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#### Obama singularly focused on the fiscal crisis—his political capital will resolve it before shutdown and default

Jonathan Allen, Politico, 9/19/13, GOP battles boost President Obama, dyn.politico.com/printstory.cfm?uuid=17961849-5BE5-43CA-B1BC-ED8A12A534EB

There’s a simple reason President Barack Obama is using his bully pulpit to focus the nation’s attention on the battle over the budget: In this fight, he’s watching Republicans take swings at each other.

And that GOP fight is a lifeline for an administration that had been scrambling to gain control its message after battling congressional Democrats on the potential use of military force in Syria and the possible nomination of Larry Summers to run the Federal Reserve.

If House Republicans and Obama can’t cut even a short-term deal for a continuing resolution, the government’s authority to spend money will run out on Oct. 1. Within weeks, the nation will default on its debt if an agreement isn’t reached to raise the federal debt limit.

For some Republicans, those deadlines represent a leverage point that can be used to force Obama to slash his health care law. For others, they’re a zero hour at which the party will implode if it doesn’t cut a deal.

Meanwhile, “on the looming fiscal issues, Democrats — both liberal and conservative, executive and congressional — are virtually 100 percent united,” said Sen. Charles Schumer (D-N.Y.).

Just a few days ago, all that Obama and his aides could talk about were Syria and Summers. Now, they’re bringing their party together and shining a white hot light on Republican disunity over whether to shut down the government and plunge the nation into default in a vain effort to stop Obamacare from going into effect.

The squabbling among Republicans has gotten so vicious that a Twitter hashtag — #GOPvsGOPugliness — has become a thick virtual data file for tracking the intraparty insults. Moderates, and even some conservatives, are slamming Texas Sen. Ted Cruz, a tea party favorite, for ramping up grassroots expectations that the GOP will shut down the government if it can’t win concessions from the president to “defund” his signature health care law.

“I didn’t go to Harvard or Princeton, but I can count,” Sen. Bob Corker (R-Tenn.) tweeted, subtly mocking Cruz’s Ivy League education. “The defunding box canyon is a tactic that will fail and weaken our position.”

While it is well-timed for the White House to interrupt a bad slide, Obama’s singular focus on the budget battle is hardly a last-minute shift. Instead, it is a return to the narrative arc that the White House was working to build before the Syria crisis intervened.

And it’s so important to the president’s strategy that White House officials didn’t consider postponing Monday’s rollout of the most partisan and high-stakes phase even when a shooter murdered a dozen people at Washington’s Navy Yard that morning.

The basic storyline, well under way over the summer, was to have the president point to parts of his agenda, including reducing the costs of college and housing, designed to strengthen the middle class; use them to make the case that he not only saved the country from economic disaster but is fighting to bolster the nation’s finances on both the macro and household level; and then argue that Republicans’ desire to lock in the sequester and leverage a debt-ceiling increase for Obamacare cuts would reverse progress made.

The president is on firm ground, White House officials say, because he stands with the public in believing that the government shouldn’t shut down and that the country should pay its bills.

#### The plan causes an inter-branch fight that derails Obama’s agenda

Douglas Kriner, Assistant Profess of Political Science at Boston University, 2010, After the Rubicon: Congress, Presidents, and the Politics of Waging War, p. 67-69

Raising or Lowering Political Costs by Affecting Presidential Political Capital

Shaping both real and anticipated public opinion are two important ways in which Congress can raise or lower the political costs of a military action for the president. However, focusing exclusively on opinion dynamics threatens to obscure the much broader political consequences of domestic reaction—particularly congressional opposition—to presidential foreign policies. At least since Richard Neustadt's seminal work Presidential Power, presidency scholars have warned that costly political battles in one policy arena frequently have significant ramifications for presidential power in other realms. Indeed, two of Neustadt's three "cases of command"—Truman's seizure of the steel mills and firing of General Douglas MacArthur—explicitly discussed the broader political consequences of stiff domestic resistance to presidential assertions of commander-in-chief powers. In both cases, Truman emerged victorious in the case at hand—yet, Neustadt argues, each victory cost Truman dearly in terms of his future power prospects and leeway in other policy areas, many of which were more important to the president than achieving unconditional victory over North Korea."

While congressional support leaves the president's reserve of political capital intact, congressional criticism saps energy from other initiatives on the home front by forcing the president to expend energy and effort defending his international agenda. Political capital spent shoring up support for a president's foreign policies is capital that is unavailable for his future policy initiatives. Moreover, any weakening in the president's political clout may have immediate ramifications for his reelection prospects, as well as indirect consequences for congressional races." Indeed, Democratic efforts to tie congressional Republican incumbents to President George W. Bush and his war policies paid immediate political dividends in the 2006 midterms, particularly in states, districts, and counties that had suffered the highest casualty rates in the Iraq War.6°

In addition to boding ill for the president's perceived political capital and reputation, such partisan losses in Congress only further imperil his programmatic agenda, both international and domestic. Scholars have long noted that President Lyndon Johnson's dream of a Great Society also perished in the rice paddies of Vietnam. Lacking both the requisite funds in a war-depleted treasury and the political capital needed to sustain his legislative vision, Johnson gradually let his domestic goals slip away as he hunkered down in an effort first to win and then to end the Vietnam War. In the same way, many of President Bush's highest second-term domestic priorities, such as Social Security and immigration reform, failedperhaps in large part because the administration had to expend so much energy and effort waging a rear-guard action against congressional critics of the war in Iraq.

When making their cost-benefit calculations, presidents surely consider these wider political costs of congressional opposition to their military policies. If congressional opposition in the military arena stands to derail other elements of his agenda, all else being equal, the president will be more likely to judge the benefits of military action insufficient to its costs than if Congress stood behind him in the international arena

#### That spills-over to government shutdown and US default—that kills the economy and US credibility

Norm Ornstein, resident scholar at the American Enterprise Institute, 9/1/13, Showdowns and Shutdowns, www.foreignpolicy.com/articles/2013/09/01/showdowns\_and\_shutdowns\_syria\_congress\_obama

Then there is the overload of business on the congressional agenda when the two houses return on Sept. 9 -with only nine legislative days scheduled for action in the month. We have serious confrontations ahead on spending bills and the debt limit, as the new fiscal year begins on Oct. 1 and the debt ceiling approaches just a week or two thereafter. Before the news that we would drop everything for an intense debate on whether to strike militarily in Syria, Congress-watchers were wondering how we could possibly deal with the intense bargaining required to avoid one or more government shutdowns and/or a real breach of the debt ceiling, with devastating consequences for American credibility and the international economy.

Beyond the deep policy and political divisions, Republican congressional leaders will likely use both a shutdown and the debt ceiling as hostages to force the president to cave on their demands for deeper spending cuts. Avoiding this end-game bargaining will require the unwavering attention of the same top leaders in the executive and legislative branches who will be deeply enmeshed in the Syria debate. The possibility -even probability -of disruptions caused by partial shutdowns could complicate any military actions. The possibility is also great that the rancor that will accompany the showdowns over fiscal policy will bleed over into the debate about America and Syria.

#### New depression causes authoritarianism

Hart, politicalscience @ the University of Michigan, March/April ‘9

(Ronald, Foreign Affairs, How Development Leads to Democracy, p. 26-38)

Thus, other things being equal, high levels of economic development tend to make people more tolerant and trusting, bringing more emphasis on self-expression and more participation in decisionmaking**.** This process is not deterministic, and any forecasts can only be probabilistic, since economic factors are not the only influence; a given country's leaders and nation-specific events also shape what happens. Moreover, modernization is not irreversible. Severe economic collapse can reverse it, as happened during the Great Depression in Germany, Italy, Japan, and Spain and during the 1990s in most of the Soviet successor states. Similarly, if the current economic crisis becomes a twenty-first-century Great Depression, the world could face a new struggle against renewed xenophobia and authoritarianism.

**Nuclear war**

Harris and Burrows ‘9

(Mathew, PhD European History at Cambridge, counselor in the National Intelligence Council (NIC) and Jennifer, member of the NIC’s Long Range Analysis Unit “Revisiting the Future: Geopolitical Effects of the Financial Crisis” <http://www.ciaonet.org/journals/twq/v32i2/f_0016178_13952.pdf>, AM)

Of course, the report encompasses more than economics and indeed believes the future is likely to be the result of a number of intersecting and interlocking forces. With so many possible permutations of outcomes, each with ample Revisiting the Future opportunity for unintended consequences, there is a growing sense of insecurity. Even so, history may be more instructive than ever. While we continue to believe that the Great Depression is not likely to be repeated, the lessons to be drawn from that period include the harmful effects on fledgling democracies and multiethnic societies (think Central Europe in 1920s and 1930s) and on the sustainability of multilateral institutions (think League of Nations in the same period). There is no reason to think that this would not be true in the twenty-first as much as in the twentieth century. For that reason, the ways in which the potential for greater conflict could grow would seem to be even more apt in a constantly volatile economic environment as they would be if change would be steadier. In surveying those risks, the report stressed the likelihood that terrorism and nonproliferation will remain priorities even as resource issues move up on the international agenda. Terrorism’s appeal will decline if economic growth continues in the Middle East and youth unemployment is reduced. For those terrorist groups that remain active in 2025, however, the diffusion of technologies and scientific knowledge will place some of the world’s most dangerous capabilities within their reach. Terrorist groups in 2025 will likely be a combination of descendants of long established groups\_inheriting organizational structures, command and control processes, and training procedures necessary to conduct sophisticated attacks\_and newly emergent collections of the angry and disenfranchised that become self-radicalized, particularly in the absence of economic outlets that would become narrower in an economic downturn. The most dangerous casualty of any economically-induced drawdown of U.S. military presence would almost certainly be the Middle East. Although Iran’s acquisition of nuclear weapons is not inevitable, worries about a nuclear-armed Iran could lead states in the region to develop new security arrangements with external powers, acquire additional weapons, and consider pursuing their own nuclear ambitions. It is not clear that the type of stable deterrent relationship that existed between the great powers for most of the Cold War would emerge naturally in the Middle East with a nuclear Iran. Episodes of low intensity conflict and terrorism taking place under a nuclear umbrella could lead to an **unintended escalation** and broader conflict if clear red lines between those states involved are not well established. The close proximity of potential nuclear rivals combined with underdeveloped surveillance capabilities and mobile dual-capable Iranian missile systems also will produce inherent difficulties in achieving reliable indications and warning of an impending nuclear attack. The lack of strategic depth in neighboring states like Israel, short warning and missile flight times, and uncertainty of Iranian intentions may place more focus on preemption rather than defense, potentially leading to **escalating** **crises**. 36 Types of conflict that the world continues to experience, such as over resources, could reemerge, particularly if protectionism grows and there is a resort to neo-mercantilist practices. Perceptions of renewed energy scarcity will drive countries to take actions to assure their future access to energy supplies. In the worst case, this could result in interstate conflicts if government leaders deem assured access to energy resources, for example, to be essential for maintaining domestic stability and the survival of their regime. Even actions short of war, however, will have important geopolitical implications. Maritime security concerns are providing a rationale for naval buildups and modernization efforts, such as China’s and India’s development of blue water naval capabilities. If the fiscal stimulus focus for these countries indeed turns inward, one of the most obvious funding targets may be military. Buildup of regional naval capabilities could lead to increased tensions, rivalries, and counterbalancing moves, but it also will create opportunities for multinational cooperation in protecting critical sea lanes. With water also becoming scarcer in Asia and the Middle East, cooperation to manage changing water resources is likely to be increasingly difficult both within and between states in a more dog-eat-dog world.

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The affirmative re-inscribes the primacy of liberal legalism as a method of restraint—that paradoxically collapses resistance to Executive excesses.

**Margulies ‘11**

Joseph, Joseph Margulies is a Clinical Professor, Northwestern University School of Law. He was counsel of record for the petitioners in Rasul v. Bush and Munaf v. Geren. He now is counsel of record for Abu Zubaydah, for whose torture (termed harsh interrogation by some) Bush Administration officials John Yoo and Jay Bybee wrote authorizing legal opinions. Earlier versions of this paper were presented at workshops at the American Bar Foundation and the 2010 Law and Society Association Conference in Chicago., Hope Metcalf is a Lecturer, Yale Law School. Metcalf is co-counsel for the plaintiffs/petitioners in Padilla v. Rumsfeld, Padilla v. Yoo, Jeppesen v. Mohammed, and Maqaleh v. Obama. She has written numerous amicus briefs in support of petitioners in suits against the government arising out of counterterrorism policies, including in Munaf v. Geren and Boumediene v. Bush., “Terrorizing Academia,” http://www.swlaw.edu/pdfs/jle/jle603jmarguilies.pdf

