,” that media reportage provides the oxygen of terrorism, and that politicians consider journalists to be “the terrorist's best friend” (p. 7).¶ Stohl further compounds this incoherence, claiming that “the media are far more likely to focus on the destructive actions, rather than on … grievances or the social conditions that breed [terrorism]—to present episodic rather than thematic stories” (p. 7). He argues that terror attacks between 1968 and 1980 were scarcely reported in the United States, and that reporters do not delve deeply into the sources of conflict (p. 8). All of this is quite contentious, with no direct evidence produced to support such statements. The “media” is after all a very broad term, and to assume that it is monolithic is to replace criticism with conspiracy theory. Moreover, even if it were true that the media always serves as a government propaganda agency, then by Stohl's own logic, terrorism as a method of political communication is clearly futile as no rational actor would engage in a campaign doomed to be endlessly misreported.¶ Nevertheless, the notion that an inherent pro-state bias vitiates terrorism studies pervades the critical position. Anthony Burke, in “The End of Terrorism Studies” (pp. 37-49), asserts that established analysts like Bruce Hoffman “specifically exclude states as possible perpetrators” of terror. Consequently, the emergence of “critical terrorism studies” “may signal the end of a particular kind of traditionally state-focused and directed 'problem-solving' terrorism studies—at least in terms of its ability to assume that its categories and commitments are immune from challenge and correspond to a stable picture of reality” (p. 42).¶ Elsewhere, Adrian Guelke, in “Great Whites, Paedophiles and Terrorists: The Need for Critical Thinking in a New Era of Terror” (pp. 17-25), considers British government-induced media “scare-mongering” to have legitimated an “authoritarian approach” to the purported new era of terror (pp. 22-23). Meanwhile, Joseba Zulaika and William A. Douglass, in “The Terrorist Subject: Terrorist Studies and the Absent Subjectivity” (pp. 27-36), find the War on Terror constitutes “*the* single,” all embracing paradigm of analysis where the critical voice is “not allowed to ask: what is the reality itself?” (original italics) (pp. 28-29). The construction of this condition, they further reveal, if somewhat abstrusely, reflects an abstract “desire” that demands terror as “an ever-present threat” (p. 31). In order to sustain this fabrication: “Terrorism experts and commentators” function as “realist policemen”; and not very smart ones at that, who while “gazing at the evidence” are “unable to read the paradoxical logic of the desire that fuels it, whereby *lack* turns to*excess*” (original italics) (p. 32). Finally, Ken Booth, in “The Human Faces of Terror: Reflections in a Cracked Looking Glass” (pp. 65-79), reiterates Richard Jackson's contention that state terrorism “is a much more serious problem than non-state terrorism” (p. 76).¶ Yet, one searches in vain in these articles for evidence to support the ubiquitous assertion of state bias: assuming this bias in conventional terrorism analysis as a fact seemingly does not require a corresponding concern with evidence of this fact, merely its continual reiteration by conceptual fiat. A critical perspective dispenses not only with terrorism studies but also with the norms of accepted scholarship. Asserting what needs to be demonstrated commits, of course, the elementary logical fallacy *petitio principii*. But critical theory apparently emancipates (to use its favorite verb) its practitioners from the confines of logic, reason, and the usual standards of academic inquiry.¶ Alleging a constitutive weakness in established scholarship without the necessity of providing proof to support it, therefore, appears to define the critical posture. The unproved “state centricity” of terrorism studies serves as a platform for further unsubstantiated accusations about the state of the discipline. Jackson and his fellow editors, along with later claims by Zulaika and Douglass, and Booth, again assert that “orthodox” analysts rarely bother “to interview or engage with those involved in 'terrorist' activity” (p. 2) or spend any time “on the ground in the areas most affected by conflict” (p. 74). Given that Booth and Jackson spend most of their time on the ground in Aberystwyth, Ceredigion, not a notably terror rich environment if we discount the operations of *Meibion Glyndwr* who would as a matter of principle avoid *pob sais* like Jackson and Booth, this seems a bit like the pot calling the kettle black. It also overlooks the fact that *Studies in Conflict and Terrorism* first advertised the problem of “talking to terrorists” in 2001 and has gone to great lengths to rectify this lacuna, if it is one, regularly publishing articles by analysts with first-hand experience of groups like the Taliban, Al Qaeda and *Jemaah Islamiyah*.¶ A consequence of avoiding primary research, it is further alleged, leads conventional analysts uncritically to apply psychological and problem-solving approaches to their object of study. This propensity, Booth maintains, occasions another unrecognized weakness in traditional terrorism research, namely, an inability to engage with “the particular dynamics of the political world” (p. 70). Analogously, Stohl claims that “the US and English [sic] media” exhibit a tendency to psychologize terrorist acts, which reduces “structural and political problems” into issues of individual pathology (p. 7). Preoccupied with this problem-solving, psychopathologizing methodology, terrorism analysts have lost the capacity to reflect on both their practice and their research ethics.