### Case – Solv

#### President believes he is constrained by statute

Saikrishna Prakash 12**,** professor of law at the University of Virginia and Michael Ramsey, professor of law at San Diego, “The Goldilocks Executive” Feb, SSRN

We accept that the President’s lawyers search for legal arguments to justify presidential action, that they find the President’s policy preferences legal more often than they do not, and that the President sometimes disregards their conclusions. But the close attention the Executive pays to legal constraints suggests that the President (who, after all, is in a good position to know) believes himself constrained by law. Perhaps Posner and Vermeule believe that the President is mistaken. But we think, to the contrary, it represents the President’s recognition of the various constraints we have listed, and his appreciation that attempting to operate outside the bounds of law would trigger censure from Congress, courts, and the public.

### 2AC – T

#### 1. We meet – we prohibit the President’s ability to act without judicial review

John C. Eastman 6, Prof of Law at Chapman University, PhD in Government from the Claremont Graduate University, served as the Director of Congressional & Public Affairs at the United States Commission on Civil Rights during the Reagan administration, “Be Very Wary of Restricting President's Power,” Feb 21 2006, http://www.claremont.org/publications/pubid.467/pub\_detail.asp]

Prof. Epstein challenges the president's claim of inherent power by noting that the word "power" does not appear in the Commander in Chief clause, but the word "command," fairly implied in the noun "Commander," is a more-than-adequate substitute for "power." Was it really necessary for the drafters of the Constitution to say that the president shall have the power to command? Moreover, Prof. Epstein ignores completely the first clause of Article II -- the Vesting clause, which provides quite clearly that "The executive Power shall be vested in a President." The relevant inquiry is whether those who ratified the Constitution understood these powers to include interception of enemy communications in time of war without the permission of a judge, and on this there is really no doubt; they clearly did, which means that Congress cannot restrict the president's authority by mere statute.¶ Prof. Epstein's own description of the Commander in Chief clause recognizes this. One of the "critical functions" performed by the clause, he notes, is that "Congress cannot circumvent the president's position as commander in chief by assigning any of his responsibilities to anyone else." Yet FISA does precisely that, assigning to the FISA court a core command authority, namely, the ability to authorize interception of enemy communications. This authority has been exercised by every wartime president since George Washington.

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

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

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

#### 3. Prefer it

#### SP A) Aff ground – only process-based affs can beat the executive CP and ex ante review is illegal

Bloomberg 13, Bloomberg Editorial Board, Feb 18 2013, “Why a ‘Drone Court’ Won’t Work,” http://www.bloomberg.com/news/2013-02-18/why-a-drone-court-won-t-work.html

As for the balance of powers, that is where we dive into constitutional hot water. Constitutional scholars agree that the president is sworn to use his “defensive power” to protect the U.S. and its citizens from any serious threat, and nothing in the Constitution gives Congress or the judiciary a right to stay his hand. It also presents a slippery slope: If a judge can call off a drone strike, can he also nix a raid such as the one that killed Osama bin Laden? If the other branches want to scrutinize the president’s national security decisions in this way, they can only do so retrospectively.

### 2AC – Schmitt

#### 5. Six specific external factors restrain president from circumvention in the squo

Pildes 12 (Richard H. Pildes, Sudler Family Professor of Constitutional Law, NYU School of Law, “Book Reviews Law And The President,” Harvard Law Review [Vol. 125:1381] 2012, //nimo)

