## **T**

#### TOPICALITY

#### Interpretation: the aff can only claim solvency for impacts that are directly and uniquely tied to the implementation of the plan text

#### Violation: their framing arguments claim that voting for their plan solves all reframing of a variety of issues in a new way

#### Reasons to prefer:

#### Fairness – because they can stipulate the framing, they will always stipulate it towards a literature base that is one sided and unfair. They can get out of solvency arguments by claiming that their framing advantage means that the plan causes societal change

#### Topicality – it proves that the plan alone is likely insufficient and proves that it would result in just the status quo. It’s a reason to vote negative because they can’t defend the aff in the frame of the resolution because their framing doesn’t limit war authority

#### Limits – their solvency mechanism lies outside the scope of the topic, so it’s impossible to have meaningful debates on the issue. The logical gap in the 1AC between the concreteness of their impact claims and the vagueness of their reframing solvency claims is proof

#### Voter for fairness and education – view the debate through a lens of competing interpretations. Reasonability is arbitrary and leads to judge intervention, destroys education.

## Plan Flaw

#### PLAN FLAW

#### Plan text isn’t grammatically correct – two implications, either:

#### Policymakers don’t know how to interpret the plan, means no solvency for the aff and vote negative on presumption OR

#### It’s interpreted as allowing Obama to ONLY use humanitarian intervention as a justification for the introduction of force

## Schmitt K

#### LEGALISM

#### Restrictions on executive war powers DO NOTHING for the state of political legal exception we live in and only gives further justification for violent intervention on the basis of legality

Dyzenhaus 05 (David, is a professor of Law and Philosophy at the University of Toronto, and a Fellow of the Royal Society of Canada, “Schmitt v. Dicey: Are States of Emergency Inside or Outside the Legal Order?” Cardozo Law Review 27)

Rossiter had in mind Lincoln's actions during the Civil War, including the proclamation by which Lincoln, without the prior authority of Congress, suspended habeas corpus. n35 Lincoln, he said, subscribed to a theory that in a time of emergency, the President could assume whatever legislative, executive, and judicial powers he thought necessary to preserve the nation, and could in the process break the "fundamental laws of the nation, if such a step were unavoidable." n36 This power included one ratified by the Supreme Court: "an almost unrestrained power to act toward insurrectionary citizens as if they were enemies of the United States, and thus place them outside the protection of the Constitution." Rossiter's difficulties here illustrate rather than solve the tensions inherent in the idea of constitutional dictatorship. On the one hand, he wants to assert that emergency rule in a liberal democracy can be constitutional in nature. "Constitutional" implies restraints and limits in accordance not only with law, but with fundamental laws. These laws are not the constitution that is in place for ordinary times; rather, they are the laws that govern the management of exceptional times - the eleven criteria that he developed for constitutional dictatorship. The criteria are either put within the discretion of the dictator - they are judgments about necessity - or are couched as limits that should be enshrined either in the constitution or in legislation. However, Rossiter does not properly address the fact that judgments about necessity are for the dictator to make, which means that these criteria are not limits or constraints but merely factors about which the dictator will have to decide. Other criteria look more like genuine limits. Moreover, they are limits that could be constitutionally enshrined - for example, the second criterion, which requires that the person who makes the decision that there is an emergency should not be the person who assumes dictatorial powers. Yet, as we have seen, Rossiter's foremost example of the modern constitutional dictator, Lincoln, not only gave himself dictatorial powers but, Rossiter supposes, had no choice but to do this. Moreover, if these criteria are constitutionally enshrined, so that part of the constitution is devoted to the rules that govern the time when the rest of the constitution might be suspended, they still form part of the constitution. So, no less than the ordinary constitution, what we can think of as the exceptional or emergency constitution - the constitution that governs the state of emergency - is subject to suspension should the dictator deem this necessary. This explains why, on the other hand, Rossiter equated emergency rule with potentially unlimited dictatorship, with Locke's idea of prerogative. And Rossiter said, "whatever the theory, in moments of extreme national emergency the facts have always been with ... John Locke." So Rossiter at one and the same time sees constitutional dictatorship as unconstrained in nature and as constrainable by principles - his eleven criteria. The upshot is that "constitutional" turns out not to mean what we usually take it to mean; rather, it is a misleading name for the hope that the person who assumes dictatorial powers does so because of a good faith evaluation that this is really necessary and with the honest and steadfast intention to return to the ordinary way of doing things as soon as possible. Giorgio Agamben is thus right to remark that the bid by modern theorists of constitutional dictatorship to rely on the tradition of Roman dictatorship is misleading. n39 They rely on that tradition in an effort to show that dictatorship is constitutional or law-governed. But in fact they show that dictatorship is in principle absolute - the dictator is subject to whatever limits he deems necessary, which means to no limits at all. As H.L.A. Hart described the sovereign within the tradition of legal positivism, the dictator is an uncommanded commander. n40 He [\*2015] operates within a black hole, in Agamben's words, "an emptiness of law." n41 Agamben thus suggests that the real analogue to the contemporary state of emergency is not the Roman dictatorship but the institution of iustitium, in which the law is used to produce a "juridical void" - a total suspension of law. n42 And in coming to this conclusion, Agamben sides with Carl Schmitt, his principal interlocutor in his book. However, it is important to see that Schmitt's understanding of the state of exception is not quite a legal black hole, a juridically produced void. Rather, it is a space beyond law, a space which is revealed when law recedes, leaving the state, represented by the sovereign, to act. In substance, there might seem to be little difference between a legal black hole and space beyond law since neither is controlled by the rule of law. But there is a difference in that nearly all liberal legal theorists find the idea of a space beyond law antithetical, even if they suppose that law can be used to produce a legal void. This is so especially if such theorists want to claim for the sake of legitimacy that law is playing a role, even if it is the case that the role law plays is to suspend the rule of law. Schmitt would have regarded such claims as an attempt to cling to the wreckage of liberal conceptions of the rule of law brought about by any attempt to respond to emergencies through the law. They represent a vain effort to banish the exception from legal order. Because liberals cannot countenance the idea of politics uncontrolled by law, they place a veneer of legality on the political, which allows the executive to do what it wants while claiming the legitimacy of the rule of law. We have seen that Rossiter presents a prominent example which supports Schmitt's view, and as I will now show, it is a depressing fact that much recent post 9/11 work on emergencies is also supportive of Schmitt's view. II. Responding to 9/11 For example, Bruce Ackerman in his essay, The Emergency Constitution, n43 starts by claiming that we need "new constitutional concepts" in order to avoid the downward spiral in protection of civil liberties that occurs when politicians enact laws that become increasingly repressive with each new terrorist attack. n44 We need, he says, to rescue the concept of "emergency powers ... from fascist thinkers like Carl Schmitt, who used it as a battering ram against liberal [\*2016] democracy." n45 Because Ackerman does not think that judges are likely to do, or can do, better than they have in the past at containing the executive during an emergency, he proposes mainly the creative design of constitutional checks and balances to ensure, as did the Roman dictatorship, against the normalization of the state of emergency. Judges should not be regarded as "miraculous saviors of our threatened heritage of freedom." n46 Hence, it is better to rely on a system of political incentives and disincentives, a "political economy" that will prevent abuse of emergency powers. He calls his first device the "supramajoritarian escalator" n48 - basically the requirement that a declaration of a state of emergency requires legislative endorsement within a very short time, and thereafter has to be renewed at short intervals, with each renewal requiring the approval of a larger majority of legislators. The idea is that it will become increasingly easy with time for even a small minority of legislators to bring the emergency to an end, thus decreasing the opportunities for executive abuse of power. n49 The second device requires the executive to share security intelligence with legislative committees and that a majority of the seats on these committees belong to the opposition party. Ackerman does see some role for courts. They will have a macro role should the executive flout the constitutional devices. While he recognizes both that the executive might simply assert the necessity to suspend the emergency constitution and that this assertion might enjoy popular support, he supposes that if the courts declare that the executive is violating the constitution, this will give the public pause and thus will decrease incentives on the executive to evade the constitution. n51 In addition, the courts will have a micro role in supervising what he regards as the inevitable process of detaining suspects without trial for the period of the emergency. Suspects should be brought to court and some explanation should be given of the grounds of their detention, not so that they can contest it - a matter which Ackerman does not regard as practicable - but in order both to give the suspects a public identity so that they do not disappear and to provide a basis for compensation once the emergency is over in case the executive turns out to have fabricated [\*2017] its reasons. He also wishes to maintain a constitutional prohibition on torture, which he thinks can be enforced by requiring regular visits by lawyers. Not only is the judicial role limited, but it is clear that Ackerman does not see the courts as having much to do with preventing a period of "sheer lawlessness." n53 Even within the section on the judiciary, he says that the real restraint on the executive will be the knowledge that the supramajoritarian escalator might bring the emergency to an end, whereupon the detainees will be released if there is no hard evidence to justify detaining them. In sum, according to Ackerman, judges have at best a minimal role to play during a state of emergency. We cannot really escape from the fact that a state of emergency is a legally created black hole, a lawless void. It is subject to external constraints, controls on the executive located at the constitutional level and policed by the legislature. But internally, the rule of law does next to no work; all that we can reasonably hope for is decency. But once one has conceded that internally a state of emergency is more or less a legal black hole because the rule of law, as policed by judges, has no or little purchase, it becomes difficult to understand how external legal constraints, the constitutionally entrenched devices, can play the role Ackerman sets out. Recall that Ackerman accepts that the reason we should not give judges more than a minimal role is the history of judicial failure to uphold the rule of law during emergencies in the face of executive assertions of a necessity to operate outside of law's rule. For that reason, he constructs a political economy to constrain emergency powers. But that political economy still has to be located in law in order to be enforceable, which means that Ackerman cannot help but rely on judges. But why should we accept his claim that we can rely on judges when the executive asserts the necessity of suspending the exceptional constitution, the constitution for the state of emergency, when one of his premises is that we cannot so rely? Far from rescuing the concept of emergency powers from Schmitt, Ackerman's devices for an emergency constitution, an attempt to update Rossiter's model of constitutional dictatorship, fails for the same reasons that Rossiter's model fails. Even as they attempt to respond to Schmitt's challenge, they seem to prove the claim that Schmitt made in late Weimar that law cannot effectively enshrine a distinction between constitutional dictatorship and dictatorship. They appear to be vain attempts to find a role for law while at the same time conceding that law has no role. Of course, this last claim trades on an ambiguity in the idea of the rule of law between, on the one hand, the rule of law, understood as the rule of substantive principles, and, on the other, rule by law, where as long as there is a legal warrant for what government does, government will be considered to be in compliance with the rule of law. Only if one holds to a fairly substantive or thick conception of the rule of law will one think that there is a point on a continuum of legality where rule by law ceases to be in accordance with the rule of law. Ackerman's argument for rule by law, by the law of the emergency constitution, might not answer Schmitt's challenge. But at least it attempts to avoid dignifying the legal void with the title of rule of law, even as it tries to use law to govern what it deems ungovernable by law. The same cannot be said of those responses to 9/11 that seem to suggest that legal black holes are not in tension with the rule of law, as long as they are properly created. While it is relatively rare to find a position that articulates so stark a view, it is quite common to find positions that are comfortable with grey holes, as long as these are properly created. A grey hole is a legal space in which there are some legal constraints on executive action - it is not a lawless void - but the constraints are so insubstantial that they pretty well permit government to do as it pleases. And since such grey holes permit government to have its cake and eat it too, to seem to be governing not only by law but in accordance with the rule of law, they and their endorsement by judges and academics might be even more dangerous from the perspective of the substantive conception of the rule of law than true black holes.