¶ By contrast, the critical approach is not only self-reflective, but also and, for good measure, self-reflexive. In fact, the editors and a number of the journal's contributors use these terms interchangeably, treating a reflection and a reflex as synonyms (p. 2). A cursory encounter with the *Shorter Oxford Dictionary* would reveal that they are not. Despite this linguistically challenged misidentification, “reflexivity” is made to do a lot of work in the critical idiom. Reflexivity, the editors inform us, requires a capacity “to challenge dominant knowledge and understandings, is sensitive to the politics of labelling … is transparent about its own values and political standpoints, adheres to a set of responsible research ethics, and is committed to a broadly defined notion of emancipation” (p. 2). This covers a range of not very obviously related but critically approved virtues. Let us examine what reflexivity involves as Stohl, Guelke, Zulaika and Douglass, Burke, and Booth explore, somewhat repetitively, its implications.¶ Reflexive or Defective? ¶ Firstly, to challenge dominant knowledge and understanding and retain sensitivity to labels leads inevitably to a fixation with language, discourse, the ambiguity of the noun, terror, and its political use and abuse. Terrorism, Booth enlightens the reader unremarkably, is “a politically loaded term” (p. 72). Meanwhile, Zulaika and Douglass consider terror “the dominant tropic [sic] space in contemporary political and journalistic discourse” (p. 30). Faced with the “serious challenge” (Booth p. 72) and pejorative connotation that the noun conveys, critical terrorologists turn to deconstruction and bring the full force of postmodern obscurantism to bear on its use. Thus the editors proclaim that terrorism is “one of the most powerful signifiers in contemporary discourse.” There is, moreover, a “yawning gap between the 'terrorism' signifier and the actual acts signified” (p. 1). “[V]irtually all of this activity,” the editors pronounce *ex cathedra*, “refers to the *response* to acts of political violence not the violence itself” (original italics) (p. 1). Here again they offer no evidence for this curious assertion and assume, it would seem, all conventional terrorism studies address issues of homeland security.¶ In keeping with this critical orthodoxy that he has done much to define, Anthony Burke also asserts the “instability (and thoroughly politicized nature) of the unifying master-terms of our field: 'terror' and 'terrorism'” (p. 38). To address this he contends that a critical stance requires us to “keep this radical instability and inherent politicization of the concept of terrorism at the forefront of its analysis.” Indeed, “without a conscious reflexivity about the most basic definition of the object, our discourse will not be critical at all” (p. 38). More particularly, drawing on a jargon-infused amalgam of Michel Foucault's identification of a relationship between power and knowledge, the neo-Marxist Frankfurt School's critique of democratic false consciousness, mixed with the existentialism of the Third Reich's favorite philosopher, Martin Heidegger, Burke “*questions the question*.” This intellectual *potpourri* apparently enables the critical theorist to “question the ontological status of a 'problem' before any attempt to map out, study or resolve it” (p. 38).¶ Interestingly, Burke, Booth, and the symposistahood deny that there might be objective data about violence or that a properly focused strategic study of terrorism would not include any prescriptive goodness or rightness of action. While a strategic theorist or a skeptical social scientist might claim to consider only the complex relational situation that involves as well as the actions, the attitude of human beings to them, the critical theorist's radical questioning of language denies this possibility.¶ The critical approach to language and its deconstruction of an otherwise useful, if imperfect, political vocabulary has been the source of much confusion and inconsequentiality in the practice of the social sciences. It dates from the relativist pall that French radical post structural philosophers like Gilles Deleuze and Felix Guattari, Foucault, and Jacques Derrida, cast over the social and historical sciences in order to demonstrate that social and political knowledge depended on and underpinned power relations that permeated the landscape of the social and reinforced the liberal democratic state. This radical assault on the possibility of either neutral fact or value ultimately functions unfalsifiably, and as a substitute for philosophy, social science, and a real theory of language.¶ The problem with the critical approach is that, as the Australian philosopher John Anderson demonstrated, to achieve a genuine study one must either investigate the facts that are talked about or the fact that they are talked about in a certain way. More precisely, as J.L. Mackie explains, “if we concentrate on the uses of language we fall between these two stools, and we are in danger of taking our discoveries about manners of speaking as answers to questions about what is there.”2 Indeed, in so far as an account of the use of language spills over into ontology it is liable to be a confused mixture of what should be two distinct investigations: the study of the facts about which the language is used, and the study of the linguistic phenomena themselves.¶ It is precisely, however, this confused mixture of fact and discourse that critical thinking seeks to impose on the study of terrorism and infuses the practice of critical theory more generally. From this confused seed no coherent method grows.¶ What is To Be Done?¶ This ontological confusion notwithstanding, Ken Booth sees critical theory not only exposing the dubious links between power and knowledge in established terrorism studies, but also offering an ideological agenda that transforms the face of global politics. “[*C*]*ritical knowledge*,” Booth declares, “*involves understandings of the social world that attempt to stand outside prevailing structures, processes, ideologies and orthodoxies while recognizing that all conceptualizations within the ambit of sociality derive from particular social/historical conditions*” (original italics) (p. 78). Helpfully, Booth, assuming the manner of an Old Testament prophet, provides his critical disciples with “*big-picture* navigation aids” (original italics) (p. 66) to achieve this higher knowledge. Booth promulgates fifteen commandments (as Clemenceau remarked of Woodrow Wilson's nineteen points, in a somewhat different context, “God Almighty only gave us ten”). When not stating the staggeringly obvious, the Ken Commandments are hopelessly contradictory. Critical theorists thus should “avoid exceptionalizing the study of terrorism,”3 “recognize that states can be agents of terrorism,” and “keep the long term in sight.” Unexceptional advice to be sure and long recognized by more traditional students of terrorism. The critical student, if not fully conversant with critical doublethink, however, might find the fact that she or he lives within “Powerful theories” that are “constitutive of political, social, and economic life” (6th Commandment, p. 71), sits uneasily with Booth's concluding injunction to “stand outside” prevailing ideologies (p. 78).