III. THE INCOMPLETE CONSEQUENTIALIST THEORY¶ FOR THE ROLE OF LAW¶ For these reasons, I want to move beyond empirical issues and en- gage Posner and Vermeule on their own terms, and at a deeper, more theoretical, and general level. Posner and Vermeule see presidents as Holmesians, not Hartians.69 Yet even if we enter their purely conse- quentialist world, in which presidents follow the law not out of any normative obligation or the more specific duty to faithfully execute the laws but only when the cost-benefit metric of compliance is more fa- vorable than that of noncompliance, powerful reasons suggest that presidents will comply with law far more often than Posner and Vermeule imply. And analysis of those reasons might also point us to understanding better the contexts in which presidents are less likely to comply (either by invoking disingenuous or wholly unpersuasive legal interpretations or by defying the law outright).¶ The Posner and Vermeule approach is characteristic of a general approach to assessing public institutions and the behavior of judges, legislators, presidents, and other public officials that has emerged re- cently within legal scholarship. Under the influence of rational-choice theory and empirical social science from other disciplines, such as po- litical science and economics, some public law scholarship has shifted to trying to predict and understand the behavior of public officials wholly in terms of the material incentives to which they are posited to respond. These incentives include the power of effective sanctions other actors can impose on public officials who deviate from those ac- tors’ preferred positions. In this general rational-choice approach, considerations of morality or duty internal to the legal system do not motivate public actors. Indeed, in the case of Posner and Vermeule’s book, that is more the working assumption of the approach than a fact that the theories actually prove. Public officials do not follow the law out of any felt normative sense of official or moral obligation. In what they view as hard-headed realism, scholars like Posner and Vermeule believe a more external perspective is required to understand presiden- tial behavior. All that matters, from this vantage point, are the conse- quences that will or will not flow from compliance or defiance and manipulation of the law. If other actors, including Congress, thecourts, or “the public” (whatever that might mean, precisely) will ac- cept an action, the President will be able to do it; if not, his credibility and power will be undermined. It is that externally oriented cost- benefit calculation — not the law and not any internal sense of obliga- tion to obey the law — that determines how presidents act in fact. Thus, “politics,” not “law,” determines how much discretion presidents actually have.¶ This approach to presidential power finds its analog in the way a number of constitutional law scholars have come to portray the behav- ior of the Supreme Court. These scholars, such as Professors Michael Klarman,70 Barry Friedman,71 Jack Balkin,72 and others, have asserted various versions of what I call the “majoritarian thesis”73: the claim that Court decisions are constrained to reflect the policy preferences of national political majorities (or national political elite majorities), ra- ther than the outcomes that good-faith internal elaboration of legal doctrine would compel based on normative considerations about ap- propriate methods of legal reasoning and interpretation. In some ver- sions of the majoritarian thesis, these potential external sanctions im- pose outer boundaries on the degrees of freedom the Court has; within those boundaries, the Court remains free to act on its own considera- tions, including perhaps purely legal ones as viewed from an internal perspective. In other versions, the Court is cast as almost mirroring the preferences of national political majorities. Here, too, the behavior of the Court is seen as based less on internal, legal considerations and more on the anticipated external reactions to decisions.¶ At an even broader theoretical level, Professor Daryl Levinson has employed the same kind of purely consequentialist framework to ana- lyze what he calls the “puzzle” of the stability and effectiveness in general of constitutional law.74 Constitutional law decisions often frus-trate the preferences of political majorities. As Levinson puts it, the question of why those majorities do or should ever abide by such deci- sions is much like the question of why presidents do or should abide by law. For Levinson, as for Posner and Vermeule, legal compliance, to the extent that it occurs, cannot be explained by more traditional accounts of the normative force of law or by the sense that courts are politically legitimate institutions whose authority ought to be accepted for that reason. Instead, the explanation must lie in considerations ex- ternal to the legal system, such as the material incentives other actors have to obey, or ignore, Court decisions. Levinson then catalogues an array of material incentives political majorities confront in deciding whether to follow Court decisions whose outcomes they dislike; the re- sulting cost-benefit calculations end up making compliance with Court decisions usually the “rational” course of action even for disappointed political majorities (at least in well-functioning constitutional sys- tems).75 Thus, the rational-choice and normative views end up con- verging in practice. And presumably, most actors do not actually run through these consequentialist calculations in deciding whether to obey particular Court decisions. Instead, these calculations lie deep beneath the surface of much larger systems of education, socialization, public discourse, and the like; most individuals, including public officials, comply with Court decisions unreflectively, because it is the “right” thing to do. But the rational-choice framework leaves open the possi- bility that, at any given moment, the actors the Court’s decision lim- its — the President, Congress, state legislatures, or others — could mobilize the underlying cost-benefit calculations that otherwise lie la- tent and conclude that, this time around, refusal to abide by the law is the more “rational” course.¶ But as Levinson’s work helps to show, even on its own terms, Pos- ner and Vermeule’s approach offers an incomplete account of the role of law. Levinson’s work, for example, is devoted to showing why con- stitutional law will be followed, even by disappointed political majori- ties, for purely instrumental reasons, even if those majorities do not experience any internal sense of duty to obey. He identifies at least six rational-choice mechanisms that will lead rational actors to adhere to constitutional law decisions of the Supreme Court: coordination, repu- tation, repeat-play, reciprocity, asset-specific investment, and positive political feedback mechanisms.76 No obvious reason exists to explain why all or some of these mechanisms would fail to lead presidents sim- ilarly to calculate that compliance with the law is usually important to a range of important presidential objectives. At the very least, for ex- ample, the executive branch is an enormous organization, and for in- ternal organizational efficacy, as well as effective cooperation with other parts of the government, law serves an essential coordination function that presidents and their advisors typically have an interest in respecting. There is a reason executive branch departments are staffed with hundreds of lawyers: while Posner and Vermeule might cynically speculate that the reason is to figure out how to circumvent the law artfully, the truth, surely, is that law enables these institutions to func- tion effectively, both internally and in conjunction with other institu- tions, and that lawyers are there to facilitate that role. In contrast to Posner and Vermeule, who argue that law does not constrain, and who then search for substitute constraints, scholars like Levinson establish that rational-choice theory helps explain why law does constrain. In- deed, as Posner and Vermeule surely know, there is a significant litera- ture within the rational-choice framework that explains why powerful political actors would agree to accept and sustain legal constraints on their power, including the institution of judicial review.77