#### The affirmative purports to stand against war, but they do so in the name of humanity, security, rights and justice - They betray a universalism which can only result in imperialism and more war, turning the aff.

Rasch 2000 (William. "Conflict as a Vocation: Carl Schmitt and the Possibility of Politics." Theory Culture Society 17.1)

Schmitt would recognize these as the right questions to ask, would recognize them, in fact, as his own questions. They go to the heart of the nature and possibility of conflict (which is to say -- of politics), for wars conducted in the name of the universal normative instance are wars fought to end all wars, conflicts conducted in the name of the self-transcendence of all conflict. But what if, afterwards, we find out that the heaven of consensus and reconciliation turns out to be a realm in which conflict has been outlawed in the name of the good, the efficient, the comfortable? In a world where conflict has been outlawed, how is opposition to be staged? As uncorked agreement? It is precisely against this type of outlawry of opposition in the service of the status quo - more accurately, in the service of the unfolding and global expansion of a new type of moral and economic imperialism -- that Schmitt launches his counterattack. Since, to his mind, the non-decomposable sovereignty of the autonomous state is the only form of resistance available the fight against this seemingly relentless expansion, it is to the philosopher of state sovereignty par excellence, Hobbes, that he is drawn. Schmitt's "Kampf mit Weimar-Genf-Versailles" is quite explicitly an updated version of an older "Kampf mit Rom". In an interesting and clever move, Schmitt notices that Cole's guild-socialism, Laski's liberalism and French syndicalism all share arguments and perspectives with the social philosophers of Roman Catholicism as well as those of other Churches and sects, arguments that are aimed at relativizing the power of the state. Both the call to follow the dictates of conscience and the more explicit appeal to the higher morality as embodied in international structures (like the League or international revolutionary movements) are political weapons. The battle between "internationalism" and "nationalism", then, is not simply fought between the forces of freedom and oppression, but rather between the authority of one type of sovereign power and another. But, Schmitt warns: The Roman Catholic Church is no pluralist entity, and in its [the Church's] battle against the state, pluralism, at least since the 16th century, is on the side of the national states. A pluralist social theory contradicts itself if it wishes to remain pluralist and still play off the monism and universalism of the Roman Catholic Church, as secularized in the Second or Third International, against the state. To repeat: the battle, as he sees it, is between a sham and a true pluralism, between a pluralism in the service of a universal morality (accompanied, not so coincidentally, by a universal economy) and a pluralism in which no contestant can claim the moral high ground. It is the latter, morally neutral pluralism, based on autonomous entities, that best represents the structures and possibilities of a Schmittian form of politics. We can re-figure this debate is even more classical terms. What Schmitt argues for is a politics commensurable with the conditions found in the Earthly City, and what he argues against is the "fanaticism" of judging this terrestrial domain with standards only applicable in the City of God. Through his choice of Hobbes and the notion of state sovereignty may be deemed unfortunate and can be contested, his aim is to reconstruct a space of legitimate conflict as a space of secular politics. This space must remain immune to moral and theological infections; the Earthly City must retain a legitimacy that is autonomous from the moral but other-worldly claims of the City of God, claims that can only be redeemed at the end of history --- which is to say, not on this earth. Accordingly, his critique of the "humanism" of modern liberalism is akin to an older critique of religious fanaticism. Despite his Catholicism, Schmitt is much like the Luther who supported the princes, even though he recognized their greed and cruelty, against the prophetic iconoclasts and the Armageddon of the peasant uprisings. The eschatology of religious or secular revolutions is precisely anti-political. They advocate change to outlaw change. They oppose the order of the world in order to welcome the Messiah. Once His arrival is imminent (no matter how long imminence lasts), opposition to the order of the world becomes sin. They wage wars, repeatedly, to end war. They wage wars, but not just any wars; they wage just wars. "They", the particular instance, wage wars in the name of the universal principle, in the name of humanity, outlawing all opposition: as, for example, was attempted in the "war-guilt" clause of the Versailles Treaty, which turned a war of competing national interests into a just war against an unjust enemy; and as was attempted in the Kellogg-Briand Pact of 1928, turning wars in the national interest into crimes, and wars in the interest of the universal principle into crusades. "Imperialism does not conduct national wars", Schmitt ironically observes, referring to what he sees as the particularly modern, i.e. legal and economic, form of imperialism conducted by the Anglo-American world; "at most it conducts wars that serve international politics; it conducts no unjust, only just wars"; or, as Wyndham Lewis was to put it a few years after the Second World War: "But what war that was ever fought was an unjust war, except of course that waged by the enemy?"

#### Our alternative is to recognize the necessity of the opposition. Sovereignty necessarily functions in exception to the law. This exception is necessary to avoid the universal violence of the Law and the affirmative.