¶ In his preferred imperative idiom, Booth further contends that terrorism is best studied in the context of an “academic international relations” whose role “is not only to interpret the world but to change it” (pp. 67-68). Significantly, academic—or more precisely, critical—international relations, holds no place for a realist appreciation of the status quo but approves instead a Marxist ideology of praxis. It is within this transformative praxis that critical theory situates terrorism and terrorists.¶ The political goals of those non-state entities that choose to practice the tactics of terrorism invariably seek a similar transformative praxis and this leads “critical global theorizing” into a curiously confused empathy with the motives of those engaged in such acts, as well as a disturbing relativism. Thus, Booth again decrees that the gap between “those who hate terrorism and those who carry it out, those who seek to delegitimize the acts of terrorists and those who incite them, and those who abjure terror and those who glorify it—is not as great as is implied or asserted by orthodox terrorism experts, the discourse of governments, or the popular press” (p. 66). The gap “between us/them is a slippery slope, not an unbridgeable political and ethical chasm” (p. 66). So, while “terrorist actions are always—without exception—wrong, they nevertheless might be contingently excusable” (p. 66). From this ultimately relativist perspective gang raping a defenseless woman, an act of terror on any critical or uncritical scale of evaluation, is, it would seem, wrong but potentially excusable.¶ On the basis of this worrying relativism a further Ken Commandment requires the abolition of the discourse of evil on the somewhat questionable grounds that evil releases agents from responsibility (pp. 74-75). This not only reveals a profound ignorance of theology, it also underestimates what Eric Voeglin identified as a central feature of the appeal of modern political religions from the Third Reich to Al Qaeda. As Voeglin observed in 1938, the Nazis represented an “attractive force.” To understand that force requires not the abolition of evil [so necessary to the relativist] but comprehending its attractiveness. Significantly, as Barry Cooper argues, “its attractiveness, [like that of al Qaeda] cannot fully be understood apart from its evilness.”4¶ The line of relativist inquiry that critical theorists like Booth evince toward terrorism leads in fact not to moral clarity but an inspissated moral confusion. This is paradoxical given that the editors make much in the journal's introductory symposium of their “responsible research ethics.” The paradox is resolved when one realizes that critical moralizing demands the “ethics of responsibility to the terrorist other.” For Ken Booth it involves, it appears, empathizing “with the ethic of responsibility” faced by those who, “in extremis” “have some explosives” (p. 76). Anthony Burke contends that a critically self-conscious normativism requires the analyst, not only to “critique” the “strategic languages” of the West, but also to “take in” the “side of the Other” or more particularly “engage” “with the highly developed forms of thinking” that provides groups like Al Qaeda “with legitimizing foundations and a world view of some profundity” (p. 44). This additionally demands a capacity not only to empathize with the “other,” but also to recognize that both Osama bin Laden in his *Messages to the West* and Sayyid Qutb in his Muslim Brotherhood manifesto *Milestones* not only offer “well observed” criticisms of Western decadence, but also “converges with elements of critical theory” (p. 45). This is not surprising given that both Islamist and critical theorists share an analogous contempt for Western democracy, the market, and the international order these structures inhabit and have done much to shape.¶ Histrionically Speaking¶ Critical theory, then, embraces relativism not only toward language but also toward social action. Relativism and the bizarre ethicism it engenders in its attempt to empathize with the terrorist other are, moreover, histrionic. As Leo Strauss classically inquired of this relativist tendency in the social sciences, “is such an understanding dependent upon our own commitment or independent of it?” Strauss explains, if it is independent, I am committed as an actor and I am uncommitted in another compartment of myself in my capacity as a social scientist. “In that latter capacity I am completely empty and therefore completely open to the perception and appreciation of all commitments or value systems.” I go through the process of empathetic understanding in order to reach clarity about my commitment for only a part of me is engaged in my empathetic understanding. This means, however, that “such understanding is not serious or genuine but histrionic.”5 It is also profoundly dependent on Western liberalism. For it is only in an open society that questions the values it promotes that the issue of empathy with the non-Western other could arise. The critical theorist's explicit loathing of the openness that affords her histrionic posturing obscures this constituting fact.¶ On the basis of this histrionic empathy with the “other,” critical theory concludes that democratic states “do not always abjure acts of terror whether to advance their foreign policy objectives … or to buttress order at home” (p. 73). Consequently, Ken Booth asserts: “If terror can be part of the menu of choice for the relatively strong, it is hardly surprising it becomes a weapon of the relatively weak” (p. 73). Zulaika and Douglass similarly assert that terrorism is “always” a weapon of the weak (p. 33).