In an observation more often repeated than defended, we are told that the attacks of September 11 “changed everything.” Whatever merit there is in this notion, it is certainly true that 9/11—and in particular the legal response set in motion by the administration of President George W. Bush—left its mark on the academy. Nine years after 9/11, it is time to step back and assess these developments and to offer thoughts on their meaning. In Part II of this essay, we analyze the post-9/11 scholarship produced by this “emergency” framing. We argue that legal scholars writing in the aftermath of 9/11 generally fell into one of three groups: unilateralists, interventionists, and proceduralists. Unilateralists argued in favor of tilting the allocation of government power toward the executive because the state’s interest in survival is superior to any individual liberty interest, and because the executive is best able to understand and address threats to the state. Interventionists, by contrast, argued in favor of restraining the executive (principally through the judiciary) precisely to prevent the erosion of civil liberties. Proceduralists took a middle road, informed by what they perceived as a central lesson of American history.1 Because at least some overreaction by the state is an inevitable feature of a national crisis, the most one can reasonably hope for is to build in structural and procedural protections to preserve the essential U.S. constitutional framework, and, perhaps, to minimize the damage done to American legal and moral traditions. Despite profound differences between and within these groups, legal scholars in all three camps (as well as litigants and clinicians, including the authors) shared a common perspective—viz., that repressive legal policies adopted by wartime governments are temporary departures from hypothesized peacetime norms. In this narrative, metaphors of bewilderment, wandering, and confusion predominate. The country “loses its bearings” and “goes astray.” Bad things happen until at last the nation “finds itself” or “comes to its senses,” recovers its “values,” and fixes the problem. Internment ends, habeas is restored, prisoners are pardoned, repression passes. In a show of regret, we change direction, “get back on course,” and vow it will never happen again. Until the next time, when it does. This view, popularized in treatments like All the Laws but One, by the late Chief Justice Rehnquist,2 or the more thoughtful and thorough discussion in Perilous Times by Chicago’s Geoffrey Stone,3 quickly became the dominant narrative in American society and the legal academy. **This narrative also figured heavily in the many challenges to Bush-era policies,** including by the authors. The narrative permitted litigators and legal scholars to draw upon what elsewhere has been referred to as America’s “civic religion”4 and to cast the courts in the role of hero-judges5 **whom we hoped would restore legal order.**6 But by framing the Bush Administration’s response as the latest in a series of regrettable but temporary deviations from a hypothesized liberal norm, the legal academy ignored the more persistent, and decidedly illiberal, authoritarian tendency in American thought to demonize communal “others” during moments of perceived threat. Viewed in this light, what the dominant narrative identified as a brief departure caused by a military crisis is more accurately seen as part of a recurring process of intense stigmatization tied to periods of social upheaval, of which war and its accompanying repressions are simply representative (and particularly acute) illustrations. It is worth recalling, for instance, that the heyday of the Ku Klux Klan in this country, when the organization could claim upwards of 3 million members, was the early-1920s, and that the period of greatest Klan expansion began in the summer of 1920, almost immediately after the nation had “recovered” from the Red Scare of 1919–20.7 Klan activity during this period, unlike its earlier and later iterations, focused mainly on the scourge of the immigrant Jew and Catholic, and flowed effortlessly from the anti-alien, anti-radical hysteria of the Red Scare. Yet this period is almost entirely unaccounted for in the dominant post-9/11 narrative of deviation and redemption, which in most versions glides seamlessly from the madness of the Red Scare to the internment of the Japanese during World War II.8 And because we were studying the elephant with the wrong end of the telescope, we came to a flawed understanding of the beast. In Part IV, we argue that the interventionists and unilateralists came to an incomplete understanding by focusing almost exclusively on what Stuart Scheingold called “the myth of rights”—the belief that if we can identify, elaborate, and secure judicial recognition of the legal “right,” **political structures and policies will adapt their behavior to the requirements of the law** and change will follow more or less automatically.9 Scholars struggled to define the relationship between law and security primarily through exploration of structural10 and procedural questions, and, to a lesser extent, to substantive rights. And they examined the almost limitless number of subsidiary questions clustered within these issues. Questions about the right to habeas review, for instance, generated a great deal of scholarship about the handful of World War II-era cases that the Bush Administration relied upon, including most prominently Johnson v. Eisentrager and Ex Parte Quirin. 11 Regardless of political viewpoint, a common notion among most unilateralist and interventionist scholars was that when law legitimized or delegitimized a particular policy, **this would have a direct and observable effect on actual behavior**. The premise of this scholarship, in other words, was that policies “struck down” by the courts, or credibly condemned as lawless by the academy, would inevitably be changed—and that this should be the focus of reform efforts. Even when disagreement existed about the substance of rights or even which branch should decide their parameters, it reflected shared acceptance of the primacy of law, often to the exclusion of underlying social or political dynamics. Eric Posner and Adrian Vermeule, for instance, may have thought, unlike the great majority of their colleagues, that the torture memo was “standard fare.”12 But their position nonetheless accepted the notion that if the prisoners had a legal right to be treated otherwise, then the torture memo authorized illegal behavior and must be given no effect.13 Recent developments, however, cast doubt on two grounding ideas of interventionist and unilateralist scholarship—viz., that post-9/11 policies were best explained as responses to a national crisis (and therefore limited in time and scope), and that the problem was essentially legal (and therefore responsive to condemnation by the judiciary and legal academy). One might have reasonably predicted that in the wake of a string of Supreme Court decisions limiting executive power, apparently widespread and bipartisan support for the closure of Guantánamo during the 2008 presidential campaign, and the election of President Barack Obama, which itself heralded a series of executive orders that attempted to dismantle many Bush-era policies, the nation would be “returning” to a period of respect for individual rights and the rule of law. Yet the period following Obama’s election has been marked by an increasingly retributive and venomous narrative surrounding Islam and national security. **Precisely when the dominant narrative would have predicted change** and redemption, we have seen retreat and retrenchment. This conundrum is not adequately addressed by dominant strands of post-9/11 legal scholarship. In retrospect, it is surprising that much post-9/11 scholarship appears to have set aside critical lessons from previous decades as to the relationship among law, society and politics.14 Many scholars have long argued in other contexts that rights—or at least the experience of rights—are subject to political and social constraints, particularly for groups subject to historic marginalization. Rather than self-executing, rights are better viewed as contingent political resources, capable of mobilizing public sentiment and generating social expectations.15 From that view, a victory in Rasul or Boumediene no more guaranteed that prisoners at Guantánamo would enjoy the right to habeas corpus than a victory in Brown v. Board16 guaranteed that schools in the South would be desegregated.17 Rasul and Boumediene, therefore, should be seen as part (and probably only a small part) of a varied and complex collection of events, including the fiasco in Iraq, the scandal at the Abu Ghraib prison, and the use of warrantless wiretaps, as well as seemingly unrelated episodes like the official response to Hurricane Katrina. These and other events during the Bush years merged to give rise to a powerful social narrative critiquing an administration committed to lawlessness, content with incompetence, and engaged in behavior that was contrary to perceived “American values.”18 Yet the very success of this narrative, culminating in the election of Barack Obama in 2008, produced quiescence on the Left, even as it stimulated massive opposition on the Right. The result has been the emergence of a counter-narrative about national security that has produced a vigorous social backlash such that most of the Bush-era policies will continue largely unchanged, at least for the foreseeable future.19 Just as we see a widening gap between judicial recognition of rights in the abstract and the observation of those rights as a matter of fact, there appears to be an emerging dominance of proceduralist approaches, which take as a given that rights dissolve under political pressure, and, thus, are best protected by basic procedural measures. But that stance falls short in its seeming readiness to trade away rights in the face of political tension. First, it accepts the tropes du jour surrounding radical Islam—namely, that it is a unique, and uniquely apocalyptic, threat to U.S. security. In this, proceduralists do not pay adequate heed to the lessons of American history and sociology. And second, it endorses too easily the idea that procedural and structural protections will protect against substantive injustice in the face of popular and/or political demands for an outcome-determinative system that cannot tolerate acquittals. Procedures only provide protection, however, if there is sufficient political support for the underlying right. Since the premise of the proceduralist scholarship is that such support does not exist, it is folly to expect the political branches to create meaningful and robust protections. In short, a witch hunt does not become less a mockery of justice when the accused is given the right to confront witnesses. And a separate system (especially when designed for demonized “others,” such as Muslims) cannot, by definition, be equal. In the end, we urge a fuller embrace of what Scheingold called “the politics of rights,” which recognizes the contingent character of rights in American society. We agree with Mari Matsuda, who observed more than two decades ago that rights are a necessary but not sufficient resource for marginalized people with little political capital.20 To be effective, therefore, we must look beyond the courts and grapple with the hard work of long-term change with, through and, perhaps, in spite of law. These are by no means new dilemmas, but the post-9/11 context raises difficult and perplexing questions that deserve study and careful thought as our nation settles into what appears to be a permanent emergency.

Legalism underpins the violence of empire and creates the conditions of possibility for liberal violence.

Dossa ‘99

Shiraz, Department of Political Science, St. Francis Xavier University, Antigonish, Nova Scotia, “Liberal Legalism: Law, Culture and Identity,” The European Legacy, Vol. 4, No. 3, pp. 73-87,1

No discipline in the rationalized arsenal of modernity is as rational, impartial, objective as the province of law and jurisprudence, in the eyes of its liberal enthusiasts. Law is the exemplary countenance of the conscious and calculated rationality of modern life, **it is the** emblematic face of liberal civilization. Law and legal rules symbolize the spirit of science, the march of human progress. As Max Weber, the reluctant liberal theorist of the ethic of rationalization, asserted: judicial formalism enables the legal system to operate like a technically **rational machine**. Thus it guarantees to individuals and groups within the system a relative of maximum of freedom, and greatly increases for them the possibility of predicting the legal consequences of their action. In this reading, law encapsulates the western capacity to bring order to nature and human beings, to turn the ebb and flow of life into a "rational machine" under the tutelage of "judicial formalism".19 Subjugation of the Other races in the colonial empires was motivated by power and rapacity, but it was justified and indeed rationalized, by an appeal to the civilizing influence of religion and law: western Christianity and liberal law. To the imperialist mind, "the civilizing mission of law" was fundamental, though Christianity had a part to play in this program.20 Liberal colonialists visualized law, civilization and progress as deeply connected and basic, they saw western law as neutral, universally relevant and desirable. The first claim was right in the liberal context, the second thoroughly false. In the liberal version, the mythic and irrational, emblems of thoughtlessness and fear, had ruled all life-forms in the past and still ruled the lives of the vast majority of humanity in the third world; in thrall to the majesty of the natural and the transcendent, primitive life flourished in the environment of traditionalism and lawlessness, hallmarks of the epoch of ignorance. By contrast, liberal ideology and modernity were abrasively unmythic, rational and controlled. Liberal order was informed by knowledge, science, a sense of historical progress, a continuously improving future. But this canonical, secular, bracing self-image, is tendentious and substantively illusory: it blithely scants the bloody genealogy and the extant historical record of liberal modernity, liberal politics, and particularly liberal law and its impact on the "lower races" (Hobson). In his Mythology of Modern Law, Fitzpatrick has shown that the enabling claims of liberalism, specifically of liberal law, are not only untenable but implicated in canvassing a racist justification of its colonial past and in eliding the racist basis of the structure of liberal jurisprudence.21 Liberal law is mythic in its presumption of its neutral, objective status. Specifically, the liberal legal story of its immaculate, analytically pure origin obscures and veils not just law's own ruthless, violent, even savage and disorderly trajectory, but also its constitutive association with imperialism and racism.22 In lieu of the transcendent, divine God of the "lower races", modern secular law postulated the gods of History, Science, Freedom. Liberal law was to be the instrument for realizing the promise of progress that the profane gods had decreed. Fitzpatrick's invasive surgical analysis lays bare the underlying logic of law's self-articulation in opposition to the values of cultural-racial Others, and its strategic, continuous reassertion of liberalism's superiority and the civilizational indispensability of liberal legalism. Liberal law's self-presentation presupposes a corrosive, debilitating, anarchic state of nature inhabited by the racial Others and lying in wait at the borders of the enlightened modern West. This mythological, savage Other, creature of raw, natural, unregulated fecundity and sexuality, justified the liberal conquest and control of the racially Other regions.23 Law's violence and resonant savagery on behalf of the West in its imperial razing of cultures and lands of the others, has been and still is, justified in terms of the necessary, beneficial spread of liberal civilization. Fitzpatrick's analysis parallels the impassioned deconstruction of this discourse of domination initiated by Edward Said's Orientalism, itself made possible by the pioneering analyses of writers like Aime Cesaire and Frantz Fanon. Fitzpatrick's argument is nevertheless instructive: his focus on law and its machinations unravels the one concrete province of imperial ideology that is centrally modern and critical in literally transforming and refashioning the human nature of racial Others. For liberal law carries on its back the payload of "progressive", pragmatic, **instrumental modernity**, its ideals of order and rule of law, its articulation of human rights and freedom, its ethic of procedural justice, its hostility to the sacred, to transcendence or spiritual complexity, its recasting of politics as the handmaiden of the nomos, its valorization of scientism and rationalization in all spheres of modern life. Liberal law is not synonymous with modernity tout court, but it is the exemplary voice of its rational spirit, **the custodian of its civilizational ambitions.** For the colonized Others, no non-liberal alternative is available: a non-western route to economic progress is inconceivable in liberal-legal discourse. For even the truly tenacious in the third world will never cease to be, in one sense or another, the outriders of modernity: their human condition condemns them to **playing perpetual catch-up**, eternally subservient to Western economic and technological superiority in a epoch of self-surpassing modernity.24 If the racially Other nations suffer exclusion globally, the racially other minorities inside the liberal loop enjoy the ambiguous benefits of inclusion. As legal immigrants or refugees, they are entitled to the full array of rights and privileges, as citizens (in Canada, France, U.K., U.S—Germany is the exception) they acquire civic and political rights as a matter of law. Formally, they are equal and equally deserving. In theory liberal law is inclusive, but concretely it is routinely **partial and invidious**. Inclusion is conditional: it depends on how robustly the new citizens wear and deploy their cultural difference. Two historical facts account for this phenomenon: liberal law's role in western imperialism and the Western claim of civilizational superiority that pervades the culture that sustains liberal legalism. Liberal law, as the other of the racially Other within its legal jurisdiction, differentiates and locates this other in the enemy camp of the culturally raw, irreducibly foreign, making him an unreliable ally or citizen. Law's suspicion of the others socialized in "lawless" cultures is instinctive and undeniable. Liberal law's constitutive bias is in a sense incidental: the real problem is racism or the racist basis of liberal ideology and culture.25 The internal racial other is not the juridical equal in the mind of liberal law but the juridically and humanly inferior Other, the perpetual foreigner.

**The alternative is to surrender to the nations, organizations or persons who planned, authorized, committed or aided the terrorist attacks that occurred on September 11, 2001 or harbored such organizations or persons**

**We don’t need solvency evidence for our alternative- it’s a question of their methodology and starting point- if we prove that beginning with the law is bad, then any deviation away from that starting point would solve questions about surrendering as per their Moze evidence**

## 1nc

Your decision should defend the resolutional question: Is the enactment of topical action better than the status quo or a competitive option?

1. “Resolved” before a colon reflects a legislative forum

Army Officer School ‘04

 (5-12, “# 12, Punctuation – The Colon and Semicolon”, http://usawocc.army.mil/IMI/wg12.htm)

The colon introduces the following: a.  A list, but only after "as follows," "the following," or a noun for which the list is an appositive: Each scout will carry the following: (colon) meals for three days, a survival knife, and his sleeping bag. The company had four new officers: (colon) Bill Smith, Frank Tucker, Peter Fillmore, and Oliver Lewis. b.  A long quotation (one or more paragraphs): In The Killer Angels Michael Shaara wrote: (colon) You may find it a different story from the one you learned in school. There have been many versions of that battle [Gettysburg] and that war [the Civil War]. (The quote continues for two more paragraphs.) c.  A formal quotation or question: The President declared: (colon) "The only thing we have to fear is fear itself." The question is: (colon) what can we do about it? d.  A second independent clause which explains the first: Potter's motive is clear: (colon) he wants the assignment. e.  After the introduction of a business letter: Dear Sirs: (colon) Dear Madam: (colon) f.  The details following an announcement For sale: (colon) large lakeside cabin with dock g.  A *formal* resolution, after the word "resolved:"

Resolved: (colon) That this council petition the mayor.

2. “USFG should” means the debate is solely about a policy established by governmental means

Ericson ‘03

(Jon M., Dean Emeritus of the College of Liberal Arts – California Polytechnic U., et al., The Debater’s Guide, Third Edition, p. 4)

The Proposition of Policy: Urging Future Action In policy propositions, each topic contains certain key elements, although they have slightly different functions from comparable elements of value-oriented propositions. 1. An agent doing the acting ---“The United States” in “The United States should adopt a policy of free trade.” Like the object of evaluation in a proposition of value, the agent is the subject of the sentence. 2. The verb *should*—the first part of a verb phrase that urges action. 3. An action verb to follow *should* in the *should*-verb combination. For example, *should adopt* here **means to put a** program or **policy into action though governmental means**. 4. A specification of directions or a limitation of the action desired. The phrase *free trade*, for example, gives direction and limits to the topic, which would, for example, eliminate consideration of increasing tariffs, discussing diplomatic recognition, or discussing interstate commerce. Propositions of policy deal with future action. Nothing has yet occurred. The entire debate is about whether something ought to occur. What you agree to do, then, when you accept the *affirmative side* in such a debate is to offer sufficient and compelling reasons for an audience to perform the future action that you propose.

They claim to win the debate for a psychological shift of individuals. That undermines preparation and clash. Changing the question now leaves one side unprepared, resulting in shallow, uneducational debate. Requiring debate on a communal topic forces argument development and develops persuasive skills critical to any political outcome.

Simualted national security law debates inculcate agency and decision-making skills—that enables activism and avoids cooption

Laura K. Donohue, Associate Professor of Law, Georgetown Law, 4/11/13, National Security Law Pedagogy and the Role of Simulations, http://jnslp.com/wp-content/uploads/2013/04/National-Security-Law-Pedagogy-and-the-Role-of-Simulations.pdf