#### 7. Legal reforms restrain the cycle of violence and prevent error replication

Colm O’Cinneide 8, Senior Lecturer in Law at University College London, “Strapped to the Mast: The Siren Song of Dreadful Necessity, the United Kingdom Human Rights Act and the Terrorist Threat,” Ch 15 in Fresh Perspectives on the ‘War on Terror,’ ed. Miriam Gani and Penelope Mathew, <http://epress.anu.edu.au/war_terror/mobile_devices/ch15s07.html>

This ‘symbiotic’ relationship between counter-terrorism measures and political violence, and the apparently inevitable negative impact of the use of emergency powers upon ‘target’ communities, would indicate that it makes sense to be very cautious in the use of such powers. However, the impact on individuals and ‘target’ communities can be too easily disregarded when set against the apparent demands of the greater good. Justice Jackson’s famous quote in Terminiello v Chicago [111] that the United States Bill of Rights should not be turned into a ‘suicide pact’ has considerable resonance in times of crisis, and often is used as a catch-all response to the ‘bleatings’ of civil libertarians.[112] The structural factors discussed above that appear to drive the response of successive UK governments to terrorist acts seem to invariably result in a depressing repetition of mistakes.¶ However, certain legal processes appear to have some capacity to slow down the excesses of the counter-terrorism cycle. What is becoming apparent in the UK context since 9/11 is that there are factors at play this time round that were not in play in the early years of the Northern Irish crisis. A series of parliamentary, judicial and transnational mechanisms are now in place that appear to have some moderate ‘dampening’ effect on the application of emergency powers.¶ This phrase ‘dampening’ is borrowed from Campbell and Connolly, who have recently suggested that law can play a ‘dampening’ role on the progression of the counter-terrorism cycle before it reaches its end. Legal processes can provide an avenue of political opportunity and mobilisation in their own right, whereby the ‘relatively autonomous’ framework of a legal system can be used to moderate the impact of the cycle of repression and backlash. They also suggest that this ‘dampening’ effect can ‘re-frame’ conflicts in a manner that shifts perceptions about the need for the use of violence or extreme state repression.[113] State responses that have been subject to this dampening effect may have more legitimacy and generate less repression: the need for mobilisation in response may therefore also be diluted.