Rasch 2000 (William. "Conflict as a Vocation: Carl Schmitt and the Possibility of Politics." Theory Culture Society 17.1)

It is not difficult to see that the polemical elevation of sovereignty over the rule of law replicates a lively historical opposition, one that can be perhaps best evoked by that happy pair, Hobbes and Locke. Within the liberal tradition, the rule of law invokes reason and calculability in its battles against the arbitrary and potentially despotic whim of an unrestrained sovereign. The legitimacy of the sovereign is thus replaced by a legality that claims to provide its own immanent and unforced legitimacy. Predictable and universally accessible reason - the normative validity of an "uncorked consensus", to use the words of a prominent modern exponent - gently usurps, so it is claimed, the place that would otherwise be occupied by a cynical, pragmatic utilitarianism and the tyranny of a dark, incalculable will. The rule of law brings all the comforts of an uncontroversial, rule-based, normative security as if legality preceded by way of simple logical derivation, abolishing above all the necessity of decisions. Schmitt clearly will have none of this and in various writings attempts to expose what he considers to be the two-fold fallacy of the liberal position. As we have seen, if taken at its word, legality, or the rule of law, is seen by Schmitt to be impotent; it can neither legitimize nor effectively defend itself against determined enemies in times of crisis. Were law truly the opposite of force, it would cease to exist. But this self-description is deceptive, for if judged by its deeds, the same liberal regime that enunciates the self-evidence validity of universal norms strives to enact a universal consensus that is, indeed, far from uncorked. The rule of law inevitably reveals itself, precisely during moments of crisis, as the force of law, perhaps, not every bit as violent and "irrational" as the arbitrary tyrant, but nonetheless compelling and irresistible - indeed, necessarily so. Thus, Schmitt would argue the distinction between "decision", "force" and sovereignty", on the one hand, and the "rule of law", on the other, is based on a blithe and simple illusion. What agitates Schmitt is not the force, but the deception. More precisely, what agitates Schmitt is what he perceives to be the elimination of politics in the name of a higher legal or moral order. In its claim to a universal, normative, rule-bound validity, the liberal sleight-of-hand reveals itself to be not the opposite of force, but a force that outlaws opposition. In resurrecting the notion of sovereignty, therefore, Schmitt sees himself as one who rescues a legitimate notion of politics. Of course, this rescue attempt is itself political, a battle over the correct definition of politics. That is, we are not merely dealing with a logical problem, and not merely dealing with a desire to provide constitutional mechanisms that would prevent the self-dissolution of the constitution. Rather, we are dealing with a contest between a particularist notion of politics, in which individual conflicts can be resolved, but in which antagonism as a structure and reservoir of possible future conflicts is never destroyed, versus politics as the historical unfolding and pacific expansion of the universal morality. To evoke the long shadows of an ongoing contemporary debate, we are dealing with the difference between a politics of dissensus and a politics of consensus. Whereas the latter ideology entails an explicit or implicit belief in the "highest good" that can be rationally discerned and achieved, a "right regime", to use Leo Strauss's term, or the "just society" that hopes to actualize aspects of the City of God here on earth, the former stresses the necessity of determining a workable order where no single order bears the mantle of necessity, in fact, where all order is contingent, hence imperfect, and thus seeks to make the best of an inherently contradictory world by erecting structures that minimize self-inflicted damage. In Schmitt's eyes, the elements of such a structure must be the manifold of sovereign states. The liberal says there can only be one world-wide sovereign, the sovereignty of a universal moral and legal order. Schmitt counters with a plurality of equal sovereigns, for only in this way, he believes, can the economic and moral extinction of politics be prevented. Politics, on this view, is not the means by which the universally acknowledged good is actualized, but the mechanism that negotiates and limits disputes in the absence of any universally acknowledged good. Politics exists, in other words, because the just society does not.

#### This requires the unchecked authority of the executive to respond to the exception.

Nagan and Haddad 12 (Winston and Aitza, "Sovereignty in Theory and Practice." San Diego International Law Journal 13)

Although Schmitt was German, his ideas about sovereignty, and the political exception have had influence on the American theory and practice of sovereignty. Carl Schmitt was a philosophic theorist of sovereignty during the Third Reich. n375 His ideas about sovereignty and its above the law placement in the political culture of the State have important parallels in the developing discourse in the United States about the scope of presidential authority and power. His views have attracted the attention of American theorists. Schmitt developed his view of sovereignty on the concept described as "the exception". n376 This idea suggests that the sovereign or executive may invoke the idea of exceptional powers which are distinct from the general theory of the State. In Schmitt's view, the normal condition of the functions of the theory of a State, rides with the existence of the idea of the "exception." The exception is in effect intrinsic to the idea of a normal State. In his view, [\*487] the normal legal order of a State depends on the existence of an exception. n377 The exception is based on the continuing existence of an existential threat to the State and it is the sovereign that must decide on the exception. n378 In short, the political life of a State comprises allies and enemies. For the purpose of Statecraft, "an enemy exists only when at least potentially, one fighting collectivity of people confronts another similar collectivity." n379 In this sense, the political reality of the State always confronts the issue of the survival of the group. This reality is explained as follows. The political is the most intense and extreme antagonism, and every concrete antagonism becomes that much more political the closer it approaches the most extreme point, that of the friend-enemy grouping. \*\*\* As an ever present possibility [war] is the leading presupposition which determines in a characteristic way human action and thinking and hereby creates a specifically political behavior.\*\*\* A world in which the possibility of war is utterly eliminated, a completely pacified globe, would be a world without the distinction between friend and enemy and hence a world without politics. n380 Schmitt's view bases the supremacy of the exception on the supremacy of politics and power. n381 Thus, the exception, as rooted in the competence of the executive, is not dependent on law for its authority but on the conditions of power and conflict, which are implicitly pre-legal. n382 The central idea is that in an emergency, the power to decide based on the exception accepts its normal superiority over law on the basis that the suspension of the law is justified by the pre-legal right to self-preservation. n383 Schmitt's view is a powerful justification for the exercise of extraordinary powers, which he regards as ordinary, by executive authority. This is a tempting view for executive officers but it may not be an adequate explanation of the interplay of power, legitimacy, and the constitutional foundations of a rule of law State. In a later section, we draw on insights from the New Haven School, which deals empirically with the problem of power and the problem of constituting authority using the methods of contextual mapping. Nonetheless, Schmitt's view provides support for theorists who seek to enlarge executive power on the unitary presidency theory.

## State K

#### THE STATE CRITIQUE

#### The affirmatives reliance on the traditional tenets of IR such as belief in state actors’ homogeneity, their one-dimensional masculine interventionism reinforces the same security logic they critique making it more seductive and resilient – their problematization of security actively naturalizes the things they critique – vote neg on presumption.

Harrison 2003

(Deborah, Adjunct Professor of Sociology at the University of New Brunswick, Military Masculinities Identity and the State, edited by Paul Higate, pgs. 73-82)