The concept of simulations as an aspect of higher education, or in the law school environment, is not new.164 Moot court, after all, is a form of simulation and one of the oldest teaching devices in the law. What is new, however, is the idea of designing a civilian national security course that takes advantage of the doctrinal and experiential components of law school education and integrates the experience through a multi-day simulation. In 2009, I taught the first module based on this design at Stanford Law, which I developed the following year into a full course at Georgetown Law. It has since gone through multiple iterations. The initial concept followed on the federal full-scale Top Official (“TopOff”) exercises, used to train government officials to respond to domestic crises.165 It adapted a Tabletop Exercise, designed with the help of exercise officials at DHS and FEMA, to the law school environment. The Tabletop used one storyline to push on specific legal questions, as students, assigned roles in the discussion, sat around a table and for six hours engaged with the material. The problem with the Tabletop Exercise was that it was too static, and the rigidity of the format left little room, or time, for student agency. Unlike the government’s TopOff exercises, which gave officials the opportunity to fully engage with the many different concerns that arise in the course of a national security crisis as well as the chance to deal with externalities, the Tabletop focused on specific legal issues, even as it controlled for external chaos. The opportunity to provide a more full experience for the students came with the creation of first a one-day, and then a multi-day simulation. The course design and simulation continues to evolve. It offers a model for achieving the pedagogical goals outlined above, in the process developing a rigorous training ground for the next generation of national security lawyers.166 A. Course Design The central idea in structuring the NSL Sim 2.0 course **was to bridge the gap between theory and practice by conveying** doctrinal **material and** creating an alternative reality in which students would be forced to act upon legal concerns.167 The exercise itself is a form of problem-based learning, wherein students are given both agency and responsibility for the results. Towards this end, the structure must be at once bounded (directed and focused on certain areas of the law and legal education) and flexible (responsive to student input and decisionmaking). Perhaps the most significant weakness in the use of any constructed universe is the problem of authenticity. Efforts to replicate reality will inevitably fall short. There is simply too much uncertainty, randomness, and complexity in the real world. One way to address this shortcoming, however, is through design and agency. The scenarios with which students grapple and the structural design of the simulation must reflect the national security realm, even as students themselves must make choices that carry consequences. Indeed, to some extent, student decisions themselves must drive the evolution of events within the simulation.168 Additionally, **while authenticity matters, it is worth noting that at some level the fact that the incident does not take place in a real-world setting can be a great advantage**. That is, the simulation creates an environment where students can make mistakes and learn from these mistakes – without what might otherwise be devastating consequences. It also allows instructors to develop multiple points of feedback to enrich student learning in a way that would be much more difficult to do in a regular practice setting. NSL Sim 2.0 takes as its starting point the national security pedagogical goals discussed above. It works backwards to then engineer a classroom, cyber, and physical/simulation experience to delve into each of these areas. As a substantive matter, the course focuses on the constitutional, statutory, and regulatory authorities in national security law, placing particular focus on the interstices between black letter law and areas where the field is either unsettled or in flux. A key aspect of the course design is that it retains both the doctrinal and experiential components of legal education. Divorcing simulations from the doctrinal environment risks falling short on the first and third national security pedagogical goals: (1) analytical skills and substantive knowledge, and (3) critical thought. A certain amount of both can be learned in the course of a simulation; however, the national security crisis environment is not well-suited to the more thoughtful and careful analytical discussion. What I am thus proposing is a course design in which doctrine is paired with the type of experiential learning more common in a clinical realm. The former precedes the latter, giving students the opportunity to develop depth and breadth prior to the exercise. In order to capture problems related to adaptation and evolution, addressing goal [1(d)], the simulation itself takes place over a multi-day period. Because of the intensity involved in national security matters (and conflicting demands on student time), the model makes use of a multi-user virtual environment. The use of such technology is critical to creating more powerful, immersive simulations.169 It also allows for continual interaction between the players. Multi-user virtual environments have the further advantage of helping to transform the traditional teaching culture, predominantly concerned with manipulating textual and symbolic knowledge, into a culture where students learn and can then be assessed on the basis of their participation in changing practices.170 I thus worked with the Information Technology group at Georgetown Law to build the cyber portal used for NSL Sim 2.0. The twin goals of adaptation and evolution require that students be given a significant amount of agency and responsibility for decisions taken in the course of the simulation. To further this aim, I constituted a Control Team, with six professors, four attorneys from practice, a media expert, six to eight former simulation students, and a number of technology experts. Four of the professors specialize in different areas of national security law and assume roles in the course of the exercise, with the aim of pushing students towards a deeper doctrinal understanding of shifting national security law authorities. One professor plays the role of President of the United States. The sixth professor focuses on questions of professional responsibility. The attorneys from practice help to build the simulation and then, along with all the professors, assume active roles during the simulation itself. Returning students assist in the execution of the play, further developing their understanding of national security law. Throughout the simulation, the Control Team is constantly reacting to student choices. When unexpected decisions are made, professors may choose to pursue the evolution of the story to accomplish the pedagogical aims, or they may choose to cut off play in that area (there are various devices for doing so, such as denying requests, sending materials to labs to be analyzed, drawing the players back into the main storylines, and leaking information to the media). A total immersion simulation involves a number of scenarios, as well as systemic noise, to give students experience in dealing with the second pedagogical goal: factual chaos and information overload. The driving aim here is to teach students how to manage information more effectively. Five to six storylines are thus developed, each with its own arc and evolution. To this are added multiple alterations of the situation, relating to background noise. Thus, unlike hypotheticals, doctrinal problems, single-experience exercises, or even Tabletop exercises, the goal is not to eliminate external conditions, but to embrace them as part of the challenge facing national security lawyers. The simulation itself is problem-based, giving players agency in driving the evolution of the experience – thus addressing goal [2(c)]. This requires a realtime response from the professor(s) overseeing the simulation, pairing bounded storylines with flexibility to emphasize different areas of the law and the students’ practical skills. Indeed, each storyline is based on a problem facing the government, to which players must then respond, generating in turn a set of new issues that must be addressed. The written and oral components of the simulation conform to the fourth pedagogical goal – the types of situations in which national security lawyers will find themselves. Particular emphasis is placed on nontraditional modes of communication, such as legal documents in advance of the crisis itself, meetings in the midst of breaking national security concerns, multiple informal interactions, media exchanges, telephone calls, Congressional testimony, and formal briefings to senior level officials in the course of the simulation as well as during the last class session. These oral components are paired with the preparation of formal legal instruments, such as applications to the Foreign Intelligence Surveillance Court, legal memos, applications for search warrants under Title III, and administrative subpoenas for NSLs. In addition, students are required to prepare a paper outlining their legal authorities prior to the simulation – and to deliver a 90 second oral briefing after the session. To replicate the high-stakes political environment at issue in goals (1) and (5), students are divided into political and legal roles and assigned to different (and competing) institutions: the White House, DoD, DHS, HHS, DOJ, DOS, Congress, state offices, nongovernmental organizations, and the media. This requires students to acknowledge and work within the broader Washington context, even as they are cognizant of the policy implications of their decisions. They must get used to working with policymakers and to representing one of many different considerations that decisionmakers take into account in the national security domain. Scenarios are selected with high consequence events in mind, to ensure that students recognize both the domestic and international dimensions of national security law. Further alterations to the simulation provide for the broader political context – for instance, whether it is an election year, which parties control different branches, and state and local issues in related but distinct areas. The media is given a particularly prominent role. One member of the Control Team runs an AP wire service, while two student players represent print and broadcast media, respectively. The Virtual News Network (“VNN”), which performs in the second capacity, runs continuously during the exercise, in the course of which players may at times be required to appear before the camera. This media component helps to emphasize the broader political context within which national security law is practiced. Both anticipated and unanticipated decisions give rise to ethical questions and matters related to the fifth goal: professional responsibility. The way in which such issues arise stems from simulation design as well as spontaneous interjections from both the Control Team and the participants in the simulation itself. As aforementioned, professors on the Control Team, and practicing attorneys who have previously gone through a simulation, focus on raising decision points that encourage students to consider ethical and professional considerations. Throughout the simulation good judgment and leadership play a key role, determining the players’ effectiveness, with the exercise itself hitting the aim of the integration of the various pedagogical goals. Finally, there are multiple layers of feedback that players receive prior to, during, and following the simulation to help them to gauge their effectiveness. The Socratic method in the course of doctrinal studies provides immediate assessment of the students’ grasp of the law. Written assignments focused on the contours of individual players’ authorities give professors an opportunity to assess students’ level of understanding prior to the simulation. And the simulation itself provides real-time feedback from both peers and professors. The Control Team provides data points for player reflection – for instance, the Control Team member playing President may make decisions based on player input, giving students an immediate impression of their level of persuasiveness, while another Control Team member may reject a FISC application as insufficient. The simulation goes beyond this, however, focusing on teaching students how to develop (6) opportunities for learning in the future. Student meetings with mentors in the field, which take place before the simulation, allow students to work out the institutional and political relationships and the manner in which law operates in practice, even as they learn how to develop mentoring relationships. (Prior to these meetings we have a class discussion about mentoring, professionalism, and feedback). Students, assigned to simulation teams about one quarter of the way through the course, receive peer feedback in the lead-up to the simulation and during the exercise itself. Following the simulation the Control Team and observers provide comments. Judges, who are senior members of the bar in the field of national security law, observe player interactions and provide additional debriefing. The simulation, moreover, is recorded through both the cyber portal and through VNN, allowing students to go back to assess their performance. Individual meetings with the professors teaching the course similarly follow the event. Finally, students end the course with a paper reflecting on their performance and the issues that arose in the course of the simulation, develop frameworks for analyzing uncertainty, tension with colleagues, mistakes, and successes in the future. B. Substantive Areas: Interstices and Threats As a substantive matter, NSL Sim 2.0 is designed to take account of areas of the law central to national security. It focuses on specific authorities that may be brought to bear in the course of a crisis. The decision of which areas to explore is made well in advance of the course. It is particularly helpful here to think about national security authorities on a continuum, as a way to impress upon students that there are shifting standards depending upon the type of threat faced. One course, for instance, might center on the interstices between crime, drugs, terrorism and war. Another might address the intersection of pandemic disease and biological weapons. A third could examine cybercrime and cyberterrorism. **This is the most important determination, because the substance of the** doctrinal portion of the course and the **simulation follows from this decision**. For a course focused on the interstices between pandemic disease and biological weapons, for instance, preliminary inquiry would lay out which authorities apply, where the courts have weighed in on the question, and what matters are unsettled. Relevant areas might include public health law, biological weapons provisions, federal quarantine and isolation authorities, habeas corpus and due process, military enforcement and posse comitatus, eminent domain and appropriation of land/property, takings, contact tracing, thermal imaging and surveillance, electronic tagging, vaccination, and intelligence-gathering. The critical areas can then be divided according to the dominant constitutional authority, statutory authorities, regulations, key cases, general rules, and constitutional questions. **This**, then, **becomes a guide for the** doctrinal part of the **course, as well as the grounds on which the specific scenarios developed for the simulation** are based. The authorities, simultaneously, are included in an electronic resource library and embedded in the cyber portal (the Digital Archives) to act as a closed universe of the legal authorities needed by the students in the course of the simulation. Professional responsibility in the national security realm and the institutional relationships of those tasked with responding to biological weapons and pandemic disease also come within the doctrinal part of the course. The simulation itself is based on five to six storylines reflecting the interstices between different areas of the law. The storylines are used to present a coherent, non-linear scenario that can adapt to student responses. Each scenario is mapped out in a three to seven page document, which is then checked with scientists, government officials, and area experts for consistency with how the scenario would likely unfold in real life. For the biological weapons and pandemic disease emphasis, for example, one narrative might relate to the presentation of a patient suspected of carrying yersinia pestis at a hospital in the United States. The document would map out a daily progression of the disease consistent with epidemiological patterns and the central actors in the story: perhaps a U.S. citizen, potential connections to an international terrorist organization, intelligence on the individual’s actions overseas, etc. The scenario would be designed specifically to stress the intersection of public health and counterterrorism/biological weapons threats, and the associated (shifting) authorities, thus requiring the disease initially to look like an innocent presentation (for example, by someone who has traveled from overseas), but then for the storyline to move into the second realm (awareness that this was in fact a concerted attack). A second storyline might relate to a different disease outbreak in another part of the country, with the aim of introducing the Stafford Act/Insurrection Act line and raising federalism concerns. The role of the military here and Title 10/Title 32 questions would similarly arise – with the storyline designed to raise these questions. A third storyline might simply be well developed noise in the system: reports of suspicious activity potentially linked to radioactive material, with the actors linked to nuclear material. A fourth storyline would focus perhaps on container security concerns overseas, progressing through newspaper reports, about containers showing up in local police precincts. State politics would constitute the fifth storyline, raising question of the political pressures on the state officials in the exercise. Here, ethnic concerns, student issues, economic conditions, and community policing concerns might become the focus. The sixth storyline could be further noise in the system – loosely based on current events at the time. In addition to the storylines, a certain amount of noise is injected into the system through press releases, weather updates, private communications, and the like. The five to six storylines, prepared by the Control Team in consultation with experts, become the basis for the preparation of scenario “injects:” i.e., newspaper articles, VNN broadcasts, reports from NGOs, private communications between officials, classified information, government leaks, etc., which, when put together, constitute a linear progression. These are all written and/or filmed prior to the exercise. The progression is then mapped in an hourly chart for the unfolding events over a multi-day period. All six scenarios are placed on the same chart, in six columns, giving the Control Team a birds-eye view of the progression. C. How It Works As for the nuts and bolts of the simulation itself, it traditionally begins outside of class, in the evening, on the grounds that national security crises often occur at inconvenient times and may well involve limited sleep and competing demands.171 Typically, a phone call from a Control Team member posing in a role integral to one of the main storylines, initiates play. Students at this point have been assigned dedicated simulation email addresses and provided access to the cyber portal. The portal itself gives each team the opportunity to converse in a “classified” domain with other team members, as well as access to a public AP wire and broadcast channel, carrying the latest news and on which press releases or (for the media roles) news stories can be posted. The complete universe of legal authorities required for the simulation is located on the cyber portal in the Digital Archives, as are forms required for some of the legal instruments (saving students the time of developing these from scratch in the course of play). Additional “classified” material – both general and SCI – has been provided to the relevant student teams. The Control Team has access to the complete site. For the next two (or three) days, outside of student initiatives (which, at their prompting, may include face-to-face meetings between the players), the entire simulation takes place through the cyber portal. The Control Team, immediately active, begins responding to player decisions as they become public (and occasionally, through monitoring the “classified” communications, before they are released). This time period provides a ramp-up to the third (or fourth) day of play, allowing for the adjustment of any substantive, student, or technology concerns, while setting the stage for the breaking crisis. The third (or fourth) day of play takes place entirely at Georgetown Law. A special room is constructed for meetings between the President and principals, in the form of either the National Security Council or the Homeland Security Council, with breakout rooms assigned to each of the agencies involved in the NSC process. Congress is provided with its own physical space, in which meetings, committee hearings and legislative drafting can take place. State government officials are allotted their own area, separate from the federal domain, with the Media placed between the three major interests. The Control Team is sequestered in a different area, to which students are not admitted. At each of the major areas, the cyber portal is publicly displayed on large flat panel screens, allowing for the streaming of video updates from the media, AP wire injects, articles from the students assigned to represent leading newspapers, and press releases. Students use their own laptop computers for team decisions and communication. As the storylines unfold, the Control Team takes on a variety of roles, such as that of the President, Vice President, President’s chief of staff, governor of a state, public health officials, and foreign dignitaries. Some of the roles are adopted on the fly, depending upon player responses and queries as the storylines progress. Judges, given full access to each player domain, determine how effectively the students accomplish the national security goals. The judges are themselves well-experienced in the practice of national security law, as well as in legal education. They thus can offer a unique perspective on the scenarios confronted by the students, the manner in which the simulation unfolded, and how the students performed in their various capacities. At the end of the day, the exercise terminates and an immediate hotwash is held, in which players are first debriefed on what occurred during the simulation. Because of the players’ divergent experiences and the different roles assigned to them, the students at this point are often unaware of the complete picture. The judges and formal observers then offer reflections on the simulation and determine which teams performed most effectively. Over the next few classes, more details about the simulation emerge, as students discuss it in more depth and consider limitations created by their knowledge or institutional position, questions that arose in regard to their grasp of the law, the types of decision-making processes that occurred, and the effectiveness of their – and other students’ – performances. Reflection papers, paired with oral briefings, focus on the substantive issues raised by the simulation and introduce the opportunity for students to reflect on how to create opportunities for learning in the future. The course then formally ends.172 Learning, however, continues beyond the temporal confines of the semester. Students who perform well and who would like to continue to participate in the simulations are invited back as members of the control team, giving them a chance to deepen their understanding of national security law. Following graduation, a few students who go in to the field are then invited to continue their affiliation as National Security Law fellows, becoming increasingly involved in the evolution of the exercise itself. This system of vertical integration helps to build a mentoring environment for the students while they are enrolled in law school and to create opportunities for learning and mentorship post-graduation. It helps to keep the exercise current and reflective of emerging national security concerns. And it builds a strong community of individuals with common interests. CONCLUSION The legal academy has, of late, been swept up in concern about the economic conditions that affect the placement of law school graduates. The image being conveyed, however, does not resonate in every legal field. It is particularly inapposite to the burgeoning opportunities presented to students in national security. That the conversation about legal education is taking place now should come as little surprise. Quite apart from economic concern is the traditional introspection that follows American military engagement. It makes sense: law overlaps substantially with political power, being at once both the expression of government authority and the effort to limit the same. **The one-size fits all approach** currently **dominating the conversation in legal education, however, appears ill-suited to address the concerns raised** in the current conversation. **Instead of looking at law across the board, greater insight can be gleaned by looking at** the specific demands of the different fields themselves. This does not mean that the goals identified will be exclusive to, for instance, national security law, but it does suggest there will be greater nuance in the discussion of the adequacy of the current pedagogical approach. With this approach in mind, I have here suggested six pedagogical goals for national security. For following graduation, students must be able to perform in each of the areas identified – (1) understanding the law as applied, (2) dealing with factual chaos and uncertainty, (3) obtaining critical distance, (4) developing nontraditional written and oral communication skills, (5) exhibiting leadership, integrity, and good judgment in a high-stakes, highly-charged environment, and (6) creating continued opportunities for self-learning. They also must learn how to integrate these different skills into one experience, to ensure that they will be most effective when they enter the field. The problem with the current structures in legal education is that they fall short, in important ways, from helping students to meet these goals. Doctrinal courses may incorporate a range of experiential learning components, such as hypotheticals, doctrinal problems, single exercises, extended or continuing exercises, and tabletop exercises. These are important classroom devices. The amount of time required for each varies, as does the object of the exercise itself. But where they fall short is in providing a more holistic approach to national security law which will allow for the maximum conveyance of required skills. Total immersion **simulations**, which have not yet been addressed in the secondary literature for civilian education in national security law, may **provide an important way forward**. Such **simulations** also **cure shortcomings in other areas of experiential education**, such as clinics and moot court. It is in an effort to address these concerns that I developed **the simulation model** above. NSL Sim 2.0 certainly is not the only solution, but it **does provide a** starting point for moving forward. The approach draws on the strengths of doctrinal courses and embeds a total immersion simulation within a course. **It makes use of technology and physical space to engage students in a multi-day exercise, in which** they are given agency and responsibility for their decision making, resulting in a steep learning curve. While further adaptation of this model is undoubtedly necessary, it suggests one potential direction for the years to come.