¶ At the core of this critical, ethicist, relativism therefore lies a syllogism that holds all violence is terror: Western states use violence, therefore, Western states are terrorist. Further, the greater terrorist uses the greater violence: Western governments exercise the greater violence. Therefore, it is the liberal democracies rather than Al Qaeda that are the greater terrorists.¶ In its desire to empathize with the transformative ends, if not the means of terrorism generally and Islamist terror in particular, critical theory reveals itself as a form of Marxist unmasking. Thus, for Booth “*terror has multiple forms*” (original italics) and the real terror is economic, the product it would seem of “global capitalism” (p. 75). Only the *engagee* intellectual academic finding in deconstructive criticism the philosophical weapons that reveal the illiberal neo-conservative purpose informing the conventional study of terrorism and the democratic state's prosecution of counterterrorism can identify the real terror lurking behind the “manipulation of the politics of fear” (p. 75).¶ Moreover, the resolution of this condition of escalating violence requires not any strategic solution that creates security as the basis for development whether in London or Kabul. Instead, Booth, Burke, and the editors contend that the only solution to “the world-historical crisis that is facing human society globally” (p. 76) is universal human “emancipation.” This, according to Burke, is “the normative end” that critical theory pursues. Following Jurgen Habermas, the godfather of critical theory, terrorism is really a form of distorted communication. The solution to this problem of failed communication resides not only in the improvement of living conditions, and “the political taming of unbounded capitalism,” but also in “the telos of mutual understanding.” Only through this telos with its “strong normative bias towards non violence” (p. 43) can a universal condition of peace and justice transform the globe. In other words, the only ethical solution to terrorism is conversation: sitting around an un-coerced table presided over by Kofi Annan, along with Ken Booth, Osama bin Laden, President Obama, and some European Union pacifist sandalista, a transcendental communicative reason will emerge to promulgate norms of transformative justice. As Burke enunciates, the panacea of un-coerced communication would establish “a secularism that might create an enduring architecture of basic shared values” (p. 46).¶ In the end, un-coerced norm projection is not concerned with the world as it is, but how it ought to be. This not only compounds the logical errors that permeate critical theory, it advances an ultimately utopian agenda under the guise of *soi-disant* cosmopolitanism where one somewhat vaguely recognizes the “human interconnection and mutual vulnerability to nature, the cosmos and each other” (p. 47) and no doubt bursts into spontaneous chanting of Kumbaya.¶ In analogous visionary terms, Booth defines real security as emancipation in a way that denies any definitional rigor to either term. The struggle against terrorism is, then, a struggle for emancipation from the oppression of political violence everywhere. Consequently, in this Manichean struggle for global emancipation against the real terror of Western democracy, Booth further maintains that universities have a crucial role to play. This also is something of a concern for those who do not share the critical vision, as university international relations departments are not now, it would seem, in business to pursue dispassionate analysis but instead are to serve as cheerleaders for this critically inspired vision.¶ Overall, the journal's fallacious commitment to emancipation undermines any ostensible claim to pluralism and diversity. Over determined by this transformative approach to world politics, it necessarily denies the possibility of a realist or prudential appreciation of politics and the promotion not of universal solutions but pragmatic ones that accept the best that may be achieved in the circumstances. Ultimately, to present the world how it ought to be rather than as it is conceals a deep intolerance notable in the contempt with which many of the contributors to the journal appear to hold Western politicians and the Western media.6¶ It is the exploitation of this oughtistic style of thinking that leads the critic into a Humpty Dumpty world where words mean exactly what the critical theorist “chooses them to mean—neither more nor less.” However, in order to justify their disciplinary niche they have to insist on the failure of established modes of terrorism study. Having identified a source of government grants and academic perquisites, critical studies in fact does not deal with the notion of terrorism as such, but instead the manner in which the Western liberal democratic state has supposedly manipulated the use of violence by non-state actors in order to “other” minority communities and create a politics of fear.¶ Critical Studies and Strategic Theory—A Missed Opportunity¶ Of course, the doubtful contribution of critical theory by no means implies that all is well with what one might call conventional terrorism studies. The subject area has in the past produced superficial assessments that have done little to contribute to an informed understanding of conflict. This is a point readily conceded by John Horgan and Michael Boyle who put “A Case Against 'Critical Terrorism Studies'” (pp. 51-74). Although they do not seek to challenge the agenda, assumptions, and contradictions inherent in the critical approach, their contribution to the new journal distinguishes itself by actually having a well-organized and well-supported argument. The authors' willingness to acknowledge deficiencies in some terrorism research shows that critical self-reflection is already present in existing terrorism studies. It is ironic, in fact, that the most clearly reflective, original, and *critical* contribution in the first edition should come from established terrorism researchers who critique the critical position.