#### 8. Obama would comply with the court

Stephen I. Vladeck 9, Professor of Law and Associate Dean for Scholarship at American University Washington College of Law, senior editor of the peer-reviewed Journal of National Security Law and Policy, Supreme Court Fellow at the Constitution Project, and fellow at the Center on National Security at Fordham University School of Law, JD from Yale Law School, 3-1-2009, “The Long War, the Federal Courts, and the Necessity / Legality Paradox,” http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1002&context=facsch\_bkrev

Moreover, even if one believes that suspensions are unreviewable, there is a critical difference between the Suspension Clause and the issue here: at least with regard to the former, there is a colorable claim that the Constitution itself ousts the courts from reviewing whether there is a “Case[ ] of Rebellion or Invasion [where] the public Safety may require” suspension––and even then, only for the duration of the suspension.179 In contrast, Jackson’s argument sounds purely in pragmatism—courts should not review whether military necessity exists because such review will lead either to the courts affirming an unlawful policy, or to the potential that the political branches will simply ignore a judicial decision invalidating such a policy.180 Like Jackson before him, Wittes seems to believe that the threat to liberty posed by judicial deference in that situation pales in comparison to the threat posed by judicial review. ¶ The problem is that such a belief is based on a series of assumptions that Wittes does not attempt to prove. First, he assumes that the executive branch would ignore a judicial decision invalidating action that might be justified by military necessity.181 While Jackson may arguably have had credible reason to fear such conduct (given his experience with both the Gold Clause Cases182 and the “switch in time”),183 a lot has changed in the past six-and-a-half decades, to the point where I, at least, cannot imagine a contemporary President possessing the political capital to squarely refuse to comply with a Supreme Court decision. But perhaps I am naïve.184

#### 9. Legal restraints work – the theory of the exception is self-serving and wrong

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

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

Their kritik creates a false dichotomy between total rejection and oppression—their “all or nothing” alternative dooms coalitions and closes off space for political activism

Krishna ’93 [Sankaran, Dept. of Polit. Sci., Alternatives, 1993]

The dichotomous choice presented in this excerpt is straightforward: one either indulges in total critique, delegitimizing all sovereign truths, or one is committed to “nostalgic”, essential unities that have become obsolete and have been the grounds for all our oppressions. In offering this dichotomous choice, Der Derian replicates a move made by Chaloupka in his equally dismissive critique of the more mainstream nuclear oppression, the Nuclear freeze movement of the early 1980s, that according to him, was operating along obsolete lines emphasizing “facts” and “realities” while a “postmodern” President Reagan easily outflanked them through an illusory Star Wars program. (See KN: chapter 4)Chaloupka centers this difference between his own supposedly total critique of all sovereign truths (which he describes as nuclear criticism in an echo of literary criticism) and the more partial (and issue-based) criticism of what he calls “nuclear opposition” or “antinuclearists” at the very outset of his book. (KN: xvi) Once again, the unhappy choice forced upon the reader is to join Chaloupka in his total critique of sovereign truths or be trapped in obsolete essentialisms.This leads to a disastrous politics, pitting groups that have the most in common (and need to unite on some basis to be effective) against each other. Both Chaloupka and Der Derian thus reserve their most trenchant critique for political groups that should, in any analysis, be regarded as the closest to them in terms of an oppositional politics and their desired futures. Instead of finding ways to live with these differences and to (if fleetingly) coalesce against the New Right, this fratricidal critique is politically suicidal. It obliterates the space for a political activism based on provisional and contingent coalitions, for uniting behind a common cause even as one recognizes that the coalition is comprised of groups that have very differing (and possibly unresolvable) views of reality.¶ Moreover, it fails to consider the possibility that there may have been other, more compelling reasons for the “failure” of the Nuclear Freedom movement or anti-Gulf War movement. Like many a worthwhile cause in our times, they failed to garner sufficient support to influence state policy. The response to that need not be a totalizing critique that delegitimizes all narratives.The blackmail inherent in the choice offered by Der Derian and Chaloupka, between total critique and “ineffective” partial critique, ought to be transparent. Among other things, it effectively militates against the construction of provisional or strategic essentialisms in our attempts to create space for an activist politics. In the next section, I focus more widely on the genre of critical international theory and its impact on such an activist politics

### 2AC – K Apoc

#### 2 Relying on the heuristic of scenario planning is best – it allows us to cope with complex systems and use that complexity to our advantage

Gorka et al 12 (Dr. Sebastian L. V., Director of the Homeland Defense Fellows Program at the College of International Security Affairs, National Defense University, teaches Irregular Warfare and US National Security at NDU and Georgetown, et al., Spring 2012, “The Complexity Trap,” Parameters, <http://www.carlisle.army.mil/USAWC/parameters/Articles/2012spring/Gallagher_Geltzer_Gorka.pdf>)