## 1nc

#### Text: The people in this room should personally and individually think about surrendering to those nations, organizations, or persons who planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons.

## adv 1

#### Status quo solves superpower syndrome--- and the aff’s radical criticism only opens the door to right-wing backlash that reinstalls it

Robert J. Lifton—EIGHT YEARS LATER-- 2011, aff guy, 2011, Witness to an Extreme Century: A Memoir, p. 405-406

With all of the American angst during the first year or so of the Obama administration, one may readily forget the power of the historical moment of his election in 2008. BJ and I had a few friends in to watch the returns on the sleek television set in our living room, which we had purchased four years earlier for a similar gathering that had resulted in a roomful of despair and suspicion of fraud in relation to the Bush victory. But this time, in 2008, the television set did not betray us, and my reaction of not just joy but ecstasy, including tears, was hardly mine alone. What was special to me, though, was the quick realization that the outcome meant an end to the country's superpower syndrome. But was that the case? Only partly, it turns out. Certainly Obama and his administration have renounced the principle of American omnipotence in favor of more modest claims about our capacities and influence in the world. Apocalypticism and totalistic behavior have given way to something closer to Camus's "philosophy of limits" with an acceptance of ambiguity, nuance, and complexity. And most important, there has been a specific rejection of nuclearism and a call for abolition of the weapons.

Yet despite all that, the syndrome lingers in crucial areas that specifically connect with my work. Concerning nuclear abolition, Obama has not followed through with clear American policies, despite an impressive convocation of world leaders on the subject of nuclear danger. On revelations of torture, and more recently of illegitimate medical experiments in relation to torture, Obama has mostly tried to sidestep the issue and avoid legal culpability of those involved. Finally, his decision to send added troops to Afghanistan seems to me to be the stuff of war-making, and atrocity-producing, blunder. In all three cases there is a certain clinging to the very American omnipotence being renounced. I have found myself torn between joining a considerable segment of the left in a condemnation of shortcomings that perpetuate elements of the superpower syndrome, and an alternative inclination to defend Obama as an incremental reformer who needs more time.

I took the latter position in a series of discussions with Howard Zinn, who denounced Obama as "a Chicago politician" and a hypocrite. I still don't agree with that judgment but I am also willing to take a public stand of strong opposition to Obama policies on Afghanistan and on American torture and recently revealed experimentation. Yet I remain sensitive as well to the importance of supporting the Obama administration in the face of new waves of right-wing American totalism and potential violence in the backlash over the election of our first African-American president.

Psychoanalysis is cookie cutter and has been disproven

Todd Dufresne 6, Professor of Philosophy and founding Director of The Advanced Institute for Globalization & Culture at Lakehead University, Killing Freud, googlebooks

TD: I tried to make the heterogeneity of opinion about Freuds death drive theory work on a few levels, one being a pointed criticism of the arbitrary nature of criticism in the history of psychoanalysis. In this respect the apparent dissensus about the fundamentals of psychoanalysis is a scandal. For this dissensus implies that for over one hundred years smart people haven't been able to derive any conclusions about Freuds so-called discoveries — that the verdict is still out. But that's untrue! Informed critics know very well that Freud fabricated his findings and was motivated by factors other than science and objectivity.

So why do so few people know, or care to know, about these sometimes stunning facts? In no small measure, and as you were just hinting, the pundits and critics themselves are to blame. In Tales I tried to expose the irreconcilable absurdity of Freud commentary over the last hundred years, from Reich and Marcuse to Lacan and Derrida. It’s obviously not the case that these people are ignorant. It is rather the case that these critics, like Freud before them, are motivated by special interests; for example, by Marxist, structuralist, or posr-structuralist interests. And because their works are dogmatically blind to intractable problems in Freuds work, including basic facts, they have the effect of blinding nearly everyone who reads them. We love to be dazzled, even by the spectacle of crushed glass.

AG: But what is a 'basic feet', and who is in a position to know one when he or she sees one? Isn't this where the post-modernist appreciation of Freud comes in?

TD: That's a lot of questions to answer all at once! First of all, yes, the posties' - post-modernists and post-structuralists - have generally embraced the idea that history is just a kind of fiction. I am sympathetic to this idea and am willing to entertain it up to a point. I have written about fiction and history in psychoanalysis precisely because, given the pre-eminent role of fantasy in the field, one has a tough time distinguishing between fact and fiction, history and case study. I think this is an interesting and amusing state of affairs, and have even written a short story that is meant as a sendup of the kind of historical work that we all read. But 1 attempt this work in an ironical spirit, believing that there are indeed facts — even if psychoanalysis has made it seem near impossible for us to know them. This, then, is a problem for psychoanalysis - but not really for me.

Naturally, though, I do worry about being too cavalier about facts in history. Is it really the case that the opinion of, say, a Holocaust denier is equal to another who believes that three million Jews, rather than six million, were killed in concentration camps? One says it didn't happen at all, while another questions the interpretation of facts. I reject the idea that truth is relative at the level of basic facts, and to this extent echo something Borch-Jacobsen once said454: namely, any relativist who ignores the facts risks becoming a dogmatist. And he's right. So when posties say, for example, that the fabricated foundations of psychoanalysis don't matter - primarily, they claim, because psychoanalysis is only interested in fantasy they are being absurd dogmatists.

But this response is still not very satisfactory, since it doesn't address your first two questions: namely, what is a basic fact, and how can we purport to know one? I would suggest, loosely following the historian R. G. Collingwood, that there are two kinds of history: one that barely deserves the name as it was once practised long ago; and modern history. The first is what Collingwood rightly calls 'scissor and paste' history, and is more or less concerned with recording dates, names and events: for example, on the ides of March Caesar crossed the Rubicon. The second is interpretive history, and is concerned with the interpretation of dates, names and events: for example, on the ides of March Caesar crossed the Rubicon because he was a megalomaniac, or because he wanted to defeat his enemies, or because he was a compulsive bed-wetter, and so on.

How does this distinction between basic and interpretive history help us? Well, because the majority of Freud scholarship is so obviously an interpretive history. The posties know this better than anyone, and are absolutely right to conclude that such interpretation, like analysis, is interminable. We can engage in debate about motives forever. However, there is a fundamental problem here in the case of psychoanalysis. Why? Because all historical interpretation, even the freewheeling interpretive history of post-modernists, is based on the scissor and paste' history of mere dates, names and events. And this is where the posties drop the ball. For almost all of the best critiques of Freud made over the last thirty years — the kind I associate with the creation of Critical Freud Studies - have begun by examining basic facts about dates, names and events. What these critics have found is that the history of Freud interpretation is the history of misinterpretation of a fundamental kind. Namely, it is interpretation of 'facts' or 'events that never happened. For example, they have found that Freud, during the period of 'discovery' and subsequent abandonment of the Seduction Theory, exaggerated his results and, when necessary, simply made them up.

AG: He said he crossed the Rubicon when he didn't?

TD: Worse. Not only didn't he cross the Rubicon, to extend the analogy, but it turns out in this case that the Rubicon itself doesn't exist! It's all a myth. And so, while the posties inevitably berate Cioffi, Crews and others for their naive belief in facts, they have simply fallen into the rabbit hole that Freud dug for them. For his part, Borch-Jacobscn replies that it is really these nay-savers who are being naive. I would only repeat my suspicion that our gullible colleagues have risked their egos on baseless interpretations that they are now incapable of retracting.

Of course, the stakes are now very high. For if the critics are right, then the majority of Freud interpretation is utterly worthless. And it is worthless in at least two ways: as history and as interpretation. At best, these groundless interpretations are a kind of literary garbage — works of unwitting fiction along the lines of Medieval discussions of angels/" Sure these works tell us a lot about the beliefs of a certain period, in this case the twentieth century, but they don't work the way the authors intended them. For me, they are cautionary tales — what Lacan would call 'poubellications', or published trash.

AG: If empiricism is just a theory, isn't a 'basic fact' just an interpretation among others?

TD: That is true and a little bit clever, but a degree of certainty is all I am after. I'm not saying that we can't get our basic facts wrong, which we obviously do. It is rather that we must be willing to revise our interpretations on the basis of the basic facts we do have. I don't blame Freud scholars for making a mess of everything with their erroneous interpretations. Freud misled everyone, beginning with himself and his closest followers. Psychoanalysis is a con-game, after all. That said, short of sticking our heads in the sand, we must confront the basic facts and rewrite the history of psychoanalysis anew.

No impact to threat con

Eric A. Posner and Adrian Vermeule 3, law profs at Chicago and Harvard, Accommodating Emergencies, September, <http://www.law.uchicago.edu/files/files/48.eap-av.emergency.pdf>

Against the view that panicked government officials overreact to an emergency, and unnecessarily curtail civil liberties, we suggest a more constructive theory of the role of fear. Before the emergency, government officials are complacent. They do not think clearly or vigorously about the potential threats faced by the nation. After the terrorist attack or military intervention, their complacency is replaced by fear. Fear stimulates them to action. Action may be based on good decisions or bad: fear might cause officials to exaggerate future threats, but it also might arouse them to threats that they would otherwise not perceive. It is impossible to say in the abstract whether decisions and actions provoked by fear are likely to be better than decisions and actions made in a state of calm. But our limited point is that there is no reason to think that the fear-inspired decisions are likely to be worse. For that reason, the existence of fear during emergencies does not support the antiaccommodation theory that the Constitution should be enforced as strictly during emergencies as during non-emergencies.

C. The Influence of Fear during Emergencies

Suppose now that the simple view of fear is correct, and that it is an unambiguously negative influence on government decisionmaking. Critics of accommodation argue that this negative influence of fear justifies skepticism about emergency policies and strict enforcement of the Constitution. However, this argument is implausible. It is doubtful that fear, so understood, has more influence on decisionmaking during emergencies than decisionmaking during non-emergencies.

The panic thesis, implicit in much scholarship though rarely discussed in detail, holds that citizens and officials respond to terrorism and war in the same way that an individual in the jungle responds to a tiger or snake. The national response to emergency, because it is a standard fear response, is characterized by the same circumvention of ordinary deliberative processes: thus, (i) the response is instinctive rather than reasoned, and thus subject to error; and (ii) the error will be biased in the direction of overreaction. While the flight reaction was a good evolutionary strategy on the savannah, in a complex modern society the flight response is not suitable and can only interfere with judgment. Its advantage—speed—has minimal value for social decisionmaking. No national emergency requires an immediate reaction—except by trained professionals who execute policies established earlier—but instead over days, months, or years people make complex judgments about the appropriate institutional response. And the asymmetrical nature of fear guarantees that people will, during a national emergency, overweight the threat and underweight other things that people value, such as civil liberties.

But if decisionmakers rarely act immediately, then the tiger story cannot bear the metaphoric weight that is placed on it. Indeed, the flight response has nothing to do with the political response to the bombing of Pearl Harbor or the attack on September 11. The people who were there—the citizens and soldiers beneath the bombs, the office workers in the World Trade Center—no doubt felt fear, and most of them probably responded in the classic way. They experienced the standard physiological effects, and (with the exception of trained soldiers and security officials) fled without stopping to think. It is also true that in the days and weeks after the attacks, many people felt fear, although not the sort that produces a irresistible urge to flee. But this kind of fear is not the kind in which cognition shuts down. (Some people did have more severe mental reactions and, for example, shut themselves in their houses, but these reactions were rare.) The fear is probably better described as a general anxiety or jumpiness, an anxiety that was probably shared by government officials as well as ordinary citizens.53

While, as we have noted, there is psychological research suggesting that normal cognition partly shuts down in response to an immediate threat, we are aware of no research suggesting that people who feel anxious about a non-immediate threat are incapable of thinking, or thinking properly, or systematically overweight the threat relative to other values. Indeed, it would be surprising to find research that clearly distinguished “anxious thinking” and “calm thinking,” given that anxiety is a pervasive aspect of life. People are anxious about their children; about their health; about their job prospects; about their vacation arrangements; about walking home at night. No one argues that people’s anxiety about their health causes them to take too many precautions—to get too much exercise, to diet too aggressively, to go to the doctor too frequently—and to undervalue other things like leisure. So it is hard to see why anxiety about more remote threats, from terrorists or unfriendly countries with nuclear weapons, should cause the public, or elected officials, to place more emphasis on security than is justified, and to sacrifice civil liberties.

Fear generated by immediate threats, then, causes instinctive responses that are not rational in the cognitive sense, not always desirable, and not a good basis for public policy, but it is not this kind of fear that leads to restrictions of civil liberties during wartime. The internment of Japanese Americans during World War II may have been due to racial animus, or to a mistaken assessment of the risks; it was not the direct result of panic; indeed there was a delay of weeks before the policy was seriously considered.54 Post-9/11 curtailments of civil liberties, aside from immediate detentions, came after a significant delay and much deliberation. The civil libertarians’ argument that fear produces bad policy trades on the ambiguity of the word “panic,” which refers both to real fear that undermines rationality, and to collectively harmful outcomes that are driven by rational decisions, such as a bank run, where it is rational for all depositors to withdraw funds if they believe that enough other depositors are withdrawing funds. Once we eliminate the false concern about fear, it becomes clear that the panic thesis is indistinguishable from the argument that during an emergency people are likely to make mistakes. But if the only concern is that during emergencies people make mistakes, there would be no reason for demanding that the constitution be enforced normally during emergencies. Political errors occur during emergencies and nonemergencies, but the stakes are higher during emergencies, and that is the conventional reason why constitutional constraints should be relaxed.

Util’s the only moral framework

**Murray 97** (Alastair, Professor of Politics at U. Of Wales-Swansea, *Reconstructing Realism*, p. 110)

Weber emphasised that, while the 'absolute ethic of the gospel' must be taken seriously, it is inadequate to the tasks of evaluation presented by politics. Against this 'ethic of ultimate ends' — Gesinnung — he therefore proposed the 'ethic of responsibility' — Verantwortung. First, whilst the former dictates only the purity of intentions and pays no attention to consequences, the ethic of responsibility commands acknowledgement of the divergence between intention and result. Its adherent 'does not feel in a position to burden others with the results of his [OR HER] own actions so far as he was able to foresee them; he [OR SHE] will say: these results are ascribed to my action'. Second, the 'ethic of ultimate ends' is incapable of dealing adequately with the moral dilemma presented by the necessity of using evil means to achieve moral ends: Everything that is striven for through political action operating with violent means and following an ethic of responsibility endangers the 'salvation of the soul.' If, however, one chases after the ultimate good in a war of beliefs, following a pure ethic of absolute ends, then the goals may be changed and discredited for generations, because responsibility for consequences is lacking. The 'ethic of responsibility', on the other hand, can accommodate this paradox and limit the employment of such means, because it accepts responsibility for the consequences which they imply. Thus, Weber maintains that only the ethic of responsibility can cope with the 'inner tension' between the 'demon of politics' and 'the god of love'. 9 The realists followed this conception closely in their formulation of a political ethic.10 This influence is particularly clear in Morgenthau.11 In terms of the first element of this conception, the rejection of a purely deontological ethic, Morgenthau echoed Weber's formulation, arguing tha/t:the political actor has, beyond the general moral duties, a special moral responsibility to act wisely ... The individual, acting on his own behalf, may act unwisely without moral reproach as long as the consequences of his inexpedient action concern only [HER OR] himself. What is done in the political sphere by its very nature concerns others who must suffer from unwise action. What is here done with good intentions but unwisely and hence with disastrous results is morally defective; for it violates the ethics of responsibility to which all action affecting others, and hence political action par excellence, is subject.12 This led Morgenthau to argue, in terms of the concern to reject doctrines which advocate that the end justifies the means, that the impossibility of the logic underlying this doctrine 'leads to the negation of absolute ethical judgements altogether'.13

Just war is good – surrender is worse

Michael Walzer, Professor Emeritus of Social Science at the Institute for Advanced Study and co-Editor of Dissent, 2004, Arguing About War, p. x-xiii

I want to address two criticisms of just war theory, because I have heard them often — specifically in response to some of the pieces collected here. The first is that those of us who defend and apply the theory are moralizing war, and by doing that we are making it easier to fight. We take away the stigma that should always be attached to the business of killing, which is what war always and necessarily is. When we define the criteria by which war and the conduct of war can be judged, we open the way for favorable judgments. Many of these judgments will be ideological, partisan, or hypocritical in character and, therefore, subject to criticism, but some of them, given the theory, will be right: some wars and some acts of war will turn out to be "just." How can that be, when war is so terrible?