¶ Interestingly, the specter haunting both conventional and critical terrorism studies is that both assume that terrorism is an existential phenomenon, and thus has causes and solutions. Burke makes this explicit: “The inauguration of this journal,” he declares, “indeed suggests broad agreement that there is a phenomenon called terrorism” (p. 39). Yet this is not the only way of looking at terrorism. For a strategic theorist the notion of terrorism does not exist as an independent phenomenon. It is an abstract noun. More precisely, it is merely a tactic—the creation of fear for political ends—that can be employed by any social actor, be it state or non-state, in any context, without any necessary moral value being involved.¶ Ironically, then, strategic theory offers a far more “critical perspective on terrorism” than do the perspectives advanced in this journal. Guelke, for example, propounds a curiously orthodox standpoint when he asserts: “to describe an act as one of terrorism, without the qualification of quotation marks to indicate the author's distance from such a judgement, is to condemn it as absolutely illegitimate” (p. 19). If you are a strategic theorist this is an invalid claim. Terrorism is simply a method to achieve an end. Any moral judgment on the act is entirely separate. To fuse the two is a category mistake. In strategic theory, which Guelke ignores, terrorism does not, ipso facto, denote “absolutely illegitimate violence.”¶ Intriguingly, Stohl, Booth, and Burke also imply that a strategic understanding forms part of their critical viewpoint. Booth, for instance, argues in one of his commandments that terrorism should be seen as a conscious human choice. Few strategic theorists would disagree. Similarly, Burke feels that there does “appear to be a consensus” that terrorism is a “form of instrumental political violence” (p. 38). The problem for the contributors to this volume is that they cannot emancipate themselves from the very orthodox assumption that the word terrorism is pejorative. That may be the popular understanding of the term, but inherently terrorism conveys no necessary connotation of moral condemnation. “Is terrorism a form of warfare, insurgency, struggle, resistance, coercion, atrocity, or great political crime,” Burke asks rhetorically. But once more he misses the point. All violence is instrumental. Grading it according to whether it is insurgency, resistance, or atrocity is irrelevant. Any strategic actor may practice forms of warfare. For this reason Burke's further claim that existing definitions of terrorism have “specifically excluded states as possible perpetrators and privilege them as targets,” is wholly inaccurate (p. 38). Strategic theory has never excluded state-directed terrorism as an object of study, and neither for that matter, as Horgan and Boyle point out, have more conventional studies of terrorism.¶ Yet, Burke offers—as a critical revelation—that “the strategic intent behind the US bombing of North Vietnam and Cambodia, Israel's bombing of Lebanon, or the sanctions against Iraq is also terrorist.” He continues: “My point is not to remind us that states practise terror, but to show how mainstream *strategic doctrines* are terrorist in these terms and undermine any prospect of achieving the normative consensus if such terrorism is to be reduced and eventually eliminated” (original italics) (p. 41). This is not merely confused, it displays remarkable nescience on the part of one engaged in teaching the next generation of graduates from the Australian Defence Force Academy. Strategic theory conventionally recognizes that actions on the part of state or non-state actors that aim to create fear (such as the allied aerial bombing of Germany in World War II or the nuclear deterrent posture of Mutually Assured Destruction) can be terroristic in nature.7 The problem for critical analysts like Burke is that they impute their own moral valuations to the term terror. Strategic theorists do not. Moreover, the statement that this undermines any prospect that terrorism can be eliminated is illogical: you can never eliminate an abstract noun.¶ Consequently, those interested in a truly “critical” approach to the subject should perhaps turn to strategic theory for some relief from the strictures that have traditionally governed the study of terrorism, not to self-proclaimed critical theorists who only replicate the flawed understandings of those whom they criticize. Horgan and Boyle conclude their thoughtful article by claiming that critical terrorism studies has more in common with traditional terrorism research than critical theorists would possibly like to admit. These reviewers agree: they are two sides of the same coin.¶ Conclusion¶ In the looking glass world of critical terror studies the conventional analysis of terrorism is ontologically challenged, lacks self-reflexivity, and is policy oriented. By contrast, critical theory's ethicist, yet relativist, and deconstructive gaze reveals that we are all terrorists now and must empathize with those sub-state actors who have recourse to violence for whatever motive. Despite their intolerable othering by media and governments, terrorists are really no different from us. In fact, there is terror as the weapon of the weak and the far worse economic and coercive terror of the liberal state. Terrorists therefore deserve empathy and they must be discursively engaged.¶ At the core of this understanding sits a radical pacifism and an idealism that requires not the status quo but communication and “human emancipation.” Until this radical post-national utopia arrives both force and the discourse of evil must be abandoned and instead therapy and un-coerced conversation must be practiced. In the popular ABC drama *Boston Legal* Judge Brown perennially referred to the vague, irrelevant, jargon-ridden statements of lawyers as “jibber jabber.” The Aberystwyth-based school of critical internationalist utopianism that increasingly dominates the study of international relations in Britain and Australia has refined a higher order incoherence that may be termed Aber jabber. The pages of the journal of *Critical Studies on Terrorism* are its natural home.