Once we abandon complexity and begin to talk of prioritization, diffusion of power, and speed of change, we start to see that there is a deep irony in the complexity trap. Proclaiming complexity to be the bedrock principle of today’s approach to strategy indicates a failure to understand that the very essence of strategy is that it allows us to cope with complexity—or at least good strategy does. Strategy is a commitment to a particular course of action, a heuristic blade that allows us to cut through large amounts of data with an overriding vision of how to connect certain available means with certain desired ends. **By winnowing the essential from the extraneous, such heuristics often outperform more complicated approaches to complex** (or even allegedly “wicked”) **problems that end up being computationally intractable**. **The more complex the system, the more important it is to rely on heuristics to deal with it**. Whether through the use of heuristics or otherwise, **the ability to peer through seemingly impenetrable complexity and to identify underlying patterns and trends is richly rewarded when others remain confused or intimidated by the apparent inscrutability of it all**—especially when that ability is coupled with a recognition that **small changes can have a big impact when amplified throughout an interconnected system**. If complexity, whether real or perceived, is truly the defining characteristic of the current strategic environment, then we should be witnessing a corresponding renaissance in grand strategy design and longterm strategic planning. 40 Not so, unfortunately—or at least not yet. More to the point, **because strategy copes with complexity, complexity actually rewards truly strategic actors**. Those who are prepared, organized, and rich in physical and human capital can exploit complexity to secure their interests. For example, **international regime complexity enables “chessboard politics**” whereby strategic actors can shop among forums for the best international venue to promote their policy preferences or can use cross-institutional political strategies to achieve a desired outcome. 41 Due to its high concentration of technical and legal expertise, the United States is ideally suited to exploit this complexity and to thrive in an age of chessboard politics. 42 The first step is replacing the current reactive worship of complexity with proactive prioritization. To escape the complexity trap, let us dare to decide—that is, let us strategize.

#### 3. Threats aren’t arbitrary – can’t throw out security or wish away threatening postures

Knudsen 1Olav. F. Knudsen, Prof @ Södertörn Univ College, ‘1 [Security Dialogue 32.3, “Post-Copenhagen Security Studies: Desecuritizing  Securitization,” p. 360]

In the post-Cold War period,  agenda-setting has been much easier to influence than the securitization approach assumes. That change cannot be credited to the concept; the change in  security politics was already taking place in defense ministries and parlia-  ments before the concept was first launched. Indeed, securitization in my view  is more appropriate to the security politics of the Cold War years than to the  post-Cold War period.  Moreover, I have a problem with the underlying implication that it is unim-  portant whether states ‘really’ face dangers from other states or groups. In the  Copenhagen school, threats are seen as coming mainly from the actors’ own  fears, or from what happens when the fears of individuals turn into paranoid  political action. In my view, this emphasis on the subjective is a misleading  conception of threat, in that it discounts an independent existence for what-  ever is perceived as a threat. Granted, political life is often marked by misper-  ceptions, mistakes, pure imaginations, ghosts, or mirages, but such phenom-  ena do not occur simultaneously to large numbers of politicians, and hardly most of the time. During the Cold War, threats – in the sense of plausible  possibilities of danger – referred to ‘real’ phenomena, and they refer to ‘real’  phenomena now. The objects referred to are often not the same, but that is a  different matter. Threats have to be dealt with both in terms of perceptions and in  terms of the phenomena which are perceived to be threatening.  The point of Wæver’s concept of security is not the potential existence of  danger somewhere but the use of the word itself by political elites. In his 1997  PhD dissertation, he writes, ‘One can view “security” as that which is in  language theory called a speech act: it is not interesting as a sign referring to  something more real – it is the utterance itself that is the act.’   The deliberate  disregard of objective factors is even more explicitly stated in Buzan & Wæver’s joint article of the same year.   As a consequence, the phenomenon of  threat is reduced to a matter of pure domestic politics.   It seems to me that the  security dilemma, as a central notion in security studies, then loses its founda-  tion. Yet I see that Wæver himself has no compunction about referring to the  security dilemma in a recent article.  This discounting of the objective aspect of threats shifts security studies to  insignificant concerns. What has long made ‘threats’ and ‘threat perceptions’  important phenomena in the study of IR is the implication that urgent action  may be required. Urgency, of course, is where Wæver first began his argu-  ment in favor of an alternative security conception, because a convincing sense  of urgency has been the chief culprit behind the abuse of ‘security’ and the  consequent ‘politics of panic’, as Wæver aptly calls it.   Now, here – in the case  of urgency – another baby is thrown out with the Wæverian bathwater. When  real situations of urgency arise, those situations are challenges to democracy;  they are actually at the core of the problematic arising with the process of  making security policy in parliamentary democracy. But in Wæver’s world,  threats are merely more or less persuasive, and the claim of urgency is just an-  other argument. I hold that instead of ‘abolishing’ threatening phenomena  ‘out there’ by reconceptualizing them, as Wæver does, we should continue  paying attention to them, because situations with a credible claim to urgency  will keep coming back and then we need to know more about how they work  in the interrelations of groups and states (such as civil wars, for instance), not  least to find adequate democratic procedures for dealing with them.