But just is a term of art here; it means justifiable, defensible, even morally necessary (given the alternatives) — and that is all it means. All of us who argue about the rights and wrongs of war agree that justice in the strong sense, the sense that it has in domestic society and everyday life, is lost as soon as the fighting begins. War is a zone of radical coercion, in which justice is always under a cloud. Still, sometimes we are right to enter the zone. As someone who grew up during World War II, this seems to me another obvious point. **There are acts of aggression and acts of cruelty that we ought to resist, by force if necessary**. I would have thought that our experience with Nazism ended this particular argument, but the argument goes one — hence the disagreements about humanitarian intervention that I address in a number of these essays. The use of military force to stop the killing in Rwanda would have been, in my view, a just war. And if that judgment "moralizes" military force and makes it easier to use — well, I wish it had been easier to use in Africa in 1994.

The second criticism of just war theory is that it frames wars in the wrong way. It focuses our attention on the immediate issues at stake before the war begins — in the case of the recent Iraq war, for example, on inspections, disarmament, hidden weapons, and so on — and then on the conduct of the war, battle by battle; and so it avoids larger questions about imperial ambition and the global struggle for resources and power. It is as if citizens of the ancient world had focused narrowly on the conflict between Rome and some other city-state over whether a treaty had been violated, as the Romans always claimed in the lead-up to their attack, and never discussed the long history of Roman expansion. But if critics can distinguish between concocted excuses for war and actual reasons, why can't the rest of us do the same thing? Just war theory has no fixed temporal limits; it can be used to analyze a long chain of events as readily as a short one. **Indeed, how can imperial warfare be criticized if not in just war terms**? What other language, what other theory, is available for such a critique? Aggressive wars, wars of conquest, wars to extend spheres of influence and establish satellite states, wars for economic aggrandizement – all of these are unjust war.

Just war is a theory made for criticism. But that doesn't mean that every war has to be criticized. When I defended the recent war in Afghanistan, some of my own critics claimed that since I had opposed the American war in Vietnam and many of our little wars and proxy wars in Central America, I was now being inconsistent. But that is like saying that a doctor who diagnoses one patient with cancer is then obliged to provide a similar diagnosis for every other patient. The same medical criteria yield different diagnoses in different cases. And the same moral criteria yield different judgments in different wars. Still, the judgments are controversial, even when we agree on criteria: read my piece on Kosovo, and then look for a second opinion. You won't have any difficulty finding one that differs from my own; and that is true for all my other arguments, too. The fact that we disagree, however, doesn't make just war different from any other moral (or political) concept. We give different accounts of the same military action, and we also give different accounts of the same election. We disagree about corruption, discrimination, and inequality even when we talk about all three in the common language of democratic theory. **Disagreements don't invalidate a theory; the theory, if it is a good one, makes the disagreements more coherent and comprehensible**.

Ongoing disagreements, together with the rapid pace of political change, sometimes require revisions of a theory. My own judgments since Just and Unjust Wars have been, I like to think, fairly consistent. But I have changed my mind or shifted the emphasis of my arguments about a few things, which it seems right to acknowledge here. Faced with the sheer number of recent horrors—with massacre and ethnic cleansing in Bosnia and Kosovo; in Rwanda, the Sudan, Sierra Leone, the Congo, and Liberia; in East Timor (and earlier, in Cambodia and Bangladesh) — I have slowly become more willing to call for military intervention. I haven't dropped the presumption against intervention that I defended in my book, but I have found it easier and easier to override the presumption. And faced with the reiterated experience of state failure, the reemergence of a form of politics that European historians call "bastard feudalism," dominated by warring gangs and would-be charismatic leaders, I have become more willing to defend long-term military occupations, in the form of protectorates and trusteeships, and to think of nation-building as a necessary part of postwar politics. Both of these shifts also require me to recognize the need for an expansion of just war theory. Jus ad bellum (which deals with the decision to go to war) and jus in Bello (which deals with the conduct of the battles) are its standard elements, first worked out by Catholic philosophers and jurists in the Middle Ages. Now we have to add to those two an account of jus post bellum (justice after the war). I wrote a section on justice in settlements in Just and Unjust Wars, but it is much too brief and doesn't even begin to address many of the problems that have arisen in places like Kosovo and East Timor and, recently, in Iraq. More work is necessary here, in both the theory and practice of peacemaking, military occupation, and political reconstruction.

Especially for terrorism

Jean Bethke Elshtain, Laura Spelman Rockefeller Professor of Social and Political Ethics, Divinity School, The University of Chicago, with appointments in Political Science and the Committee on International Relations, 2003, Just War Against Terror, p. 150-5

IN THIS CHAPTER, I CONSIDER two related questions: How does a democratic society defend itself? And can force be an instrument of justice? An additional feature of the just war tradition, less emphasized than self-defense, holds that the governments and citizens of one country may be called upon to protect citizens of another country, or a minority within that country, who are not in a position to defend themselves from harm. "Protecting the innocent from certain harm" may require armed force in order to interdict and punish aggressors, especially aggressors whose war aim is the death and conquest of as many noncombatants as possible. There are those who insist that no nation is obliged in this way to come to the assistance of another. They dismiss the possibility that force can be an instrument of justice. They believe that international entities should rise up to take care of the problem. Thus far, however, the track record of nonstate organizations as effective bodies to interdict violence and punish aggression is not impressive.

Given the contrast between the demonstrated ineffectiveness of international organizations to roll back violence and the track record of particular states, particularly the United States, in deflecting and muting interstate violence, let's make this question more specific. In asking, how does a democratic society defend itself, let's assume that the democratic society in question is not just any constitutional order but the United States. The role of preventing or interdicting violence in other countries is not new to the United States; it was thrust upon the United States in 1989 when it became the world's only superpower.

The shock waves that rippled around the globe in the wake of September 11 reminded us that the expectation of American power, American stability, and American continuity is a basic feature of international order. Whether people celebrate this fact or lament it, it is undeniably the case that American political, diplomatic, economic, and military power now structures and anchors the international system. Small wonder that many of us compared the plenary jolt to the world's nervous system delivered on September 11, 2001, to the sack of Rome by the Vandals in A.D. 410. As word made its way through the civilized world about Rome's vulnerability, no one could believe it, including those who were not lovers of Rome. Roman law and rule provided stability and a point of reference. Rome was the umbrella of power under which so much else stood.

The analogy is not perfect, of course. We are the world's longest-lived constitutional republic. Postrepublican Rome was governed by often brutal emperors, and transfers of power could be a bloody, not very peaceful business. But the closest modern equivalent to the city of Rome is New York City—a polyglot metropolis with an astonishingly complex mix of languages and peoples from all other cultures. New York City is an astounding achievement. Now that the dust storms of September 11 have settled, what have we learned from the attacks on Washington, our capital city, and New York, our cosmopolitan lodestar? What has been revealed through this cataclysmic event?

APPEASEMENT DOESN'T WORK

As I write these words in the summer of 2002, we have word about a cache of 251 Al Qaeda tapes captured in the Afghan operation. Several of these gruesome tapes show "what appears to be the agonizing death of three dogs exposed to a chemical agent, apparently before September 11." The tape archive also includes detailed instructions on making bombs and shooting surface-to-air missiles (SAMs) and a variety of violent tapes contributed by "affiliated groups in Bosnia, Chechnya, Somalia, Sudan and elsewhere."1

Experts who watched many hours of these tapes suggested hat Western intelligence agencies might even now be underestimating Al Qaeda. One such expert, Magnus Ranstorp, director-designate of the Center for the Study of Terrorism and Political Violence at the University of St. Andrews in Scotland, stated: "In conjunction with the Encyclopedia of Jihad and other written manuals, the tapes show meticulous planning, preparation, and attention to the tradecraft of terror."2

Let's remind ourselves: These tapes are not about classic strategies of war and warmaking and the training of soldiers. Their theme, instead, is terror. We have defined terror as violence that targets noncombatants, is random and unpredictable, and aims to sow overwhelming fear in a population. This goal contrasts to the targeting strategies of traditional warmaking, whose goal is disabling the opponent's ability to fight back. Soldiers fight combatants. Terrorists kill civilians intentionally hoping that the terrorized survivors will eventually surrender or demand peace at any price—the definition of conquest in the terrorist lexicon.

These reflections mesh with classic Augustinian thinking, whether in its just war or Christian realist incarnations. Augustinians are painfully aware of the temptation to smash, destroy, damage, and humiliate. Such temptations may be struggled against, capitulated to, or even extolled as a form of strength and the path to victory. Violence unleashed when what Augustine called the libido dominandi, or lust to dominate, is unchecked is violence that recognizes no limits. It is violence that kills politics. Whereas classic warfare is the continuation of politics by other means, terrorism is the destruction of politics by all possible means.

Because the terrorist goal is so brutal, human beings whose capacity for compassion is intact find it difficult to believe that there are other human beings with whom we cannot calmly reason or negotiate. And indeed, paranoid persons of a terrorist mentality who have surrounded themselves with a protective cordon sanitaire and want only to be left alone may not be a huge concern (unless, of course, a group of such persons is systematically destroying a minority within its own popula

don or otherwise abusing people in significant and harmful ways). But when the clearly stated terrorist aim is to kill Americans wherever and whenever possible, we are confronting an implacable foe with whom it is impossible to have a diplomatic "sit-down."

A distinguished Johns Hopkins University psychiatrist, Paul R. McHugh, in exploring the mentality of the fanatic, rejects the psychological thinking that claims Americans were driven to extreme anxiety by the destruction of the twin towers because the towers were such obvious "phallic symbols." McHugh is having none of this silliness as he writes:

Americans felt anxiety not because the towers of the World Trade Center were longer than they were wide, but because witnessing the cruel deaths of so many of our fellow citizens—horribly killed as they went about their daily lives, unsuspecting and unprotected—naturally provokes grief, anger, and fear. The brutal indiscriminate slaughter of thousands of people in an instant, along with the sight of their bodies dropping like debris from dizzying heights, should produce pity [and] grief . . . in anyone with an ounce of fellow feeling.3

It is important to take the measure of people who not only are capable of planning and executing such deeds but are gleeful about the lives lost and exult in the terrible devastation to so many families. McHugh reminds us that we are talking about a form of behavior, not just a way of thinking or fantasizing. What we ordinarily speak of as "fanaticism" the psychiatrist is likely to call an "overvalued idea." An overvalued idea drives those who hold it to take action of a certain sort—action that examines no alternative. The fanatic surrounds himself with others of like mind, brooking no dissent. He (or she) becomes cold, paranoid, and aggressive.

The imagination of the fanatic runs wild. One horror, like September 11, must be followed by others. What can we bring down next? Terrorist behavior, once undertaken, feeds on itself, as do other forms of violent criminality. This is a point made by the great psychoanalyst and cultural historian Erik Erikson years ago in a discussion of Hitler's youth. Hitler's awareness of certain dynamics of the human mind and of human behavior led him to implicate recruits to National Socialism early on in deeds of violence from which there was no turning back. Once these recruits had assaulted, bloodied, and perhaps killed their first Jew, the second became easier, and the third easier yet. As McHugh notes, the behavior of terrorists "is maintained by its consequences, especially the publicity that draws attention to the terrorist and his ideas**." The only way to stop this escalation is interdiction**: "The American government should devote its energies to interrupting the terrorists' behavior in all its aspects." Governments have a responsibility to maintain civic peace. **Because there are as many reasons for terrorism** as there are terrorists, says McHugh, the priority must be to "stop the behavior first." Then, "once peace is restored," McHugh concludes, "we can deal with underlying issues. We will very likely find that many of the justifications now offered for terrorism were only rationalizations intended to excuse it. But we need not waste our energies trying to change the opinions of terrorists about us and our aims. These people . . . have overvalued ideas that are inaccessible to argument and persuasion."4

In a speech before the United Nations on October 1, 2001, New York City Mayor Rudy Giuliani made essentially the same point. "This is not a time for further study or vague directives," he insisted, for the "evidence of terrorism's brutality and inhumanity, of its contempt for life and the concept of peace, is lying beneath the rubble of the World Trade Center less than two miles from where we meet today."5

Hannah Arendt, who was always suspicious of psychological categories, would have had little difficulty signing on with McHugh's and Giuliani's conclusions. According to Arendt, the fanatic is a person whose mind is on auto-pilot. Like the war criminal Adolf Eichmann, fanatics have lost the capacity for argument that entertains multiple possibilities. It is impossible to sit down at a table and hammer out some sort of "peace agreement" or "nonaggression pact" with terrorists. Because the goals of the fanatic cannot be achieved by compromise and negotiation, any such agreement would not be worth the paper it was written on.

The only defense against terrorism in the short run is interdiction and self-defense. The best defense against terrorism in the long run is building up secure civic infrastructures in many nations. That is why a number of policymakers have spoken about a contemporary version of the great Marshall Plan that rebuilt Europe after the catastrophe of World War II. The West's generous financial commitment is required, as is the continuing presence of foreign troops and peacekeepers in Afghanistan and, as the war against terrorism goes forward, in other sites as well. As an example of what is both expected and required, Afghan President Hamid Karzai has spoken repeatedly of the need for more troops to be sent to Afghanistan, "for as long as we need . . . to fight terrorism, to fight warlordism, to fight anarchy . . . until we have our own institutions—a national army, a national intelligence, national police and so on."6 He has consistently pled with the United States and its allies to remain engaged even after Al Qaeda has been rendered incapable of using Afghanistan as a base to mount attacks.

Those who condemn a continuing U.S. presence in Afghanistan as yet another intrusion by the "cowboy" Americans are compelled by their logic to ignore the pleadings of those on the ground, including the president of the country. The implication of calls for American withdrawal is that it is preferable to pull up stakes and leave a people beleaguered and vulnerable to terrorist exploitation. This strategy of abandonment, often justified as a way to respect a culture's "difference," is actually a counsel of indifference. To abandon beleaguered peoples is to give them less regard than they deserve as human beings. At the conclusion of World War II, with all its attendant horrors, Hannah Arendt insisted that human dignity needed a new guarantee. Providing that guarantee puts an enormous burden on those with power.

That turns democratic communication

Michael Ignatieff, Harvard Government School Human Rights Policy Center Director, Winter 2002, Part VI: defining and responding to terrorism - International Justice, War Crimes, and Terrorism: The U.S. Record, http://findarticles.com/p/articles/mi\_m2267/is\_4\_69/ai\_97756599/pg\_12

La politique du pire does away with the core of politics that is deliberation, the business of actually persuading other human beings that you are right and they are wrong. The horror of terrorism is that it is a politics that seeks the death of politics, a practice that wants to replace dialogue, discussion, debate, protest, and the arts by which we maintain some control over human violence with violence alone. The reason that Osama bin Laden is the enemy of the human race is not just that he cares so little about human life, but that he will not reason or argue with anyone. He is not interested in joining any argument with anyone. He would rather terrify or intimidate. So in understanding what we do not like about terror, it is not simply that it kills human beings. It also kills politics, the one process we have devised that masters violence in the name of justice. This is what truly entitles us to say that Osama bin Laden and his like are enemies of the human race and that our relations with them should be relations of war.