**CTS is wrong---our authors are at least as objective as theirs**

Verena **Erlenbusch 13**, Assistant Professor in the Department of Philosophy at the University of Memphis., How (Not) to Study Terrorism, http://www.tandfonline.com/doi/pdf/10.1080/13698230.2013.767040

**Even though CTS scholars** **correctly point out some** of the major **short- comings of conventional terrorism scholarship**, **some of their key objections are simply false**. First, **claiming that** the field of **terrorism research lacks historicity, interdisciplinarity, and a focus on state terrorism is disingenuous and factually wrong**. While the way in which historical examples of terrorism are used in much of the more mainstream literature is indeed problematic (see the second section above), critical scholars of terrorism are wrong to accuse traditional scholarship of a lack of historicity and con- textualization. Even though one might harbor legitimate concerns about the motivations for and approach to historical examples, it is insincere, to say the least, to discount a whole body of literature examining the relevance of the history of political violence for terrorism studies. Second, **it is** certainly **true that the bulk of terrorism research has** traditionally **been policy oriented** or at least used for political purposes. **Nevertheless, it does not follow that neutral** or unbiased **knowledge about terrorism**, including knowledge about the contexts and conditions in which something like terrorism is mobilized as a form of violence or as a discursive representation of violence, **is impossible.** **Neither does the overwhelmingly pejorative understanding of the term ‘terrorism’** necessarily **preclude any objective knowledge of the concept, its meaning, and its use.** Similarly, many more mainstream scholars in the field have documented the use of terrorism his- torically made by states and governments against their own populations. While it is true that these scholars have generally been unwilling to extend this kind of analysis to the United States and other liberal democracies, a wholesale dismissal of terrorism research for not considering state terrorism tout court is both false and dishonest.7 More interesting for the purpose of this article, however, is the solution proposed by CTS to the failure of Terrorism Studies to generate an accepted definition of terrorism. **One might expect a certain reluctance to define terrorism, given CTS scholars’ commitment to the ‘inherent ontological instability of** the “**terrorism**” category’ (Jackson 2007, p. 244) **and their consequent skepticism** towards [...] the ‘terrorism’ label because it is recognized that in practice it has always been a pejorative rather than analytical term and that to use the term is a powerful form of labeling that implies a political judge- ment about the legitimacy of actors and their actions. (p. 247) It is, therefore, all the more surprising that ‘CTS views terrorism funda- mentally as a strategy or a tactic of political violence’ which ‘involves the deliberate targeting of civilians in order to intimidate or terrorise for dis- tinctly political purposes’ (p. 248). Despite the claim that terrorism is neither a ‘brute fact’ nor an ‘analyti- cal term’ but instead a way of representing violence in a certain way (p. 247), CTS nevertheless conceptualizes terrorism as a ‘form of behaviour that can, within specific discursive and structural contexts, be understood as “terrorist”’ (Jackson et al. 2009, p. 9). Not only does this view reproduce key elements of many mainstream definitions of terrorism, but also it belies the alleged anti-naturalism, anti-essentialism, and anti-determinism of CTS by having to determine the specific difference that distinguishes the tactic of terrorism from other forms of political violence. **Even though CTS scholars are critical of the attribution of the label ‘ter- rorism’ to certain kinds of violence, they agree with traditional accounts of terrorism that something like terrorism exists and that it is possible to identify it.** The problem diagnosed by CTS, then, is not only that governments themselves seem to engage in what they define as terrorism, but also that governments apply the term to forms of violence that are, in fact, legitimate forms of resistance, insurgency, or civil conflict. CTS scholars claim to know that governments do this because of ideological reasons. They also argue that governments are not justified in doing so. Consequently, CTS scholars seek to reclaim and reserve the label terrorism for forms of vio- lence that are ‘properly’ terrorist. As Jackson explains, CTS consequently has to be ‘openly normative in orientation’ because through the identification of who the ‘terrorist other’ actually is – deciding and affirming which individuals and groups may be rightly called ‘terrorists’ is a routine practice in the field – terrorism studies actually provides an authoritative judgment about who may legitimately be killed, tortured, ren- dered or incarcerated by the state in the name of counter-terrorism. (Jackson 2007, p. 249) It is, however, not at all clear by what standards this distinction is made or on what basis CTS scholars can claim a privileged position in distinguishing between terrorist and non-terrorist or legitimate and illegitimate violence – let alone attribute authority to determine who may be tortured or killed on the basis of such problematic arguments. CTS scholars have to introduce a criterion by which to differentiate terrorism proper from legitimate violence, a criterion that is neither clear cut nor his- torically or contextually stable. Justifications of violence in terms of a natu- ral or moral right to violent resistance, for instance, are not too far away from the legitimation of state violence proffered by conventional terrorism research.8 **Just like Terrorism Studies, CTS enshrines terrorism as an instrument for classifying particular types of behavior** and then giving that classification the force of law. **By announcing its critical stance towards governments’ opportunism** and politicization of terrorism, **CTS covers over its own complicity in the production of a powerful weapon that allows one to attribute legitimacy to certain forms of violence while criminalizing oth- ers.**