#### 6. Our speech is necessary discourse – combating complacency is crucial to halting certain and inevitable extinction

Epstein and Zhao 09 (Richard J. Epstein and Y. Zhao ‘9 – Laboratory of Computational Oncology, Department of Medicine, University of Hong Kong, The Threat That Dare Not Speak Its Name; Human Extinction, Perspectives in Biology and Medicine Volume 52, Number 1, Winter 2009, Muse)

We shall not speculate here as to the “how and when” of human extinction; rather, we ask why there remains so little discussion of this important topic. We hypothesise that a lethal mix of ignorance and denial is blinding humans from the realization that our own species could soon (a relative concept, admittedly) be as endangered as many other large mammals (Cardillo et al. 2004). For notwithstanding the “overgrown Petri dish” model of human decline now confronting us, the most sinister menace that we face may not be extrinsic selection pressures but complacency. Entrenched in our culture is a knee-jerk “boy who cried wolf ” skepticism aimed at any person who voices concerns about the future—a skepticism fed by a traditionally bullish, growth-addicted economy that eschews caution (Table 1). But the facts of extinction are less exciting and newsworthy than the roller-coaster booms and busts of stock markets.

#### 7. Perm do both – the K is not a reason to banish our language – the most radical alternative is to use concepts and put them under erasure at the same time

Butler, 2k

(Judith, Professor of Rhetoric at Berkeley, “Contingency, Hegemony, Universality”, pg. 263-264, accessed through googlebooks)

In my view, an understanding of radicalism, whether conceived as political or theoretical or both, requires an inquiry into the presuppositions of its own enterprise. In the case of theory, this radical interrogation must take as its object the transcendental form that theory sometimes takes. One might think that to ask, radically, after presuppositions is of necessity to enter into a transcendental activity, asking about the generalized conditions of possibility according to which the field of knowable objects is constituted. But it seems to me that even this presupposition must be questioned, and that the form of this question ought not to be taken for granted. Although it has been said many times by now, it probably bears repeating: to question a form of activity or a conceptual terrain is not to banish or censor it; it is, for the duration, to suspend its ordinary play in order to ask after its constitution. I take it that this was the phenomenological transcription of Kant to be found in Husserl’s notion of the epoche, and that it provided the important backdrop for Derrida’s own procedure of ‘placing a concept under erasure’. I would only add, in the spirit of more recent forms of affirmative deconstruction, that a concept can be put under erasure and played at the same time; that there is no reason, for instance, not to continue to interrogate and to use the concept of universality. There is, however, a hope that the critical interrogation of the term will condition a more effective use of it, especially considering the criticisms of it spurious formulations that have been rehearsed with great justification in recent years postcolonial, feminist, and cultural studies.

#### 8. Discussing existential risks is key to prevent neglectful attitudes toward them

Bostrom 2(Nick Professor of Philosophy and Global Studies at Yale.. www.transhumanist.com/volume9/risks.html.)