# 2nc

Rejecting racism is a d-rule

Memmi 2K

(Albert, Professor Emeritus of Sociology @ U of Paris, Naiteire, Racism, Translated by Steve Martinot, p. 163-165)

The struggle against racism will be long, difficult, without intermission, without remission, probably never achieved. Yet, for this very reason, it is a struggle to be undertaken without surcease and without concessions. One cannot be indulgent toward racism; one must not even let the monster in the house, especially not in a mask. To give it merely a foothold means to augment the bestial part in us and in other people, which is to diminish what is human. To accept the racist universe to the slightest degree is to endorse fear, injustice, and violence. It is to accept the persistence of the dark history in which we still largely live. it is to agree that the outsider will always be a possible victim (and which man is not himself an outsider relative to someone else?. Racism illustrates, in sum, the inevitable negativity of the condition of the dominated that is, it illuminates in a certain sense the entire human condition. The anti-racist struggle, difficult though it is, and always in question, is nevertheless one of the prologues to the ultimate passage from animosity to humanity. In that sense, we cannot fail to rise to the racist challenge. However, it remains true that one’s moral conduit only emerges from a choice: one has to want it. It is a choice among other choices, and always debatable in its foundations and its consequences. Let us say, broadly speaking, that the choice to conduct oneself morally is the condition for the establishment of a human order, for which racism is the very negation. This is almost a redundancy. One cannot found a moral order, let alone a legislative order, on racism, because racism signifies the exclusion of the other, and his or her subjection to violence and domination. From an ethical point of view, if one can deploy a little religious language, racism is ‘the truly capital sin. It is not an accident that almost all of humanity’s spiritual traditions counsels respect for the weak, for orphans, widows, or strangers. It is not just a question of theoretical morality and disinterested commandments. Such unanimity in the safeguarding of the other suggests the real utility of such sentiments. All things considered, we have an interest in banishing injustice, because injustice engenders violence and death. Of course, this is debatable. There are those who think that if one is strong enough, the assault on and oppression of others is permissible. Bur no one is ever sure of remaining the strongest. One day, perhaps, the roles will be reversed. All unjust society contains within itself the seeds of its own death. It is probably smarter to treat others with respect so that they treat you with respect. “Recall.” says the Bible, “that you were once a stranger in Egypt,” which means both that you ought to respect the stranger because you were a stranger yourself and that you risk becoming one again someday. It is an ethical and a practical appeal—indeed, it is a contract, however implicit it might be. In short, the refusal of racism is the condition for all theoretical and practical morality because, in the end, the ethical choice commands the political choice, a just society must be a society accepted by all. If this contractual principle is not accepted, then only conflict, violence, and destruction will be our lot. If it is accepted, we can hope someday to live in peace. True, it is a wager, but the stakes are irresistible.

Also turns the case

Eric A. Posner and Adrian Vermeule 11, law profs at the University of Chicago and Harvard, Demystifying Schmitt, January, <http://www.law.uchicago.edu/files/file/333-eap-Schmitt.pdf>

If Congress cannot regulate in advance of emergencies, might it not be able to regulate once the emergency begins? The problem is that in the early stages of the emergency, the legislature is hampered by its many-headed structure. Large bodies of people deliberate and **act slowly** (unless they act as mobs). The best that the legislature can do is ratify the executive’s actions by blessing it with a retroactive authorization, or call a halt to the executive’s response by defunding it. As the emergency matures, the legislature continues to be hampered. Crises unfold in an unpredictable fashion; secrecy will be at a premium. Public deliberation compromises secrecy; the unpredictability of the threat eliminates the value of lawmaking. The legislature’s role in the emergency is marginal. It can grant or withhold political support; and it can legislate along the margins. The legislature may be able to undermine the executive response by defunding it, but it will rarely do so because some response is always better than none. The problem for the legislature is that it cannot make policy in a fine-grained way; its choice—broad support or none at all—is no choice at all. Anticipating a body of literature in positive political theory, Schmitt noted that “the extraordinary lawmaker [i.e. the President of the Reich] can create accomplished facts in opposition to the ordinary legislature. Indeed, especially consequential measures, for example, armed interventions and executions, can, in fact, no longer be set aside.”31 The President’s first-mover role – the “presidential power of unilateral action”32 – implies that he can create a new status quo that constrains Congress’ subsequent response, both in practical terms and because the President can use his veto powers to block legislative attempts to restore the status quo ante. Courts face similar problems. Detailed statutes enacted before the emergency will seem antiquated and inapt. Courts will feel pressure to interpret them loosely or use procedural obstacles to avoid their application. For this reason, violations of FISA and the Anti-Torture Act never led to prosecutions. Vague statutes enacted before and after the emergency provide no rule of decision, and courts are reluctant to substitute their views about policy for those of the executive, which has far more expertise and resources. Commentators have urged courts to use constitutional norms or even international law to control the executive, but these norms also prove to be ambiguous standards rather than clear-cut rules. To apply such standards, courts would have to engage in judicial policymaking. But judges do not believe that they have the information or expertise to make policy during emergencies and so they have seldom taken this approach.

Turns the case

Extinction

**Dawson ‘7**

Ashley Dawson, Associate Professor of English at the City University of New York’s Graduate Center and the College of Staten Island, and Malini Johar Schueller, Professor of English at the University of Flordia, 2007, Exceptional State: Contemporary U.S. Culture and the New Imperialism, p. 20-21

To engage in the critique of contemporary US imperialism is therefore to examine and disturb the nexus of raced, gendered, and classed representations of imperial national identity articulated by the Bush regime. The political implications of such scholarly work are clearer today than ever before. The Bush administration explicitly set out to cow critics of its policies by invoking a strident patriotism that viewed all dissent as treason. Scholarly work in the humanities has been particularly targeted for surveillance and disciplining with neocon ideologues such as Lynn Cheney and Daniel Pipes engaged in a project to purge US academia of progressive scholars. Witness Daniel Pipes’s Web site Campus Watch, which published dossiers of eight supposedly anti-American Middle East studies faculty in an attempt to discredit their work. The American Council of Trustees and Alumni (ACTA), the group with which Lynne Cheney and Joe Lieberman are associated, issued a report entitled “Defending Civilization: How Our Universities are Failing America.” This report published its blacklist of forty professors and argued that colleges and university faculty were the weak link in America’s response to September 11. More ominously, HR 3077 seeks to monitor Middle East studies through a board that includes members from the Department of Homeland Security. Given such repressive moves by the state, including the attempt by the University of Colorado to fire professor Ward Churchill for the remarks he made about 9/11, we believe that we have a responsibility to challenge the seemingly inexorable slide of the United States toward belligerence and authoritarianism at home and abroad. Let us be very clear about one thing: imperial US policies threaten the future of humanity and the planet in the most immediate way. By providing prominent and emerging scholars with a venue to analyze the cultural contradictions of contemporary US imperialism, we intend to highlight and challenge the role of US culture in perpetuating popular authoritarianism. In addition, we believe that Exceptional State contributes to the struggle against the new imperialism by delineating strains of anti-authoritarian culture in the United States today that resonate and articulate solidarity with the emerging movement for global social justice. We thus intend our work to provide tools with which to dismantle coercive US power both domestically and internationally. Although the past thirty years have offered scant hope, we believe that there are viable alternatives to a world of indefinite detention, preemptive strikes, and perpetual warfare.

It’s linear

Eric Posner, Professor of Law, The University of Chicago Law School, and Adrian Vermeule, Professor of Law, Harvard Law School, March 2011, The Executive Unbound, p. 57-8

The Whole and the Parts

It is tempting to think that, even if these oversight mechanisms are feeble taken individually, their cumulative force is more impressive. The reverse is more likely to be true, however: because the very multiplicity of overseers dilutes the responsibility of each, the whole will be less than the sum of the parts. In the savings-and-loan crisis, Congress also set up a variety of oversight bodies, including an independent board structured very similarly to the one created by the EESA. The consequence was unclear lines of authority and fractured responsibility: "[O]verlapping oversight ensured that ... no one agency would bear the blame for the problems that inevitably would emerge. The alphabet soup of overseers distanced both the president and the Congress from the oversight as well, so it helped minimize the electoral fallout from the bailout.” It would be no surprise to see the same dynamic at work under the EESA.

Specific applications analyzed in debates are key

Pildes ‘3

Richard, An-Bryce Professor of Law, New York University School of Law, Conflicts Between American and European Views of Law: The Dark Side of Legalism, 44 Va. J. Int'l L. 145 2003-2004

But articulating these potential limitations of law will require a more precise focus on the specific advantages and disadvantages of law itself in various, specific contexts. There is no general endorsement or critique of "legalism" as a solution to international issues that can be applied across the range of issues at stake. But many advocates for an increased role for judicial institutions and for formal legal codification in the international context do sometimes instinctively seem to believe-that is, **without examining or defending the premise**-that if law is absent in the regulation of international affairs, it must be that there are no meaningful checks on power at all. Instead, law should be understood as only one tool or mode of checking power in the international context, just as it is in the domestic context. There are a variety of ways states and other actors are constrained or can be constrained in the international context apart from formal legal rules and the resort to legal adjudicatory institutions. **What is needed is a comparative and pragmatic analysis of the advantages and disadvantages of** different modes and **tools of** **checking power**. Instead of framing the alternatives as law or "no law," these analyses and public debates ought to see law as one tool among a set of possible tools for dealing with various international issues. Law can be a useful tool in some contexts, to be sure, but one should never think the choice to turn to law is not potentially fraught with certain costs and disadvantages. Nor should the stakes be elevated to a choice between "law" or "anarchy," at least not without analysis of what alternatives to law might exist to check and regulate international affairs. The question, therefore, is not whether to turn to an idealized, "costless" regime of law. Nor should we posit any utopian vision of international harmony and consensus in the absence of law. But the sole alternative to formal law and legal institutions, both domestically and internationally, is not necessarily a regime of anarchy. The serious debate that we must have is one that understands law as one tool among many for addressing these issues, a tool that can have substantial costs-even for the very aims proponents of legalization themselves seek to realize-as well as potential advantages. The question is which tools, with what benefits and what downsides, are most appropriate for which aspects of international issues, particularly for the kind of singular, momentous, exceptional contexts which international debate is now addressing.

**Their moze evidence is solvency for the alternative- there is no reason we have to focus on the law, and it CERTAINLY does not have to be our starting point. Rather, the concept of surrendering is something done on a PERSONAL level- bottom up approach and rejecting their use of the law is the ONLY way to solve the case- takes out aff solvency and proves that the alterantive is the ONLY way to solve the impacts of the 1ac**

Moze 7—Mary Beth, Ph.D. in Personal Development and Transformation [“Surrender: An Alchemical Act in Personal Transformation,” *Journal of Conscious Evolution*, http://www.cejournal.org/GRD/Surrender.pdf]

Before pursuing a definition of what surrender is, it is helpful to benchmark what it is not. Some terms are used synonymously with surrender but have subtle shifts in meaning that differ significantly from the healthy version of surrender that grounds this article. Those terms include submission, resignation, and compliance.

Submission entails a role of domination by one over another and is a perversion of surrender (LaMothe, 2005). It is an individual’s conscious acceptance of reality but tainted with an unconscious unacceptance that harbors the desire for eventual revenge (Tiebout, 1949). Submission sustains the tension between self and Other and houses distrust and a sense of betrayal (LaMothe, 2005; Tiebout, 1949). It is ofte n a defense against hopelessness and the fear  of the annihilation of one’s sense of identity (LaM othe, 2005). It resembles surrender in its longing to know and be known, but cheats the process by sustaining a role of bondage and a sense of futility (Ghent, 1990).

Resignation holds an element of judgment (Tolle, 1 999) which is contrary to the unconditional nature of healthy surrender. Resignation moves one into accordance with another, but not based on shared beliefs nor trust and often as a result of exhausted failed efforts to negotiate a mutually satisfying interpersonal relat ionship. It often accompanies the role of submission (Ghent, 1990). Both submission and resignation have a resistant quality about them which maintains an Egoic position, not a state of surrender. To a certain degree, there is a sense of longevity to the roles of submission and resigna tion.

In comparison, compliance has a temporariness abou t it. Like resignation, it entails a going along with attitude while not necessarily approving of that t o which one resigns. However, compliance is more about saying yes in the moment more for the sake of convenience than for the sake of acceptance. Compliance contributes to a sense of guilt, inferiority, and shame for not standing up for oneself and it also deceives all of those involved with the circumstance (Tiebout, 1953).

The more inviting definition of surrender appeals to its resilient nature, not its resistant nature. Resistance operates against growth or chang e and seeks to maintain the familiar, while surrender and resilience operate toward growth (Ghe nt, 1990). Rather than an Egotistical defeat, healthy surrender is a compassionate giving over that rests on trust (LaMothe, 2005). Such surrender involves commitment, openness, soulful mo tivation, and vibrancy.

Total surrender unconditionally yields to what is (Tolle, 1999) rather than to what one prefers or expects. It is a wholehearted acceptance of one’s perception of reality and unreservedly yields to more than the Ego (Cohen, 20 04; Jones, 1994; Tiebout, 1953). Judgments are suspended. One is involved in a code of integrity and unity with Other, and admits to not knowing the full meaning of an encounter, especially in the moment it occurs (Parlee, 1993; Wolff, 1974). This allows for openness of experience and fully embraces the unknown (May, 2004).

Surrender is liberation, expansion of self, and the letting down of defensive barriers (Ghent, 1990). It is **something that takes place within one’s self** and contingent only upon one’s willingness to let down the barriers that one alone puts up: to give up resistances, defenses, and self-preconceptions in service of healing, acceptance, and seeking to know Other (Branscomb, 1993; Jones, 1994; Tiebout, 1949). Surrender is an existential reality that does not objectify self or Other and rather identifies with limitlessness ( May, 1982). Surrender need not be permanent; it can be a temporary relinquishment of control and suspension of beliefs (Hart, 2000). It leaves intellectual knowledge in tact while releasing one to inquire further about truths (Rutledge, 2004) without an agenda for expected outcomes (Wolff, 197 4). It involves curiosity that is attracted to meaning, not oddity.

Surrender is a particular way of functioning, motivated by the longing for growth and connectedness (Ghent, 1990). It is soulful. Such willingness rests on and is motivated by trust, faith, hope, and heart based desires for meaning; it appeals to that which dignifies and ennobles (Hawkins, 2002). Surrender is an act of faith and a statement of hope based on trust (Hart, 2000). Surrender of this nature reacquaints us with our humanness and innocence, not our individuality, and enables us to see the good in Other and in the world (Branscomb, 1993; Wolff, 1974). It nourishes the needs of the soul and gently releases the wants of the Ego (Zukav, 1990).

An act of surrender is inevitably followed by a state of surrender (Tiebout, 1949), free of time and space (Hart, 2000). Surprisingly, surrender is vibrant, not passive. It is an intimate state of involvement (May, 1982) in which one actively constructs an experience while choosing to give in – to lean in toward – another (LaMothe, 200 5). There is a dynamic flow of emergence and waning that actualizes the potential for enhanc ed meaning and communion with Other (LaMothe, 2005). One does not passively tolerate a situation nor cease personal action; instead, there is an awareness and reciprocity of responsive ness that is improvisational and uncontrolling (Rutledge, 2004; Tolle, 1999). To improvise is to be intuitively creative; it is a universal capacity!

I do not posit a linear relationship between trust, commitment, openness, soulful motivation, and vibrancy. The literature does not suggest anything in this regard. What is noteworthy is the simultaneous simplicity and compl exity of a resilient act of surrender. It is alchemical. It is not an act that simply initiates a natural progression of potential change; it is an innately complex function that transmutes one way of being into another.

I hesitate to offer a definition of surrender, fea ring that it will be concretized. Surrender has a wholesomeness that is elusive and not easily definable. For the sake of grounding the remaining contents of this article, I offer the following definition as support, not absolute. Surrender is a trusting act to which one fully commits and lets go of absolute perceived control and personal defenses in order to step into a limitless unknown and actively engage Other, allowing for the potential discovery of greater truths while being unattached to any expected outcomes. Even more simply stated, surrender is a faithful gesture toward knowing Other and being known.

#### Their solvency also agrees with us- democratic communication, aka the bottom up approach that the alternative states, is necessary

Markwick 10—Michael Markwick, Lecturer at Simon Fraser University, Ph.D candidate in philosophy at Simon Fraser University [Spring 2010, “Terror and Democratic Communication,” Ph.D Dissertation, http://summit.sfu.ca/item/9989]

At the same time, the messianic presidency as sovereign power is the product of continual negotiation, and its powers of vivification and vivisection do not—indeed cannot— extirpate the operation of conscience. Against the facts of the war on terror, I argue for the role of conscience in democratic communication, across the full range of cultural expression, from formal political and jurisprudential discourse to movements of social change and popular culture. Democratic communication persists even in the midst of bare life as the site of the public operation of conscience, of knowing together. It is the assertion of conscience against sovereign power, not through grand narratives or defiant, beautiful acts of hopelessness but through our agonistic and reflexive encounters in a plurality of worldviews. The point, therefore, of Kymlicka’s “equality between groups, and freedom within groups” is not to isolate conscience as an insular entity, but rather to allow us to meet each other and contend with each other over the big questions about human existence, to get to the truth and to order our affairs to suit our best understanding about these questions. The project of democratic communication is not to create zones of exclusion for our creative self-fashioning, it is to allow us to take seriously the content of each other’s lives, to discern therein insights into the way we understand ourselves as human persons. In this sense, democratic communication necessarily involves the ongoing articulation and deconstruction of ontological claims, not to rid us of metaphysics but instead—agonistically, empathetically—to find our own voice in it.