**CT’s effective**

Kenneth **Anderson 13**, Professor of International Law at American University, June 2013, “The Case for Drones,” Commentary, Vol. 135, No. 6

If one believes, as many of the critics of drone warfare do, that the proper strategies of counterterrorism are essentially defensive -- including those that eschew the paradigm of armed conflict in favor of law enforcement and criminal law -- then the strategic virtue of an offensive capability against the terrorists themselves will seem small. But that has not been American policy since 9/11, not under the Bush administration, not under the Obama administration -- and not by the Congress of the United States, which has authorized hundreds of billions of dollars to fight the war on terror aggressively. The United States has used many offensive methods in the past dozen years: Regime change of states offering safe havens, counter-insurgency war, special operations, military and intelligence assistance to regimes battling our common enemies are examples of the methods that are just of military nature.

Drone warfare today is integrated with a much larger strategic counterterrorism target -- one in which, as in Afghanistan in the late 1990s, radical Islamist groups seize governance of whole populations and territories and provide not only safe haven, but also an honored central role to transnational terrorist groups. This is what current conflicts in Yemen and Mali threaten, in counterterrorism terms, and why the United States, along with France and even the UN, has moved to intervene militarily. Drone warfare is just one element of overall strategy, but it has a clear utility in disrupting terrorist leadership. It makes the planning and execution of complex plots difficult if only because it is hard to plan for years down the road if you have some reason to think you will be struck down by a drone but have no idea when. The unpredictability and terrifying anticipation of sudden attack, which terrorists have acknowledged in communications, have a significant impact on planning and organizational effectiveness.

### browne

**Aff’s coopted**

**Browne 3** – former Libertarian Party candidate and Director of Public Policy, American Liberty Foundation (Harry, 5/3, Libertarians & War, http://www.harrybrowne.org/articles/LibertariansAndWar.htm, AG)

Government is politics: Whenever you turn anything over to the government, it ceases to be a financial, medical, commercial, educational, or human-rights matter, and becomes a political issue — to be decided by whoever has the most political influence. And that will never be you or I. Why should military matters be any different? Should we be surprised that companies like Bechtel and Halliburton have already received hundreds of millions of dollars in contracts to rebuild Iraq without competitive bidding? Did you really think this war would be fought with no regard for political gain or abuse? 7. You don't control the government: You can look at the previous six items and say you would have handled some things differently. But who asked you? No one. And no one ever will. You don't make the decisions. The politicians use your support as endorsements for them to fulfill their objectives, not yours — in their way, not yours.