I offer a feminist reconceptualisation of (international) security and (gender) violence because the current conceptualisations are not adequate for the task of thinking gender differently in the context of violence and security. They do not allow for the development of theory or practice that is capable of addressing the complexities inherent in these issues. As Wendy Brown argues, 'What suspicion about the naturalness of gender subordination persists when feminism addresses only the wrongs done to women and not the socially produced capacity for women to be wronged, to be victims?' (Brown 2003, 11). In the context of security, investigating this capacity manifests in a curiosity about 'what Foucault would have called the overall discursive fact that security is spoken about at all' (Dillon 1996, 14) and the ways in which performances of security discourse function to (re)produce particular configurations of social/political reality. From Existence to Violent Reproduction Surveying two bodies of literature, one concerned with security situated firmly in the discipline of International Relations and the other more broadly sociological, addressing violence and gender, demands that careful consideration is given to the links between them. In the discussion of the literature on violence, I draw out the ways in which the various approaches conceptualise the referent object of their analyses, and how they conceive of threat—in this case, violence. Similarly, in the discussion of the security literature, I question how different approaches to security conceive of the referent object of security, and how they too conceive of threat. In both cases, I offer a discourse-theoretic account that emphasises the (re)productive function of violence in the ordering of social/political reality. However, the critique is structured such that the links between the literatures can be effectively highlighted, rather than proceeding with each literature in turn, as illustrated in Table 1. Sovereign Individuals, Sovereign States The foundational assumptions of every body of literature are often implicit, or taken to be unproblematic. Each literature, in this case that which addresses 'violence against women' and that which addresses 'national security', speaks to a specific manifestation of violence and is informed by a particular logic of gender and security. On its own terms, each literature is internally both coherent and consistent, although there are significant differences between the ways in which this coherence and consistency is constructed. In this section, I proceed as outlined in Table 1, exploring the literature on 'violence against women' and 'national security' to investigate the ways in which (gender) violence and (international) security are conceptualised within these works. Jill Radford, Liz Kelly and Marianne Hester are prominent researchers concerned with 'violence against women' and they situate their work in a context of the debates within wider feminist theorising, stating that 'throughout the 1980s a series of separations occurred, of women's studies from feminism; of theoretical writing from women's lived experiences; of knowledge creation from activism' (Radford et al. 1996, 8). Their implicit placement within these dualities is on the side of an activist feminism concerned with 'women's lived experiences'. Researching and writing about 'violence against women' has a particular, albeit internally differentiated, politics that differs in several key ways from researching and writing about 'gender violence', and one aspect of this is the location articulated by Radford, Kelly and Hester above. Researching 'violence against women' is an explicit challenge to the self-proclaimed objectivist and value-free research programmes of mainstream social science. This can be understood as a political undertaking in two main ways; research was conducted 'with the aim of achieving a description as well as a comprehensive understanding of the problem' (Dobash and Dobash 1992, 283, emphasis added). These two aspects—the description and the understanding—were conceived as separable and separate. It is vital to note that the academic study of 'violence against women' claims as its intellectual heritage critically important activity and activism in communities throughout the UK and the US. 'Starting at the grass roots level, feminists named its existence ... and began to put into place an underground network of shelters and safe houses for women. Only then did significant numbers of mental health professionals, social science researchers ... and policy makers begin to notice' (Bograd 1988, 11). Research that focuses on 'violence against women' posits women as coherent and stable subjects whose life experiences can be ameliorated by appropriate policy practice. This approach identifies materially determined gendered individuals as a result of its empirical approach to the study of politics and social life. The notion of sovereignty is central here, and provides an important link to the literature on international security. The subject constructed through the discourse of 'violence against women' is assumed sovereign, the 'women' affected by violence have sovereign rights over their own material forms and should not therefore be subjected to violence. Moreover, this sovereignty is pre-constituted and taken to be an empirical 'reality'. In a similar manner, the assumed sovereignty of the state is the foundational truth claim of literature on 'national security', which I discuss in the following paragraphs. Both internal and external sovereignty are central to the conception of the state that informs conventional IR security literature, and the logical corollary of this conception constructs the state system as anarchic. Realist IR theory 'sees' the state as its object of analysis and therefore '[s]tates are the principle referent objects of security because they are both the framework of order and the highest sources of governing authority' (Buzan 1991, 22). Within both classical (or 'political') realism and neo-realism (or 'structural realism'), the state is represented as a unitary actor.10 Both variants proceed according to the assumption that all human existence is bounded by states, according to the assertion that states are the primary object of analysis. If, as Kenneth Waltz claims, '[s]tatesmen and military leaders are responsible for the security of their states ... no one at all is responsible for humanity' (Waltz 1959, 416), then states are further assumed to be the object to which security policy and practice refers and humans can only be secured to the extent that they are citizens of a given state. John Herz's conception of the 'security dilemma' is explicitly premised on assumptions regarding the potential of human nature, and therefore state behaviour, to provide circumstances of collaboration and co-operation. The 'human nature' under discussion is, on closer inspection, the nature of 'man' (see Morgenthau 1973, 15–16), and is thus problematic in its partiality as well as its pessimism. Insecurity, according to Herz, stems from a fundamental social constellation ... where groups live alongside each other without being organised into a higher unity ... Since none can ever feel entirely secure in such a world ... power competition ensues and the vicious circle of security and power accumulation is on (Herz 1950, 157). The 'fundamental social constellation' posited by classical realists is a population of rational, unitary, masculine entities that will never, and can never, be otherwise. The concept of security driving these prescriptions is premised on a particular vision of the social relations between states, and furthermore constructs a particular notion of what is considered to be a security threat within this conceptualisation, as eternal and external to the state. While 'human nature' drives state behaviours according to classical realists, neo-realist assumptions concerning the construction of security in an anarchic system appeal to a structural logic of uncertainty. 'Uncertainty is a synonym for life, and nowhere is uncertainty greater than in international politics' (Waltz 1993, 58). The necessity of security behaviours is thus derived from the anarchic system and 'rests on the argument that the distribution and character of military power are the root causes of war and peace' (Mearsheimer 1990, 6). Thus threats, reduced to external violences and ultimately war between states, are perpetual, a theoretical move that serves to perpetuate the understanding of security as reducible to military force. This functions to blind those working within a conceptualisation of 'national security' to the possibility that threats are variously constructed depending on context. Moreover, the structural context of anarchy that is taken to be a foundational reality within this conceptualisation prescribes and proscribes certain behaviours that are then never opened to critical scrutiny, a point to which I return in the conclusion of this article. The Social Construction of Individuals and States Although researchers working on 'violence against women' would identify (patriarchal) power structures that facilitate the continuation of violence against women, thinking about 'gender violence' enables a more sensitive understanding of the representation of women as simultaneously 'victims, perpetrators [and] ... actors' (Moser and Clark 2001) and the different conceptualisation of power that this representation entails. The conceptualisation of power that underpins work on 'gender violence' is implicated in the conceptualisation of violence. Caroline Moser suggests that there is a 'gendered continuum of conflict and violence' (Moser 2001, 31), and, moreover, that this continuum is a result of the ways in which 'gender is embedded in relations of power/powerlessness' (ibid., 37). While I sustain the challenge to a unidirectional power–violence relationship as offered by work on 'violence against women', the 'embedded' nature of gender in power as suggested by Moser and others does not fully problematise the links between masculinity and violence that are assumed by the previous literature. In an attempt to move beyond what she terms 'gender traditionalism', in which gender is readable from sex and differences between genders are thus biological, and 'gender liberalism', which stresses the equality of the genders despite differences between them, both of which 'can combine in unfortunate ways ... to prevent gender from being seen as significant or explanatory' (Cockburn 2001, 14), Cynthia Cockburn develops a subtle and thoughtful account of gender violence with specific reference to situations of armed conflict. Centralising the power inherent in gender relations enables the 'uncovering [of] the differentiation and asymmetry of masculine and feminine as governing principles, idealized qualities, practices or symbols' (ibid., 16). However, Cockburn 'calls, first, for a sensitivity to gender difference' (ibid., 28, emphasis in original) that I believe may undermine the utility of this approach. It does, in a way, put the empirical cart before the theoretical horse. If difference between the genders is taken as a starting point for the analysis of gender, then the (re)production of this difference is obscured from critical attention. However, this approach, in contrast to research addressing 'violence against women', does not assume sovereignty of a stable subject. Attention is paid to the ways in which individuals are both product and productive of their social environments, positing a socially constructed individual within a similarly socially constructed matrix of gender relations. Gender is therefore not assumed to be a transhistorical or universal system of identity production, nor is it assumed that individuals experience gender in the same way, even within a particular social/political context. This emphasises the ontological difference between research on 'violence against women' and 'gender violence'. The former assumes a material reality and, in the context of gender, gender can thus be read unproblematically from sexed bodies. The latter approach focuses on gender as a social construct, where sexed bodies are gendered in accordance to variable matrices of gender norms. Those who work within a conceptualisation of 'international security' are more loosely bound by their theoretical assumptions and research priorities than those who work on 'national security'. The literature on 'international security' incorporates work on 'human security', 'critical security' and 'common security'.11 The literature represents a variety of different theoretical frameworks, and draws heavily on representations of, and arguments concerning, 'global civil society' and cosmopolitanism, as I discuss further below. However, in this analysis I treat these works as minimally unitary, and label them 'international security' for three interconnected reasons.12 Primarily, the term 'international' easily differentiates this approach from the literature on 'national security'. Second, the use of the modifier 'international' denotes the association of this approach with global, or universal, values. Third, the term resonates with the discipline in which this literature is situated—International Relations. Often tracing its heritage back to the 1994 United Nations Development Program (UNDP) Human Development Report,13 which includes a chapter entitled 'New Dimensions of Human Security', work on 'international security' seeks to reconceptualise security such that the referent object is no longer conceived, as in 'national security', as the sovereign state (see Newman 2001, 240; Booth 2004, 5). As Matt McDonald explains, this reconceptualisation is 'a potential response to the growing insecurity of security' (McDonald 2002, 277) and incorporates several of the critiques discussed above. Roland Paris argues that this 'paradigm shift' does not necessarily represent a coherent research agenda (Paris 2001, 92–93), but recognises that this work comprises 'a distinct branch of security studies that explores the particular conditions that affect the survival of individuals, groups and societies' (Paris 2001, 102). Broadly, the analytical focus of 'international security' is 'we, the peoples' (Dunne and Wheeler 2004) and research within this conceptualisation requires the recognition of 'both the indivisibility of human rights and security, and the concomitant responsibility to rescue those trapped in situations of violence, poverty and ill-health' (ibid., 20). Theorists of 'international security' have argued that '[e]ven though state-based conceptions of security have taken precedence, alternative ways of thinking that give priority to individual and social dimensions of security' are also possible (Bilgin 2003, 203). If 'anarchy is what states make of it' (Wendt 1992, 395) and states are not constructed as the unproblematic unitary rational actors pursuing defensive policies, as assumed by theorists of 'national security', then co-operation is as likely as hostility in the domain of international relations. In fact, it is argued, conceiving of security as 'international' highlights the importance of relations between states and the salience of the construction of an 'international community' (McRae 2001, 19). However, just as the state is asserted as autonomous within the conceptualisation of 'national security', as I have described above, in this conceptualisation 'international security' is similarly asserted as relational. These assumptions are in opposition but are equally problematic, as both assumptions treat the state and the international as predetermined objective realities, which impacts on the ways in which it is possible to conceptualise security. Richard McRae (2001, 20), for example, argues that 'global civil society' needs to address the issues of insecurity facing those 'citizens of ... noncountries' (ibid., 19) whose governments are unable to provide adequate security measures. Tim Dunne and Nick Wheeler also cite the co-operation of 'an alliance of states and transnational civil society' (Dunne and Wheeler 2004, 10), needed to 'rescue those trapped in situations of poverty and violence' (ibid., 20). Recognising the 'structural inequalities generated by global capitalism' (ibid., 16) goes some way towards challenging the assumptions of 'national security' literature, in the same way as work on 'gender violence' offers sustainable critiques of the literature on 'violence against women'. However, theories of 'international security' neither take into account the implications of their representations of a 'global civil society' vs. citizens of 'noncountries' who need rescuing, nor engage in critical discussion of the very notion of 'global civil society'. The concept of 'global civil society' is ideologically and normatively loaded with implications of its global reach, its civilised nature and its social form. All of these characteristics are in opposition to their relevant 'others', the local/parochial, the uncivilised and the forms of behaviour associated with states and international institutions, all of which are conceived of as negative.14 Despite this, the construction of 'global civil society' is under-theorised, represented unproblematically in the literature on 'international security' and assumed to confer authority and legitimacy in the realms of morality, efficacy, democracy and social cohesion (Scholte 2002, 159–164). Furthermore, 'international security', in both broadening and deepening the concept of threat (Booth 2005b, 14–15), implicitly conveys the urgency and priority built into the concept of security propounded by work on 'national security', in which security is, as discussed above, 'the highest end' (Waltz 1979, 126). 'An implicit assumption ... is that the elevation of issues of human rights, economic inequality and environmental change, for example, to the realm of security will allow greater priority to these issues' (McDonald 2002, 277). Even as it problematises the conceptualisation of security evidenced in the conceptualisation of 'national security', literature on 'international security' tends to naturalise it, constructing security as a 'single continuum ... protected and enhanced by a series of interlocking instruments and policies' (McRae 2001, 22). This suggests that the approach to 'national security' is broadly valid, needing only supplementary analysis to fill in the gaps rather than a thorough reconceptualisation of its basic organisational concepts. The assumptions underpinning literature on 'international security' lead to policy prescriptions premised on the triumph of liberal values, implemented by 'a progressive alliance between ... cosmopolitan transnational civil society and enlightened state leaders' (Booth 2004, 6). The formation of an informed and activist global civil society, with all the problems inherent within that concept, is seen as a necessary step to the provision of security. Well-established international institutions and collectives capable of providing security and guaranteeing freedoms are also vital on this view. Ultimately, the critique I offer is concerned that the conceptualisation of 'international security' I discuss here 'constitutes a Western project, predicated on the values of the developing world' (McDonald 2002, 293). In the articulation of this conceptualisation of 'international security', the values upon which the prescriptions are founded are not opened to critical scrutiny, and effect closure on the ways in which it is possible to think not only about security but also international relations more broadly. The ontological assumptions of this second approach differentiate it from work on 'national security', as this approach posits the international as a socially constructed zone of co-operation rather than assuming the reality of an anarchic international domain. However, violence and threat are still ever-present in this conceptualisation, but thoughtful security policy and practice can ameliorate the situations of individuals, societies, communities, states. ...15 These subjects are recognised as constructs of their social/political milieu on this view. Just as research on 'gender violence' does not see a universal stability to matrices of gender norms, research on 'international security' investigates the ways in which norms and ideas function in international relations to construct the subjects of inquiry—states. In the following section I map out an alternative approach to the study of violence, security and the international, arguing that states and subjectivity can be conceived differently with potentially radical ramifications for the discipline of IR. Performances of State and Subjectivity I find it far more persuasive to conceptualise gender violence, of which violence against women is a part, as violences that are both gendered and gendering. Power is conceived of within this mode of analysis as productive, a conceptualisation that Peter Digeser has called 'the fourth face of power' (Digeser 1992, 980). Influenced by the theorising of Foucault, 'the critical issue is, "What kind of subject is being produced?" ' (ibid), and, through which discursive practices are these subjects being produced? Thinking about 'the violent reproduction of gender' allows for the consideration of the ways in which culturally and historically specific narratives or discourses produce particular understandings of notions of violence, gender and power, thus enabling the emergence of gendered subjects. By analysing the ways in which these subjects are temporarily 'fixed' through discursive practice, through their performance, it is possible to investigate 'the discursive practice by which matter is rendered irreducible'—that is, how it comes to be accepted that subjects embody a pre-given materiality—and to refuse the conceptual bracketing of the 'problematic gendered matrix' that organises the logic of this materiality (Butler 1993, 29). To illustrate this perspective, it is possible to make meaning of rape as an instance of the violent reproduction of gender. I am not disputing the 'reality' of rape as a crime; rather, I follow Sharon Marcus when she asserts that 'rape is a question of language, interpretation and subjectivity' (Marcus 1992, 387). Along with Marcus, I am working towards the formulation of a politics of rape, which conceives of the act itself, the circumstances which 'allow' for the act, the immediate and long-term legal procedures following the act and associated reportage and documentation as equally implicated and important in the theorising of rape, arguing 'against the political efficacy of seeing rape as the fixed reality of women's lives, against an identity politics which defines women by our violability' (ibid.). The legal definition of rape was amended under section 1 of the UK Sexual Offences Act 2003. Section 1 of the Sexual Offences Act 1956 stated that '[i]t is an offence for a man to rape a woman or another man'; the relevant legislation now rules that 'A person (A) commits an offence if—(i) he intentionally penetrates the vagina, anus or mouth of another person (B) with his penis; (ii) B does not consent to the penetration; and (iii) A does not reasonably believe that B consents' (OPSI 2003). This legal definition of rape is interesting on many levels, but for the purposes of this analysis I would like to consider the implications of closing off the discursive space for women to be agents of rape. Rape can be seen as a culturally sanctioned masculine realm; although the legislation talks of 'men' the assumption is that masculinities will map on to socially defined 'male' bodies, following the myths of a 'natural' gender order. In the UK, rape is discursively constructed as a resource of gender violence, a violent means of inscribing the boundaries between masculinities and femininities, apparent from the outset once the legal definition of rape has been examined. Research that addresses the 'violent reproduction of the international' conceives of security as a set of discourses rather than as something that can be achieved either in absolute or relative terms, and is also concerned with the demarcation of boundaries in the study and practice of I/international R/relations.16 Engaging with research that works within this conceptualisation can explore how these discourses function to reproduce, through various strategies, domains of the international with which IR is self-consciously concerned. Thus the violences and the threats, as much as the states and security itself, are interpreted though the practices that enable individuals as social beings to make sense of their social location and identity. Literature that addresses 'the violent reproduction of gender' conceives of violence as a site at which genders are reproduced; literature that addresses the 'violent reproduction of the international' conceives of violence, of which security practice and policy is an integral part, as sites at which the international is reproduced. Including not just acts of inter-state war, but also instances of civil conflict and oppressive practices within and between states, expanding further to problematise the legal structures, policy practices and the research that guides these, theorists are enabled to investigate the ways in which these acts of violence articulated through discourses of security function to perpetuate 'the international' as various spatial and conceptual realms. Thus, within this conceptualisation it is possible to say that states, acting as unitary authoritative entities, perform violences, but also that violences, in the name of security, perform states. Undertaking research within this conceptualisation allows for a holistic perspective on the ways in which discourses of security reproduce grammatically correct narratives of identity and being-in-the-world, of which in international relations the 'international' is a key organising concept. One aspect of the ways in which discourses of security, and the violences undertaken with reference to these discourses, function within international relations is to delimit the state as boundary between the domestic and the international realms. States are assumed to be unitary and authoritative, to maintain both internal and external sovereignty, and furthermore, it is assumed that the internal organisation of the state is undertaken in the best interests of the citizenship—to protect and serve the population. Unsettling 'the international' as an a priori unsafe/safe domain (in the discourses of 'national security' and 'international security', respectively) challenges this truth of security as propounded by the two conceptualisations outlined above. Considering the ways in which this domain is (re)produced is vital to understanding how security functions as a discourse. James Der Derian addresses the 'new technological practice' of simulation as a means of identifying 'the reality principle that international relations theory in general seeks to save' (Der Derian 1990, 300). The reality principle of the international as a conceptual domain is undermined by the intertextuality of simulation and policy procedure and discourses of security help to reassert the primacy of the international in the ways described above, through the identification of objective threats, the construction of international order and the perpetuation of the myth of the state