#### Deviation in the human conscience is key

Markwick 10—Michael Markwick, Lecturer at Simon Fraser University, Ph.D candidate in philosophy at Simon Fraser University [Spring 2010, “Terror and Democratic Communication,” Ph.D Dissertation, http://summit.sfu.ca/item/9989]

Far from living in a post-metaphysical era, I believe Connolly is correct in his assertion that every “political interpretation projects presumptions about the primordial character of things”. (Connolly, 1993: 1) There is, therefore, a caesaropapist effect in the liberal narrative of public neutrality; it provides plausible cover for the construction of dominant, history-ending definitions about what it means to be human. Instead of building a political culture beyond metaphysics—the purely procedural and inclusive political culture, democratic in the equal freedoms it accords for our private fulfilment in seeking the good individually—this narrative allows sovereign power to enforce its edict about the nature and purpose of human life. The post-metaphysics feint allows a political culture to develop 200 and enforce the limits of the political community, setting the bounds between the citizen and the alien, and the community of life itself, setting the bounds between human and subhuman, the quick, the dead and the expendable. It is the means by which sovereign power bifurcates human existence, producing on the one hand politically qualified life—the citizen made in its own image—and, on the other, bare life, the human organism. Political liberalism’s restraint about the big questions, its concern to create maximal space for our individual, creative self-fashioning, is part of its edict about the “primordial character of things”. Instead of standing against republicanism, political liberalism works symbiotically with the republican project of defining the national character, the way of life, of a democratic people. Together they confer freedom and equality on the terms of sovereign power, not on the terms of conscience. They set the bounds of democratic communication, and remove from the function of citizenship public deliberation about existential questions. There is no return through political liberalism to classical politics, the sharing in self-governance of a democratic people through the scrupulous separation of public and private life, of political life and organic life. Instead, citizenship becomes the constructed acceptance of a synthetic freedom and equality, synthetic because freedom and equality under sovereign power are not the fruit of the operation of conscience; they are, instead, the doctrines of the state policed by violence. Citizenship becomes sovereign power’s imposition of a doctrinal closure on the debate about what it means to be human, because the definition of who is a citizen carries with it the power to define who is and who is not human. This places citizenship at odds against conscience and its principal function of continually discerning the meaning and purpose of human existence; sovereign power 201 might simulate conscience, but it cannot replace the restless human work in conscience of examination and deconstruction.

I will argue below that the persistence of this unexamined, dominant metaphysics allows the continuing ascendance of the security regime. Further, the political effect of this metaphysics is to consolidate power in the messianic presidency. A great deal of authoritative work has been done to map the contours of, and at times laud, the “imperial presidency”, with reference to the global reach of the executive branch in the United States. (Schlesinger, 1989) In the words of Michael Ignatieff, “Yet what word but ‘empire’ describes the awesome thing that America is becoming?” (Ignatieff, 2005) My concern is the biopolitical dimension this office now assumes; I believe the claim it makes to validate human life as such, to “touch the soul” of the citizen, to be the agent of a divine plan in the unfolding of human history suggest a presidency that is not simply imperial in its self-understanding but messianic. I will suggest that a biopolitical reading of the war on terror gains ground in deconstructing the covert ontology of what passes for democratic political culture, moving the analysis from ideology and discipline to the messianic powers of vivification and vivisection. Ostensible neutrality “about the primordial character of things” is the shell within which the messianic presidency quickens, rising to primacy over constitutional governance in the United States. The Obama White House does not represent a break with this phenomenon; it does not return the Office of the President to the proportions the framers of the republic entrenched constitutionally. Instead, through its reinvigorated prosecution of the war on terror, the Obama White House represents the next phase in the maturation of the messianic presidency.202

The permutation is coopted and the alternative is a pre-requisite—legalism crowds out our method—that’s marguilies—the alt is a pre-requisite

Knox ‘12

Robert, PhD Candidate, London School of Economics and Political Science. !is paper was presented at the Fourth Annual Conference of the Toronto Group for the Study of International, Transnational and Comparative Law and the Towards a Radical International Law workshop, “Strategy and Tactics,”

this warning is of great relevance to the type of ‘strategic’ interventions advocated by the authors. there are serious perils involved in making any intervention in liberal-legalist terms for critical scholars. the first is that – as per their own analysis – liberal legalism is not a neutral ground, but one which is likely to favour certain claims and positions. Consequently, it will be incredibly difficult to win the argument. Moreover, **even if** the argument is won, the victory is likely to be a very particular one – inasmuch as **it will foreclose any wider consideration of the structural or systemic causes** of any particular ‘violation’ of the law. All of these issues are to some degree considered by the authors.44 However, given the way in which ‘strategy’ is understood, the effects of these issues are generally confined to the immediate, conjunctural context. As such, the emphasis was placed upon the way that the language of liberal legalism blocked effective action and criticism of the war.45 Much less consideration is placed on the way in which advancing such argument impacts upon the long term effectiveness of achieving the strategic goals outlined above. Here, the problems become even more widespread. Choosing to couch the intervention in liberal legal terms ultimately reinforces the structure of liberal legalism, rendering it more difficult to transcend these arguments.46 In the best case scenario that such an intervention is victorious, this victory would precisely seem to underscore the liberal position on international law. Given that international law is in fact bound up with processes of exploitation and domination on a global scale, such a victory contributes to the legitimation of this system, **making it very difficult to argue against its logic.** this process takes place in three ways. Firstly, by intervening in the debate on its own terms, critical scholars reinforce those very terms, as their political goals are incorporated into it.47 It can then be argued the law is in fact neutral, because it is able to encompass such a wide variety of viewpoints. Secondly, in discarding their critical tools in order to make a public intervention, these scholars abandon their structural critique **at the very moment when they should hold to it most strongly**. that is to say, that at the point where there is actually a space to publicise their position, they choose instead to cleave to liberal legalism. thus, even if, in the ‘purely academic’ context, they continue to adhere to a ‘critical’ position, in public political terms, they advocate liberal legalism. Finally, from a purely ‘personal’ standpoint, in advocating such a position, they undercut their ability to articulate a critique in the future, precisely because they will be contradicting a position that they have already taken. the second point becomes increasingly problematic absent a guide for when it is that liberal legalism should be used and when it should not. Although the ‘embrace’ of liberal legalism is always described as ‘temporary’ or ‘strategic’**,** there is actually very little discussion about the specific conditions in which it is prudent to adopt the language of liberal legalism. It is simply noted at various points that this will be determined by the ‘context’.48 As is often the case, the term ‘context’ is invoked49 without specifying precisely which contexts are those that would necessitate intervening in liberal legal terms. Traditionally, such a context would be provided by a strategic understanding. that is to say, that the specific tactics to be undertaken in a given conjunctural engagement would be understood by reference to the larger structural aim. But here, there are simply no considerations of this. It seems likely therefore, that again context is understood in purely **tactical terms.** Martti Koskenniemi can be seen as representative in this respect, when he argued: What works as a professional argument depends on the circumstances. I like to think of the choice lawyers are faced with as being not one of method (in the sense of external, determinate guidelines about legal certainty) but of language or, perhaps better, of style. the various styles – including the styles of ‘academic theory’ and ‘professional practice’ – are neither derived from nor stand in determinate hierarchical relationships to each other. the final arbiter of what works is nothing other than the context (academic or professional) in which one argues.50 On this reading, the ‘context’ in which prudence operates seems to the immediate circumstances in which an intervention takes place. this would be consistent with the idea, expressed by the authors, that the ‘strategic’ context for adopting liberal legalism was that the debate was conducted in these terms. But the problem with this understanding is surely evident. As critical scholars have shown time and time again, the contemporary world is one that is deeply saturated with, and partly constituted by, **juridical relations**.51 Accordingly, there are really very few contexts (indeed perhaps none) in which political debate is not conducted in juridical terms. A brief perusal of world events would bear this out.52 the logical conclusion of this would seem to be that in terms of abstract, immediate effectiveness, the ‘context’ of public debate will almost always call for an intervention that is couched in liberal legalist terms. This raises a final vital question about what exactly distinguishes critical scholars from liberal scholars. If the above analysis holds true, then the ‘strategic’ interventions of critical scholars in legal and political debates will almost always take the form of arguing these debates in their own terms, and simply picking the ‘left’ side. thus, whilst their academic and theoretical writings and interventions may (or may not) retain the basic critical tools, the public political interventions will basically be ‘liberal’. The question then becomes, in what sense can we really characterise such interventions (and indeed such scholars) as ‘critical’? The practical consequence of understanding ‘strategy’ in essentially tactical terms seems to mean always struggling within the coordinates of the existing order. Given the exclusion of strategic concerns as they have been traditionally understood, **there is no practical account for how these coordinates will ever be transcended** (or how the debate will be reconfigured). As such, **we have a group of people struggling within liberalism, on liberal terms,** who may or may not also have some ‘critical’ understandings which are never actualised in public interventions. We might ask then, apart from ‘good intentions’ (although liberals presumably have these as well) what differentiates these scholars from liberals? Because of course liberals too can sincerely believe in political causes that are ‘of the left’. It seems therefore, that just as – in practical terms – strategic essentialism collapses into essentialism, so too does ‘strategic’ liberal legalism collapse into plain old liberal legalism.53

“do both” is textually intrinsic—voter because its unpredictable and makes the perm a moving target which guts clash

Overcoming structural factors via the alt is a pre-requisite

Knox ‘12

Robert, PhD Candidate, London School of Economics and Political Science. !is paper was presented at the Fourth Annual Conference of the Toronto Group for the Study of International, Transnational and Comparative Law and the Towards a Radical International Law workshop, “Strategy and Tactics,”

‘Lawfare’ is a very specific term which refers to the idea that international law is a part of modern warfare, and can be used as a weapon by both sides.21 But in this instance the particular usage implies a more general idea about the relationship between international law and the political process. Essentially, critical scholars argue that rather than international law being outside of relations of power, exploitation and domination it is already ‘part of the problem’, that is to say that international law has played and continues to play a role in constituting and legitimating these relations.22 this is because it at least partially creates the conditions in which political and economic power is exercised – by granting certain types of property, allowing certain types of violence, locating certain agents within certain social positions and granting them certain powers etc.23 In this view, law is not simply a negative relationship that constrains action, but also one that sets the conditions in which action takes place, enabling relations of domination and exploitation. the final element is that of ‘structural bias’. the following comment from Martti Koskenniemi gives a glimpse into how it has been understood by critical scholars. Koskenniemi argues that irrespective of the formal openness entailed by indeterminacy ‘the system still de facto prefers some outcomes or distributive choices to other outcomes or choices ... even if it is possible to justify many kinds of practices through the use of impeccable professional argument, there is a structural bias in the relevant legal institutions that makes them serve typical, deeply embedded preferences, and that something we feel that is politically wrong in the world is produced or supported by that bias.’.24 Whilst there are problems with this specific formulation, it does the final core insight of critical international lawyers, namely that law is not a neutral framework through which all interests can be equally expressed, but one which will systematically favour some interests over others.25 Provisionally then, these positions point to a theory about law and legal argument which argues that it occupies a central role in international politics. In this vision, international law helps to constitute and enable those relations that critical scholars want to fight and is not a ‘neutral’ instrument through which any actors can pursue their interests. Crucially, this is a theory about the structure of law and legal argument, which is not concerned with specific legal rules should be deployed or the outcomes of specific legal decisions, but is rather about the broader the relationship between law and social phenomena. these positions stand in contrast to the mainstream, liberal understanding of international law. the liberal position is the precise inverse of the critical one outlined above. In this understanding, international law is seen as a determinate body of rules, through which various interests could be expressed. Here international law is not said to be constitutive of relations of exploitation of domination, but rather to have played a crucial role in ending such relations historically (particularly in the case of colonialism) and in the present conjuncture to be systematically violated and abused by various superpowers.26 In this account international law is at worst a ‘neutral’ vessel, and at best the rule of law (as distinct from particular laws) is a force for good. This liberal understanding is one not simply held by lawyers or academic commentators, but is also the ‘common sense’ understanding of international law that structures public debate.27 Much of this debate proceeds on the understanding that various imperial actions are illegal, **must be shown to be so**, and contested in these terms.28 the applicability of the strategy and tactics distinction should be obvious here. On the one hand we have a group of scholars advancing a structural critique of international law that is, in the limited sense outlined above, ‘revolutionary’. On the other hand, they operate in a context in which the majority of individual struggles – over wars, detention of ‘terrorists’, debt etc. – are conducted in such a way as directly militates against this critique. thus we have the example of the ‘revolutionary’ critique (of organic moments) in a non-revolutionary period. What, in this context, would a strategic objective look like? Despite the previously mentioned theoretical and political diversity in critical international legal scholarship, the common ‘organic’ analysis of international law provides a basic idea of the form such a strategic goal might assume. there are two obvious variants of strategy here. First, there is what we might call the ‘idealist’ variant. In this account the primary problem to be dealt with is that the ideas of liberal legalism have a hold over policy makers and the public. Consequently, strategic aim would be to reconfigure the debate in such a way that the structural critique of the mainstream would be strengthened, with the eventual aim of constituting it as a hegemonic understanding of international law.29 Second, there is a materialist approach, which would stress that the material basis of the problems outlined above. On this account, one cannot understand the structuring features of the law and legal argument on their own terms, or simply as ‘ideas’. Rather, they need to be understood on the basis of ‘the material conditions of existence’ that is to say those ‘definite and necessary relations of production that human beings enter into independently of their will’.30 As such, it is social and economic forces and relationships which generate indeterminacy, lawfare and structural bias. this means that a strategic goal would necessarily involve overcoming the social relationships that give rise to the problems outlined above, involving action to transform the material conditions of our existence.31 In practical terms, of course, these are hardly mutually exclusive positions since any materialist critique relies on convincing people of its validity.32 the point is that both of these objectives are strategic and so are not directly concerned with winning arguments on the terms of liberal legalism (that is to say, whether given actions would be legal or illegal) **but rather aim at overturning those very terms**.33

Individuation DA—destroys collective movements necessary for solvency

Dossa ‘99

Shiraz, Department of Political Science, St. Francis Xavier University, Antigonish, Nova Scotia, “Liberal Legalism: Law, Culture and Identity,” The European Legacy, Vol. 4, No. 3, pp. 73-87,1

LEGALISM AND THE LIBERAL ORDER

In liberal theory and practice, law lies at the core of politics: legislation, policy, projects are fashioned and implemented as a set of sovereign rules. Rule of law is the pride of liberal conduct, **the dominion which protects liberty, resolves disputes, defends rights, punishes crimes, and hears the supplications of the politically weak for justice.** Liberal theory is deeply infused with juridical metaphors, legalist analytic styles and juridical notions of rights and citizenship. In its substantive concerns, in fact, liberal political theory is often indistinguishable from legal theory or jurisprudence. The formal split between law and morals, the primacy of individual liberty and autonomy and of right over the good, the focus on the visibly factual (distinguished from values), constitute sacral tenets of liberal legality and politics. Law occupies much of the private and social terrain in liberal societies. For most liberals, this synonymity, the fusion of politics with the ideology of legalism, is not troubling: they see in law the steely foundation of fairness and justice, process and procedure, capsulated in the doctrine of the rule of law. No other department of civilized life offers, in this view, comparable resources and the possibilities for justice. That this ideal is rarely realized, has not dissuaded liberals from supposing that law-based politics is the only politics worth defending. To liberals, law is **distilled, honed reason**: fidelity to its rules yields rational and impartial judgments. Law in this rendering is the nucleus of civilized life, of rights against the state, against social engineers with grand moral visions. Law's aficionados acclaim it as disinterested, intrinsically unbiased, non-ideological, fair and just. Lawful politics **in the real world** is a far cry from this idolized depiction. For one critic, espousing a view shared by the Critical Legal and Critical Race theory movement, the law is "profoundly political", neither innocent nor neutral, and "the Rule of Law is a sham" despite its facade of cool rationality.7 Not all liberal political theorists are sanguine about the juridical usurpation of politics. Judith Shklar for one has radically questioned this legalistic trend in political argument. In her critical text, Legalism, she has argued that this formalist legal ethos is manifestly ideological and complacently oblivious to the intimacy between law and violence, law and politics, law and moral prejudice. Legalism, among other claims, denies "both the political provenance and the [political] impact of judicial decisions": it asserts the "belief that law is not only separate from political life but that it is a mode of social action superior to mere politics".8 This astonishing displacement of the ancient classical Greek ideal of just regime (good society), balancing and harmonising claims for the sake of the common good, has yielded a crass, impoverished, instrumental definition of justice. Justice is now "the most legal of virtues" (Hart), defined as "the commitment to obeying the rules"9 : justice is not the uniquely political virtue as Plato and Aristotle had thought. Liberal legalism scants the ideals of communal harmony and collective good, it only recognises individual interest, desire, possessiveness, within the bounds of the rules: this is the crux and bane of legalistic politics. In the US and in Canada, this legalistic ethic has legitimated an analytical approach to cultural and political issues that has privileged formalism, procedure, process, as emblems of rationality, efficiency, modernity: the good society or the common good is inadmissible in this methodologically rational and individualist legal outlook.10