F**lips your ethics**

**Browne 95** – former Libertarian Party candidate and Director of Public Policy, American Liberty Foundation (Harry, Why Government Doesn’t Work, p 19-20, AG)

To get it enacted you’ll need political allies, since alone you have only limited influence. But other people will support your plan and work for it only if you modify it in dozens of ways that further their goals and satisfy their opinions. Suppose you make the necessary compromises and amass enough support to pressure the politicians to vote for your revised program. Who will write the actual law? You? Of course not. It will be written by the same legislators and aides who created all the laws, programs, and problems you object to now. Each of them will compromise your program still further to satisfy his political supporters. And if the law passes, who will administer it? You? Of course not. It will be implemented by bureaucrats — many of whom will use it to pursue goals quite different from what you had in mind. They won’t care what your purpose was. It’s their law now, and they’ll use it to suit their objectives. And, lastly, the new law probably will generate many disputes — cases that must be settled in a courtroom. Who will decide those cases? You? Of course not. It will be the same judges who today rule according to their own beliefs, rather than by reference to the written law. A judge may even rule that your law means exactly the opposite of what you had intended. By the time your program has run this gauntlet, it will be far bigger and far more expensive (in money and disrupted lives) than you had imagined. And it will have been twisted to satisfy many factions. In fact, **your program may end up** being **the opposite of what you** had **intended.**

### at: no nuke terror

**Default affirmative- we don’t fully know terrorist capabilities**

Dahl ’13 (Fredrik Dahl, “Missing nuclear material may pose attack threat: IAEA”, <http://www.reuters.com/article/2013/06/28/us-nuclear-security-iaea-idUSBRE95R0BV20130628>, June 28, 2013)

(Reuters) - Nuclear and radioactive materials are still going missing and the information the United Nations atomic agency receives about such incidents may be the tip of the iceberg, said a senior U.N. official. Any loss or theft of highly enriched uranium, plutonium or different types of radioactive sources is potentially serious as al Qaeda-style militants could try to use them to make a crude nuclear device or a so-called dirty bomb, experts say. Khammar Mrabit, a director of the U.N.'s International Atomic Energy Agency (IAEA), said there had been progress in recent years to prevent that from happening. But he said more still needed to be done to enhance nuclear security. "You have to improve continuously because also on the other side, the bad guys, they are trying to find ways how to evade such detection," Mrabit said in an interview. "The threat is global because these people operate without borders," he said on Thursday before an IAEA-hosted meeting of more than 100 states in Vienna next week on how to ensure nuclear materials do not fall into the wrong hands. The U.N. agency is helping states combat smuggling of uranium, plutonium or other items that could be used for a nuclear weapon or a dirty bomb, which uses conventional explosives to scatter radioactive material across a wide area posing health risks and massive cleanup costs. About 150-200 cases are reported annually to the IAEA's Incident and Trafficking Database. More than 120 countries take part in this information exchange project, covering theft, sabotage, unauthorized access and illegal transfers. While making clear that most were not major from a nuclear security point of view, Mrabit said some were serious incidents involving nuclear material such as uranium or plutonium. These incidents mean that "material is still out of regulatory control", said Mrabit, who heads the nuclear security office of the IAEA. "Maybe this is the tip of the iceberg, we don't know, this is what countries report to us." DIRTY BOMB DANGER In one reported case, police in former Soviet Moldova two years ago seized highly enriched uranium carried by smugglers in a shielded container to prevent it from being detected, a sign of increased sophistication of such gangs. But unlike in the 1990s - after the Cold War and the collapse of the Soviet Union weakened control over its nuclear arsenal - the few cases that are reported involve grams of enriched uranium or plutonium, not kilograms. "A lot has been improved," Mrabit said. Analysts say radical groups could theoretically build a crude but deadly nuclear device if they have the money, technical know-how and the amount of fissile material needed. Obtaining weapons-grade fissile material - highly enriched uranium or plutonium - poses their biggest challenge, so keeping it secure is vital, both at civilian and military facilities. An apple-sized amount of plutonium in a nuclear device and detonated in a highly populated area could instantly kill or wound hundreds of thousands of people, according to the Nuclear Security Governance Experts Group (NSGEG), a lobby group. Because radioactive material is seen as less hard to find and the device easier to manufacture, experts say a "dirty bomb" is a more likely threat than a nuclear bomb. In dirty bombs, conventional explosives are used to disperse radiation from a radioactive source, which can be found in hospitals, factories or other places not very well protected. George M. Moore, a former senior IAEA analyst, said in an article in the Bulletin of the Atomic Scientists last month that "many experts believe it's only a matter of time before a dirty bomb or another type of radioactive dispersal device" is used. Mrabit said: "Statistically speaking no reasonable person will say that this will never happen. The probability is there."