. Towards a Feminist Reconceptualisation As Spike Peterson and Jacqui True comment, 'our sense of self-identity and security may seem disproportionately threatened by societal challenge to gender ordering' (Peterson and True 1998, 17). That is, the performance of gender is immanent in the performance of security and vice versa, both concern issues of ontological cohesion (as illustrated in Table 2). Taking this on board leads me to the conclusion that perhaps security is best conceived of as referring to ontological rather than existential identity effects. Security, if seen as performative of particular configurations of social/political order, is inherently gendered and inherently related to violence. Violence, on this view, performs an ordering function—not only in the theory/practice of security and the reproduction of the international, but also in the reproduction of gendered subjects. Butler acknowledges that 'violence is done in the name of preserving western values' (Butler 2004, 231); that is, the ordering function that is performed through the violences investigated here, as discussed above, organises political authority and subjectivity in an image that is in keeping with the values of the powerful, often at the expense of the marginalised. 'Clearly, the west does not author all violence, but it does, upon suffering or anticipating injury, marshal violence to preserve its borders, real or imaginary' (ibid.). While Butler refers to the violences undertaken in the protection of the sovereign state—violence in the name of security—the preservation of borders is also recognisable in the conceptual domain of the international and in the adherence to a binary materiality of gender. This adherence is evidenced in the desire to fix the meaning of concepts in ways that are not challenging to the current configuration of social/political order and subjectivity, and is product/productive of 'the exclusionary presuppositions and foundations that shore up discursive practices insofar as those foreclose the heterogeneity, gender, class or race of the subject' (Hanssen 2000, 215). However, the terms used to describe political action and plan future policy could be otherwise imagined. They could 'remain that which is, in the present, never fully owned, but always and only redeployed, twisted, queered from prior usage and in the direction of urgent and expanding political purposes' (Butler 1993, 228). The concepts both produced by and productive of policy could reflect an aversion to essentialism, while recognising that strategic gains can be made through the temporary binding of identities to bodies and constraining of authority within the confines of the territorial state. This is, in short, an appeal to a politics of both/and rather than either/or. Both the state (produced through representations of security and violence) and the subject (produced through representations of gender and violence) rely on a logic of sovereignty and ontological cohesion that must be problematised if alternative visions of authority and subjectivity are to become imaginable. International Relations as a discipline could seek to embrace the investigation of the multiple modalities of power, from the economic to the bureaucratic, from neo-liberal capitalism to the juridical. Rather than defending the sovereign boundaries of the discipline from the unruly outside constituted by critical studies of development, political structures, economy and law, not to mention the analysis of social/political phenomena like those undertaken by always-already interdisciplinary feminist scholarship, IR could refuse to fix its own boundaries, and refuse to exercise sovereign power, in terms of authority, over the meanings of its objects of analysis. Future research on global politics could look very different if it were not for the inscription of ultimately arbitrary disciplinary borderlines that function to constrain rather than facilitate understanding. It may seem that there is a tension between espousing a feminist poststructural politics and undertaking research that seeks to detail, through deconstruction, the ways in which particular discourses have failed to manifest the reforms needed to address security and violence in the context of gendered subjectivity and the constitution of political community. In keeping with the ontological position I hold, I argue that there is nothing inherent in the concepts of (international) security and (gender) violence that necessitated their being made meaningful in the way they have been. Those working on policy and advocacy in the area of security and violence can use the reconceptualisation I offer 'to enable people to imagine how their being-in-the-world is not only changeable, but perhaps, ought to be changed' (Milliken 1999, 244). As a researcher, the question I have grown most used to hearing is not 'What?' or 'How?' but 'Why?'. At every level of the research process, from securing funding to relating to the academic community, it is necessary to be able to construct a convincing and coherent argument as to why this research is valuable, indeed vital, to the field in which I situate myself. A discursive approach acknowledges that my legitimacy as a knowing subject is constructed through discursive practices that privilege some forms of being over others. In the study of security, because of the discursive power of the concept, and of violence, which can quite literally be an issue of life and death, these considerations are particularly important. Furthermore, as a result of the invigorating and investigative research conducted by exemplary feminist scholars in the field of IR,17 I felt encouraged to reclaim the space to conduct research at the margins of a discipline that itself functions under a misnomer, being concerned as it is with relations inter-state rather than inter-national. As Cynthia Enloe has expressed it, To study the powerful is not autocratic, it is simply reasonable. Really? ... It presumes a priori that margins, silences and bottom rungs are so naturally marginal, silent and far from power that exactly how they are kept there could not possibly be of interest to the reasoning, reasonable explainer (Enloe 1996, 188, emphasis in original). If this is the case, I am more than happy to be unreasonable, and I am in excellent company.