**Existential risks have** a cluster of **features that make it useful to identify them as a special category**: **the extreme magnitude of the harm** that would come from an existential disaster; **the futility of the trial-and-error approach; the lack of** evolved biological and cultural **coping methods;** the fact that existential risk dilution is a global public good; **the shared stakeholdership of all future generations**; the international nature of many of the required countermeasures; **the** necessarily highly **speculative** and multidisciplinary **nature of the topic**; the subtle and diverse methodological problems involved in assessing the probability of existential risks; **and the** comparative **neglect** of the whole area. From our survey of the most important existential risks and their key attributes, **we can** **extract** tentative **recommendations for ethics and policy: We need more research into existential risks** – detailed studies of particular aspects of specific risks as well as more general investigations of associated ethical, methodological, security and policy issues. Public awareness should also be built up so that constructive political debate about possible countermeasures becomes possible. Now, it’s a commonplace that researchers always conclude that more research needs to be done in their field. But in this instance it is *really* true. **There is more scholarly work on the** life-habits of the **dung fly than on existential risks.** Since existential risk reduction is a global public good, there should ideally be an institutional framework such that the cost and responsibility for providing such goods could be shared fairly by all people. Even if the costs can’t be shared fairly, **some system that leads to the provision of existential risk reduction** in something approaching optimal amounts **should be attempted.** The necessity for international action goes beyond the desirability of cost-sharing, however. Many existential risks simply cannot be substantially reduced by actions that are internal to one or even most countries. For example, even if a majority of countries pass and enforce national laws against the creation of some specific destructive version of nanotechnology, will we really have gained safety if some less scrupulous countries decide to forge ahead regardless? And strategic bargaining could make it infeasible to bribe all the irresponsible parties into subscribing to a treaty, even if everybody would be better off if everybody subscribed [14,42].

#### 10. Discourse doesn’t matter – forcing others to adopt certain discourse destroys the project

Elshtain 82 [Jean Bethke Elshtain is an award-winning professor of social and political ethics at the University of Chicago. She holds administratiuve positions at U Chicago and Georgetown University. She is a fellow at Princeton and multiple other universities. She is on the Presiden’t Concil for Bioethics. She has written and lectured widely. She has nearly 50 years of experience in the social sciences. ] “Feminist Discourse and Its Discontents: Language, Power, and Meaning.” *Signs* 7.3 (1982): 603-21. Web. DA 6/29/11. http://www.jstor.org/stable/pdfplus/3173857.pdf?acceptTC=true

What is the Hobbesian basis for the Great Silence, his solution to our public and private travail? All individuals are cursed with "a perpetual and restless desire of power after power, that ceaseth only in death."'0 Though God is the first author of speech, man cannot rely on human words to bring order: "The bonds of words are too weak to girdle men's ambition, avarice, anger, and other passions, without the fear of some coercive power."" Not only are words "too weak," they are a positive inducement to private avarice and public sedition. Human speech is riddled with ab- surdity and senselessness, a "sort of madness when words have no signification,"'2 when names are full of sound and fury but signify nothing. This accursed abuse of words has no meaning and bears no truth: it is, for Hobbes, babbling and "wandering amongst innumerable absurdities" of metaphor and ambiguity. But to silence seditious speech, public and private language must be controlled. All human beings must be passive subjects and, wholly subjected, must quell the inner voices of passion and disarticulate the connection between thought-speech-action. To defuse the power within, Hobbes would impose upon us a new vo- cabulary: one disimpassioned, neutral, "scientific."'3 Hobbes's search for "truth" along radical nominalist criteria erodes meaning to human subjects of their own lives

MARK

and experience which can no longer be couched in ordinary language but must, like everything else that "can intelligibly be said ... be reducible to a statement about the motion of a material substance."14 All children and all citizens must be taught this scientific language, all must be indoctrinated in "the right ordering of names."15 Human discourse begins and ends, for Hobbes, not with a restless search for meaning but with correct definitions of words shorn of meaning. The notion that the Hobbesian vocabulary, given its reductive mechanistic quality, is somehow "neutral" is a dangerous view that sanctions the silencing of human speech by the all powerful: those with the power to "name names." To that single will and voice, the mortal God, Hobbes's subjects must surrender their plurality of wills and voices. The poison of seditious doctrines is eradicated. The absurdity of private babbling ceases.