## Warfighting DA

#### WARFIGHTING DISAD

#### Obama’s Syria maneuver has maximized presidential war powers because it’s on his terms

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(Eric, Law Prof at University of Chicago, Obama Is Only Making His War Powers Mightier, www.slate.com/articles/news\_and\_politics/view\_from\_chicago/2013/09/obama\_going\_to\_congress\_on\_syria\_he\_s\_actually\_strengthening\_the\_war\_powers.html)

President **Obama’s** surprise **announcement that he will ask Congress for approval of a military attack on Syria is being hailed as a vindication of the rule of law and a revival of the central role of Congress in war-making**, even by critics. **But all of this is wrong. Far from breaking new legal ground, President Obama has reaffirmed the primacy of the executive in matters of war and peace. The war powers of the presidency remain as mighty as ever**. It would have been different if the president had announced that only Congress can authorize the use of military force, as dictated by the Constitution, which gives Congress alone the power to declare war. That would have been worthy of notice, a reversal of the ascendance of executive power over Congress. But the president said no such thing. He said: “I believe I have the authority to carry out this military action without specific congressional authorization.” Secretary of State John Kerry confirmed that the president “has the right to do that”—launch a military strike—“no matter what Congress does.” Thus, **the president believes that the law gives him the option to seek a congressional yes or to act on his own. He does not believe that he is bound to do the first. He has merely stated the law as countless other presidents and their lawyers have described it before him**. The president’s announcement should be understood as a political move, not a legal one. His motive is both self-serving and easy to understand, and it has been all but acknowledged by the administration. If Congress now approves the war, it must share blame with the president if what happens next in Syria goes badly. If Congress rejects the war, it must share blame with the president if Bashar al-Assad gases more Syrian children. The big problem for Obama arises if Congress says no and he decides he must go ahead anyway, and then the war goes badly. He won’t have broken the law as he understands it, but he will look bad. He would be the first president ever to ask Congress for the power to make war and then to go to war after Congress said no. (In the past, presidents who expected dissent did not ask Congress for permission.) **People who celebrate the president for humbly begging Congress for approval** also apparently **don’t realize that his understanding of the law—that it gives him the option to go to Congress**—**maximizes executive power vis-à-vis Congress**. If the president were required to act alone, without Congress, then he would have to take the blame for failing to use force when he should and using force when he shouldn’t. **If he were required to obtain congressional authorization, then Congress would be able to block him. But if he can have it either way, he can force Congress to share responsibility when he wants to and avoid it when he knows that it will stand in his way.**

#### The plan destroys causes countries to doubt the credibility of our threats – collapses security guarantees and deterrence – causes nuclear war

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(MARIAH ZEISBERG, Research Fellow, The Political Theory Project, Department of Political Science, "INTERBRANCH CONFLICT AND CONSTITUTIONAL MAINTENANCE: THE CASE OF WAR POWERS" SEPTEMBER 22, 2004, KB)

The first significant argument of pro-Presidency insularists is that flexibility is a prime value in the conduct of foreign affairs, and especially war. Implicit in this argument is the recognition that the executive is functionally superior to Congress in achieving flexibility and swiftness in war operations, a recognition I share. The Constitution cannot be meant to curtail the very flexibility that may be necessary to preserve the nation; and yet, according to the insularists, any general norm which would include Congress in decision-making about going to war could only undermine that flexibility. Writing on the War Powers Act, Eugene Rostow predicts that it would, “put the Presidency in a straightjacket of a rigid code, and prevent new categories of action from emerging, in response to the necessities of a tense and unstable world.” In fact, Rostow believes, “[t]he centralization of authority in the president is particularly crucial in matters of national defense, war, and foreign policy, where a unitary executive can evaluate threats, consider policy choices, and mobilize national resources with a speed and energy that is far superior to any other branch.” Pro-presidency insularists are fond of quoting Hamilton, who argued that “[o]f all the cares or concerns of government, the direction of war most peculiarly demands those qualities which distinguish the exercise of power by a single hand.” ¶ This need for flexibility, some insularists argue, is especially acute given modern conditions, where devastating wars can develop quickly. Today, “many foreign states have the power to attack U.S. forces - and some even the U.S. mainland - almost instantly,” and in such a world it is impracticable to require the President to seek advance authorization for hostilities. Such a requirement would simply be too risky to U.S. security. We furthermore face a nuclear age, and the system of deterrence that operates to contain that threat requires that a single person be capable of responding to nuclear attack with nuclear weapons immediately. Rostow writes, “the requirement for advance authorization would collapse the system of deterrence, making preemptive strikes by our enemies more likely.” Hence, “modern conditions” require the President to “act quickly, and often alone.” ¶ While this does not mean that Congress has no role to play in moments of crisis, it does mean that Congress should understand its role largely in terms of cooperating with the President to support his negotiations and decisions regarding relationships with foreign powers. Rostow writes,¶ “Congress should be able to act effectively both before and after moments of crisis or potential crisis. It may join the President in seeking to deter crisis by publicly defining national policy in advance, through the sanctioning of treaties or other legislative declarations. Equally, Congress may participate formally in policymaking after the event through legislative authorization of sustained combat, either by means of a declaration of war, or through legislative action having more limited legal and political consequences. Either of these devices, or both in combination, should be available in situations where cooperation between the two branches is indicated at many points along an arc ranging from pure diplomacy at one end to a declaration of war at the other.” ¶ In other words, for Congress to understand itself as having any justifiable role in challenging executive security determinations, especially at moments of crisis, would be to undermine the strength that the executive requires in order to protect the nation. Conflict in this domain represents political degradation.¶ Flexibility is also a key value to support the stability of the global security order, some pro-Presidency insularists argue. International security systems require guarantees that an attack on an ally will be retaliated as quickly as possible. Given such a system, the requirement of congressional consultation “vitiates the security guarantee.” It is important to note that the US does not simply play a role in international collective security systems: it is a central player in those systems, and hence “it is necessary for the system that U.S. participation be assured and credible. But this means that in order to support collective security, the fundamental function for Congress is to support the executive in ways that send a clear message of national resolve, so unequivocal and unmistakable that international pillagers and those who advise them can have no doubts.” ¶ This value of flexibility is sometimes applied to the mechanisms for foreign policy themselves. John Yoo, for example, argues that there must be a diversity of mechanisms for going to war, including unilateral action by the President. On Yoo’s account, Congress is granted authority in foreign affairs in times of peace, the President for times of danger. Yoo interprets the understructured nature of war powers to indicate that “the Framers did not intend the Constitution to establish a single, correct method for going to war. . . [d]uring times of relative peace, Congress can use its authority over funding and the raising of the military to play a leading role in foreign policy. In times of emergency or national danger, however, the President can seize the initiative in warmaking.” ¶ A second insularist argument is that the “nature of foreign affairs” is such that this domain cannot be guided by law. Jefferson’s oft-cited quote, that “[t]he transaction of business with foreign nations is Executive altogether,” is sometimes used in support of this argument, although I do not believe Jefferson understood himself to be making this point. Robert Bork is instead the most prominent insularist arguing this position. Far from believing that the President’s use of force can be bound by law, Bork denies that law governing foreign affairs—whether domestic or international—even exists. In Bork’s own words,¶ “[T]here are areas of life, and the international use of armed force seems to be one of them, in which the entire notion of law—law conceived as a body of legal principles declared in advance to control decisions to be made in the future—where that conception of law is out of place. The pretense that there is such a law and that it has been constantly violated, has debilitating effects upon our foreign policy . . . [t]wo examples come to mind: one is international law about the use of force, and the other is domestic law, that is, the War Powers Act. These two bodies of ‘law’ arise from different sources, but they are alike in that they are not law in any recognizable sense. They are not enforceable.” ¶ Since law in this domain simply cannot exist, the idea of a legislative body playing any role in guiding decisions here is simply senseless. Bork points us to the simple fact of the matter—that “Presidential use or support of force abroad will succeed when the public approves and fail when it disapproves. Law has little to do with the outcome.” ¶ The third important argument on behalf of insularity is that Congress already possesses all the power it needs to contain a wayward executive. This power is wielded mainly through Congress’ “power of the purse,” but also through Congress’ power to raise the military and commission (or de-commission) troops. It is in the course of approving Presidential requests for funding measures that Congress discusses the merits of his actions, and Congress retains the simple power to block the president’s actions simply by refusing him funds or military resources. Yoo argues,¶ “One might respond that it is unreasonable to expect Congress to use its appropriations powers to cut off troops in the field. Surely members of Congress will not take actions that might be interpreted as undermining the safety and effectiveness of the military, once committed and in the midst of hostilities. We should not mistake a failure of political will, however, for a violation of the Constitution. Congress undoubtedly possessed the power to end the Kosovo war, it simply chose not to. Affirmatively providing funding for a war, or at the very least refusing to cut off previous appropriations, represents a political determination by Congress that it will provide minimal support for a war, but that ultimately it will leave it to the President to receive the credit either for success or failure.” ¶ Furthermore, it is simply a fact that the President relies upon Congress to wage the wars he wishes to pursue. As Bobbit points out, unless Congress “by statute, provides an army, transport, weapons, and materials . . . there is nothing for the President to command.” Bobbit insists, though, that this does not mean that Congress can appropriately “interfere in the operation of that power” once handed over. Just as Congress, once it has established and vested the judiciary, has no authority to interfere in the operation of the judicial power, so too Congress, once it vests the President with command of a military, has no authority to interfere in how that command is used. Hence Bobbit believes that the only constitutionally legitimate way for Congress to engage in decisionmaking on the use of the sovereign war power is to remove forces from the command of the President. Bobbit continues, “[a]s a structural matter, Congress has the first and last word. It must provide forces before the President can commence hostilities, and it can remove those forces, by decommissioning them or by forbidding their use in pursuit of a particular policy at any time.” Bobbit is quite explicit about the implications of his position:¶ “Does this mean that presidents can simply ransack the current Defense Appropriations Act for available forces and that Congress then has no way to stop a president from unilaterally making war so long as one-third plus one of the members of one House sustains his veto - for the balance of the biennium? It may well mean that.” ¶ The fourth argument is that the kind of challenging characteristic of interbranch deliberation would endanger the well-being of troops in the field, as foreign nations interpret Congressional challenging to mean that we lack the will to support our soldiers. This argument is not about the comparative advantages of the presidency as an institution, or about the meaning of law: rather, it directly challenges the value of conflict itself. In fact, as we saw in chapter two, settlement theorists and realists seem to believe that the conditions of war and insecurity are the most congenial territory for their claims about the importance of deference and settlement, precisely because peace, stability, and the very possibility of rights-protection are all at stake in this issue. Rostow cites Dean Acheson’s comments on the Korean War:¶ “An incredulous country and world held its breath and read the mounting casualties suffered by these gallant troops, most of them without combat experience. In the confusion of the retreat even their divisional commander, Major General William F. Dean, was captured. Congressional hearings on a resolution of approval at such a time, opening the possibility of endless criticism, would hardly be calculated to support the shaken morale of the troops or the unity that, for the moment, prevailed at home. The harm it could do seemed to me to outweigh the little good that might ultimately accrue.”

## **Masculinity**

**Feminist international relations recreate the oppressive structures they seek to dismantle by assigning and categorizing gender.**

Maria **Stern and** Marysia **Zalewski. 2009**. Lecturer and researcher at the Department of Peace and Development research at Gotberg university; Director of Centre for Gender Studies at university of Aberdeen. “Feminist fatigue(s): reflections on feminism and familiar fables of militarization” Review of International Studies (2009), 35, 611–630, Cambridge journals)

In this section **we clarify** what we mean by **the problem of sexgender and how it transpires in the context of feminist narratives within IR** – which we will exemplify below with a recounting of a familiar feminist reading of militarisation. To re-iterate, the primary reason for investigating this is that we suspect part of the reason for the aura of disillusionment around feminism – especially as a critical theoretical resource – is connected to the sense that feminist stories repeat the very grammars that initially incited them as narratives in resistance. To explain; one might argue that there has been a normative feminist failure to adequately construct secure foundations for legitimate and authoritative knowledge claims upon which to garner effective and permanent gender change, particularly in regard to women. But **for poststructural scholars this failure is not surprising as the emancipatory visions of feminism inevitably emerged as illusory given the attachments to foundationalist and positivistic understandings of subjects, power and agency. If**, as poststructuralism has shown us, **we cannot – through language – decide the meaning of woman, or of femininity, or of feminism, or produce foundational information about it or her;42 that subjects are ‘effects’ rather than ‘origins of institutional practices and discourses’;43 that power ‘produces subjects in effects’;44 or that authentic and authoritative agency are illusory – then the sure foundations for the knowledge that feminist scholars are conventionally required to produce – even hope to produce – are unattainable. Moreover, post-colonial feminisms have vividly shown how representations of ‘woman’ or ‘women’ which masquerade as ‘universal’ are, instead, universalising and inevitably produced through hierarchical and intersecting power relations**.45 In sum; **the poststructural suggestion is that feminist representations of women do not correspond to some underlying truth of what woman is or can be; rather feminism produces the subject of woman which it then subsequently comes to represent**.46 **The implications of this familiar conundrum are far-reaching as the demands of feminism in the context of the knowledge/political project of the gender industry are exposed as implicated in the re-production of the very power from which escape is sought. In short, feminism emerges as complicit in violent reproductions of subjects and knowledges/ practices.** How does this recognisable puzzle (recognisable within feminist theory) play out in relation to the issues we are investigating in this article? As noted above, the broad example we choose to focus on to explain our claims is militarisation; partly chosen as both authors have participated in pedagogic, policy and published work in this generic area, and partly because this is an area in which the demand for operationalisable gender knowledge is ever-increasing. **Our suggestion is that the increasing requirement for knowledge for the gender industry about gender and militarisation re-animates the sexgender paradox which persistently haunts attempts to translate what we know into useful knowledge for redressing (and preventing) conflict, or simply into hopeful scenarios for our students**.

**Feminist explanations of international violence are too broad to be theoretically useful–realism is the only alternative**

**LIND 2005** (Michael, Executive Editor of the National Interest, “Of Arms and the Woman,” Jan 20, http://feminism.eserver.org/of-arms-and-the-woman.txt)

Though realist theory can survive, and perhaps even accommodate, many of the arguments of feminism with respect to collective conflict and state sovereignty, realism must reject the third aspect of the feminist criticism: the redefinition of security to mean social justice. From the Marxist left, feminists have picked up the argument that interstate violence is just one genre of "structural violence," which includes the economic oppression of lower classes by upper classes (Marxism) and the subordination of women to men by custom and by violence (feminism). But this notion merely disguises a change of subject as a change of approach. To say that mass rape by soldiers in wartime and wife-beating in societies at peace (excuse me, at "peace") are parts of the same phenomenon is to abandon any pretense of engaging in serious thinking about international relations. The result may be feminist theory, but it is not a theory of world politics. It is a theory of human society in general. When, as in "ecofeminism," the mistreatment of women by men in all societies, in peace and at war, is fused, as a subject of analysis, with the mistreatment of the ecosystem by humanity, one has a theory of everything, and a theory of everything is usually not very much.

## **Solvency**

#### The Executive will circumvent – articulating their position solves backlash

McGinnis 93

John McGinnis, Assistant Professor, Benjamin N. Cardozo School of Law, 1993, <http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=4213andcontext=lcp>

The executive’s decision to elaborate on its refusal to enforce a law and then publish its elaboration also serves several purposes within the bargaining model. The opinion bolsters the legitimacy of the executive’s position, particularly because it is one of the few official legal analyses of the issue of the rights of governance over diplomatic representation, given the paucity of judicial precedent.’°3 Moreover, it creates a commitment to refuse similar congressional encroachments in the future. As Schelling has pointed out: “To be convincing commitments usually have ... to rest on some rationale.”0’ Publicizing these commitments may also strengthen one’s negotiating position: “If in the past one has successfully maintained [a] principle,.. . and elects to nail his demands to that principle. . . he may persuade his adversary that [he will not give up the principle.]” By articulating the principles that the executive will not concede, OLC generates commitments for the future that may strengthen the president’s bargaining position vis-a-vis the other branches.’0’ The executive branch’s response to this legislation also shows why the executive branch has an advantage over Congress in creating favorable legal precedent. For the reasons just discussed, this legislation presented an excellent opportunity for the president to make good law with negligible risk of congressional or judicial reaction. Why then did Congress give the president this opportunity? The answer almost certainly lies in the relative dispersion of authority in Congress and the consequent lack of any institutional mechanism for long-term planning and enforcement of a legal strategy.’°’ This void permits staffers and individual members of Congress to press for provisions that are not well-designed to advance congressional claims to constitutional powers and, in fact, may offer the president strategic opportunities for reaffirming his own power.’0’ Moreover, because the congressional leadership has difficulty in monitoring potential confrontations, Congress is thrust into positions that its leadership is not willing to spend the political capital to defend.’0’ In contrast, the executive branch with its hierarchical structure, particularly in the area of foreign affairs, is better positioned to develop and enforce a long-term strategy.

#### Reps don’t shape reality—focusing on them obscures material and political analysis which turns the criticism

**Tuathail 96** (Gearoid, Department of Georgraphy at Virginia Polytechnic Institute, Political Geography, 15(6-7), p. 664, science direct)

While theoretical debates at academic conferences are important to academics, the discourse and concerns of foreign-policy decision- makers are quite different, so different that they constitute a distinctive problem- solving, theory-averse, policy-making subculture. **There is a danger that academics assume that the discourses they engage are more significant** in the practice of foreign policy and **the exercise of power than they really are**. This is not, however, to minimize the obvious importance of academia as a general institutional structure among many that sustain certain epistemic communities in particular states. In general, I do not disagree with Dalby’s fourth point about politics and discourse except to note that his statement-‘Precisely because reality could be represented in particular ways political decisions could be taken, troops and material moved and war fought’-evades the important question of agency that I noted in my review essay. **The assumption that it is representations that make action possible is inadequate by itself.** **Political, military and economic structures, institutions, discursive networks and leadership are all crucial in explaining social action and should be theorized together with representational practices**. Both here and earlier, Dalby’s reasoning inclines towards a form of idealism. In response to Dalby’s fifth point (with its three subpoints), it is worth noting, first, that his book is about the CPD, not the Reagan administration. He analyzes certain CPD discourses, root the geographical reasoning practices of the Reagan administration nor its public-policy reasoning on national security. Dalby’s book is narrowly textual; the general contextuality of the Reagan administration is not dealt with. Second, let me simply note that I find that the distinction between critical theorists and post- structuralists is a little too rigidly and heroically drawn by Dalby and others. Third, Dalby’s interpretation of the reconceptualization of national security in Moscow as heavily influenced by dissident peace researchers in Europe is highly idealist, an interpretation that ignores the structural and ideological crises facing the Soviet elite at that time. Gorbachev’s reforms and his new security discourse were also strongly self- interested, an ultimately futile attempt to save the Communist Party and a discredited regime of power from disintegration. The issues raised by Simon Dalby in his comment are important ones for all those interested in the practice of critical geopolitics. While I agree with Dalby that questions of discourse are extremely important ones for political geographers to engage**there is a danger of fetishizing this concern with discourse so that we neglect the institutional and the sociological, the materialist and the cultural, the political and the geographical contexts within which particular discursive strategies become significant**,. Critical geopolitics, in other words, should not be a prisoner of the sweeping ahistorical cant that sometimes accompanies ‘poststructuralism nor convenient reading strategies like the identity politics narrative; it needs to always be open to the patterned mess that is human history.

**Masking Disad—discursive criticism masks the problem and prevents legitimate solutions.**

**Meisner 95** (Mark, professor of environmental studies at York University, (Mark, “Resourcist Language: The Symbolic Enslavement of Nature”, Proceedings of the Conference on Communication and Our Environment, ed: David Sachsman, p. 242)

**Changing the language we use** to talk **about** non-human nature **is not a solution**. As I suggested, **language is not the problem**. Rather, **it s**eems **more like a contagious symptom of a deeper and multi-faceted problem that has yet to be fully defined**. Resourcist language is both an indicator and a carrier of the pathology of rampant ecological degradation. Further¬more, **language change alone can end up simply being a band-aid solution that gives the appearance of change and makes the problem all the less visible**. In a recent article on feminist language reform, Susan Ehrlich and Ruth King (1994) argue that because meanings are socially constructed, attempts at introducing nonsexist language are being undermined by a culture that is still largely sexist. The **words may have shifted, but the meanings and ideologies have not. The real world cure for the sick patient matters more than the treatment of a single symptom**. Consequently, **language change and cultural change must go together with social-moral change**. It is naive to believe either that language is trivial, or that it is deterministic.