Their studies are flawed

Douglas Kriner, Assistant Profess of Political Science at Boston University, 2010, After the Rubicon: Congress, Presidents, and the Politics of Waging War, p. 6-8

The role that Congress plays in deciding whether a war is continued or concluded is of intrinsic interest to academics, policymakers, and casual observers of contemporary American politics alike. Yet the belief that Congress retains some capacity to shape the conduct of military affairs after a venture is launched is also a critically important and untested proposition underlying most theories **asserting** congressional influence over the initiation of military action. Why, according to this emerging literature, do presidents facing a strong opposition party in Congress use force less frequently than do their peers with strong partisan majorities in Congress? The most commonly offered answer is that presidents anticipate Congress's likely reaction to a prospective use of force and respond accordingly.14 Presidents who confront an opposition-led Congress anticipate that it is more willing and able to challenge the administration's conduct of military action than a Congress controlled by their partisan allies. Therefore, the frequency with which presidents use force abroad covaries with the strength of their party in Congress. However, this anticipatory logic requires that Congress has the ability to raise the costs of military action for the president, once that action has begun. If Congress lacks this capacity, presidents have little reason to adjust their willingness to initiate the use of force in anticipation of an adverse congressional response." As a result, determining whether and how Congress can influence the scope and duration of ongoing military operations is critically important even to evaluating prior research that asserts congressional influence over the initiation of military actions. Without it, such analyses rest on shaky ground. Unfortunately, because the dynamics change dramatically once American troops are deployed abroad, simply drawing lessons from existing studies of interbranch dynamics in military policymaking at the conflict initiation phase and applying them to the conflict conduct phase is unlikely to offer much insight." The decision-making environment at the conflict conduct phase differs from that at the conflict initiation phase along at least three key dimensions: the incentives and constraints governing congressional willingness to challenge presidential discretion; the relative institutional capacities of the executive and legislative branches to affect military policymaking; and finally, the ability of unfolding conflict events to change further the political and strategic environment in which the two branches vie for power. With regard to the political constraints that limit would-be adversaries in Congress, the president may **be in an even stronger position** after American troops are deployed in the field. Ordering troops abroad is akin to other unilateral presidential actions; by seizing his office's capacity for independent action, a president can dramatically **change the status quo** and fundamentally alter the political playing field on which Congress and other actors must act to challenge his policies.17 Once the troops are overseas, the political stakes for any congressional challenge to the president's policies are inexorably raised; any such effort is subject to potentially ruinous charges of failing to support the troops. Georgia Senator Richard Russell's conversion from opposition to U.S. intervention in Vietnam in the early 196os to stalwart support for staying the course after Lyndon Johnson's escalation of the American commitment there illustrates this change: "We are there now, and the time for debate has passed. Our flag is committed, and—more importantly—American boys are under fire."" Russell's sentiment was loudly echoed forty years later in the allegations by the Bush administration and its partisan allies in Congress that any legislative efforts to curtail the war in Iraq undermined the troops. As a result of these potentially **intense political costs**, there are reasons to question whether Congress can mount an effective challenge to the policies of the commander in chief. If it cannot, this would compel a reassessment of prior theories asserting congressional influence over the initiation of military actions through the logic of anticipated response. Certainly, more empirical analysis is needed to answer this question.

Anticipatory adaptation is false

Douglas Kriner, Assistant Profess of Political Science at Boston University, 2010, After the Rubicon: Congress, Presidents, and the Politics of Waging War, p. 11

The theoretical puzzle then is how Congress can serve as a strong constraint, given the rarity with which members have succeeded in using their legislative powers to write their foreign policy preferences into law. Anticipatory mechanisms suggest one possible answer: if presidents anticipate perfectly when Congress will act legislatively to block a new use of force or end an ongoing military deployment, then they will adjust their policies ex ante to avoid being overruled by Congress. According to this logic, we should only rarely, if ever, see Congress striking down presidential military policies. This is not because Congress is weak, but because the president anticipates when Congress will act and adjusts his conduct of military affairs accordingly. The problem with this hypothesis is that presidents surely recognize that Congress faces tremendous institutional and political barriers that all but preclude it from legislatively overriding their military policies except in extraordinary cases. Given this reality, this simple anticipatory logic begins to break down.

Congressional signal won’t be perceived

Douglas Kriner, Assistant Profess of Political Science at Boston University, 2010, After the Rubicon: Congress, Presidents, and the Politics of Waging War, p. 81-2

First, in many cases **congressional signals will** likely **have** **only a** modest influence **on the calculations of the target state** at the conflict conduct phase. Uses of force involving the United States are different from most other uses of force occurring in the international system because of the tremendous asymmetric advantages in military capabilities that the United States enjoys over almost every adversary. By the time that the military policymaking process enters the conflict conduct phase, the target state's leader has already decided that his or her interests are best served by refusing to capitulate to American demands, even at the risk of almost certain tactical defeat at the hands of a superior military force. Having made this cost-benefit calculation, **congressional signals** during the course of a conflict **should have only a modest impact on the target state leader's subsequent behavior at the conflict conduct phase**." Moreover, the types of states whose leaders are most likely to make this calculation—weak states (including those harboring non-state actors who are the true target of a proposed use of force), failed states, and vulnerable dictatorships—are in many cases **very different** from most other members of the international community. For these actors, the costs of capitulating to American demands are so high that their cost-benefit calculations should be more impervious to congressional signals.

Err neg—we’ve tried this so many times

Eric Posner, Professor of Law, The University of Chicago Law School, and Adrian Vermeule, Professor of Law, Harvard Law School, March 2011, The Executive Unbound, p. 84-5

The constitutional framework of liberal legalism is too rickety to contain executive power, perhaps statutes can substitute new legal constraints. A principal hope of liberal legal theory is that the deficiencies of the constitutional framework can be patched up by framework statutes that will channel and constrain executive power. The executive comprises the president and (various types of) agencies, and liberal legalism tries to constrain both, through different statutes. As to the agencies, liberal legalists hope that general procedural statutes such as the Administrative Procedure Act (APA) can "translate" the principles and values underlying the separation of powers into a world in which agencies routinely hold consolidated powers of lawmaking, law-execution, and law-interpretation.' As to the president, Congress has enacted many subject-specific framework statutes that attempt to constrain executive power, especially with regard to warmaking, foreign policy, and emergencies. And liberal legal theorists often propose new statutes of this sort—for example, a statute that would confine presidential emergency powers in the aftermath of a terrorist attack.' These efforts all fall short of the aspirations of liberal legalism, in greater or lesser degree. The subject-specific framework **statutes that attempt to constrain presidential power are the most conspicuous failure**; most are dead letters. Seemingly more successful is the APA, which remains the central framework for the administrative state. We will suggest that this is something of an illusion; the greater specificity of the subject-specific statutes, and the greater plasticity and ambiguity of the APA, make the failure of the former group more conspicuous, while giving the latter a misleading appearance of constraining force. The secret of the APA's "success"—its ability to endure in a nominal sense—is that it contains a series of adjustable parameters that the courts use to dial up and down the intensity of their scrutiny over time. The APA's basic flexibility allows courts to allow government to do what government needs to do when it needs to do it. The result is a series of legal "black holes" and "grey holes"—the latter being standards of reasonableness that have the appearance of legality, but not the substance, at least not when pressing interests suggest otherwise. This regime is a triumph for the nominal supremacy of the APA, but not for any genuine version of the rule of law. Liberal legalism's basic aspiration, that statutes (if not the Constitution) will subject the administrative state to the rule of law, is far less successful than it appears.

No compliance w/ Congressional constraints

Eric Posner, Professor of Law, The University of Chicago Law School, and Adrian Vermeule, Professor of Law, Harvard Law School, March 2011, The Executive Unbound, p. 25-29

Many institutional factors hamper effective legislative monitoring of executive discretion for legal compliance. Consider the following problems. Information Asymmetries Monitoring the executive requires expertise in the area being monitored. In many cases, **Congress lacks the information necessary** to monitor discretionary policy choices by the executive. Although the committee system has the effect, among others, of generating legislative information and expertise,18 and although Congress has a large internal staff, there are domains in which no amount of legislative expertise suffices for effective oversight. Prime among these are areas of **foreign policy and national security**. Here the relative lack of legislative expertise is only part of the problem; what makes it worse is that the legislature lacks the raw information that experts need to make assessments. The problem would disappear if legislators could cheaply acquire information from the president, but they cannot. One obstacle is a suite of legal doctrines protecting executive secrecy and creating deliberative privileges—doctrines that may or may not be justified from some higher-order systemic point of view as means for producing optimal deliberation within the executive branch. Although such privileges are waivable, the executive often fears to set a bad institutional precedent. Another obstacle is the standard executive claim that Congress leaks like a sieve, so that sharing secret information with legislators will result in public disclosure. The problem becomes most acute when, as in the recent controversy over surveillance by the National Security Agency, the executive claims that the very scope or rationale of a program cannot be discussed with Congress, because to do so would vitiate the very secrecy that makes the program possible and beneficial. In any particular case the claim might be right or wrong; legislators have no real way to judge, and they know that the claim might be made either by a well-motivated executive or by an ill-motivated executive, albeit for very different reasons. Collective Action Problems Part of what drives executive reluctance to share information is that, even on select intelligence committees, some legislator or staffer is bound to leak and it will be difficult to pinpoint the source. Aware of the relative safety that the numbers give them, legislative leakers are all the more bold. This is an example of a larger problem, arising from the fact that there are many more legislators than top-level executive officials. Compared to the executive branch, Congress finds it more costly to coordinate and to undertake collective action (such as the detection and punishment of leakers). To be sure, the executive too is a "they," not an "it." Much of what presidents do is arbitrate internal conflicts among executive departments and try to aggregate competing views into coherent policy over time. As a strictly comparative matter, however, the contrast is striking: the executive can act with much greater unity, force, and dispatch than can Congress, which is chronically hampered by the need for debate and consensus among large numbers. This comparative advantage is a principal reason why Congress enacts broad delegating statutes in the first place, especially in domains touching on foreign policy and national security. In these domains, and elsewhere, the very conditions that make delegation attractive also hamper congressional monitoring of executive discretion under the delegation. There may or may not be offsetting advantages to Congress's large numbers. Perhaps the very size and heterogeneity of Congress make it a superior deliberator, whereas the executive branch is prone to suffer from various forms of groupthink. But there are clear disadvantages to large numbers, insofar as monitoring executive discretion is at issue. From the standpoint of individual legislators, monitoring is a collective good. If rational and self-interested, each legislator will attempt to free ride on the production of this good, and monitoring will be inefficiently underproduced. More broadly, the institutional prerogatives of Congress are also a collective good. Individual legislators may or may not be interested in protecting the institution of Congress or the separation of legislative from executive power; much depends on legislators' time horizons or discount rate, the expected longevity of a legislative career, and so forth. But it is clear that protection of legislative prerogatives will be much less emphasized in an institution composed of hundreds of legislators coming and going than if Congress were a single person. "Separation of Parties, not Powers" Congress is, among other things, a partisan institution.° Political scientists debate whether it is principally a partisan institution, or even exclusively so. But Madison arguably did not envision partisanship in anything like its modern sense. Partisanship undermines the separation of powers during periods of unified government. When the same party controls both the executive branch and Congress, real monitoring of executive discretion rarely occurs, at any rate far less than in an ideal Madisonian system. This appears to have a marked effect in the domain of war powers and foreign affairs, where a recent study by political scientists William Howell and Jon Pevehouse shows that congressional oversight of presidential war powers differs markedly depending upon the partisan composition of Congress." When Congress is a co-partisan of the president, oversight is minimal; when parties differ across branches, oversight is more vigorous. Partisanship can enhance monitoring during periods of divided government,21 but this is cold comfort for liberal legalists. From the standpoint of liberal legalism, monitoring is **most necessary** during periods of unified government, because Congress is most likely to enact broad delegations when the president holds similar views; and in such periods monitoring is least likely to occur. The Congress of one period may partially compensate by creating institutions to ensure bipartisan oversight in future periods—consider the statute that gives a minority of certain congressional committees power to subpoena documents from the executive22—but these are palliatives. Under unified government, congressional leaders of the same party as the president have tremendous power to frustrate effective oversight by the minority party. The Limits of Congressional Organization Congress as a collective body has attempted, in part, to overcome these problems through internal institutional arrangements. Committees and subcommittees specialize in a portion of the policy space, such as the armed forces or homeland security, thereby relieving members of the costs of acquiring and processing information (at least if the committee itself maintains a reputation for credibility). Intelligence committees hold closed sessions and police their members to deter leaks (although the sanctions that members of Congress can apply to one another are not as strong as the sanctions a president can apply to a leaker in the executive branch). Large staffs, both for committees and members, add expertise and monitoring capacity. And interest groups can sometimes be counted upon to sound an alarm when the executive harms their interests. Overall, however, these arrangements are not fully adequate, especially in domains of foreign policy and national security, where the scale of executive operations is orders of magnitude larger than the scale of congressional operations. Congress's whole staff, which must (with the help of interest groups) monitor all issues, runs to some 30,000 persons.23 The executive branch has some 2 million civilian employees, in addition to almost 1.4 million in the active armed forces.24 The sheer mismatch between the scale of executive operations and the congressional capacity for oversight, even aided by interest groups or by leakers within the bureaucracy, is daunting. Probably Congress is already at or near the limits of its monitoring capacity at its current size and budget. We neither make, nor need to make, any general empirical claim that Congress has no control over executive discretion. That is surely not the case; there is a large debate, or set of related debates, about the extent of congressional dominance. We have reviewed the institutional problems piecemeal; perhaps some of them are mutually offsetting, although we do not see any concrete examples. But we do think that in the administrative state there is a significant structural gap, and during emergencies and wars an even larger gap, between the extent of executive discretion and legislative capacity for monitoring.

Future crisis guarantees Congressional failure

Eric Posner, Professor of Law, The University of Chicago Law School, and Adrian Vermeule, Professor of Law, Harvard Law School, March 2011, The Executive Unbound, p. 50-1

The overall picture of Congress's role in emergency lawmaking, then, is as follows. Congress lacks motivation to act before the crisis, even if the crisis is in some sense predictable. Thus the initial administrative response will inevitably take place under old statutes of dubious relevance, or under vague emergency statutes that imposes guidelines that the executive ignores and that Congress lacks the political will to enforce, or under claims of inherent executive authority. After the crisis is under way, the executive seeks a massive new delegation of authority and almost always obtains some or most of what it seeks, although with modifications of form and of degree. When Congress enacts such delegations, it is reacting to the crisis rather than anticipating it, and the consequence of delegation is just that the executive once again chooses the bulk of new policies for managing the crisis, but with clear statutory authority for doing so. In this pattern, Congress's structural incapacities ensure that, while Congress can shape and constrain the executive's response at the margins, it is fundamentally driven by events and by executive proposals for coping with those events, rather than seizing control of them. Schmitt's broad claim that the fast-moving conditions of the administrative state produce a marginal, reactive, and essentially **debilitated Congress** is closer to the mark than the Madisonian vision of a deliberative legislature that might rise to the occasion in times of crises, rather than handing power to the executive and hoping for the best.

# 1nr

Method focus causes scholarly paralysis

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

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

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

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

Its good

**Garrett 12**

Banning, In Search of Sand Piles and Butterflies, director of the Asia Program and Strategic Foresight Initiative at the Atlantic Council.

http://www.acus.org/disruptive\_change/search-sand-piles-and-butterflies

 “Disruptive change” that produces “strategic shocks” has become an increasing concern for policymakers, shaken by momentous events of the last couple of decades that were not on their radar screens – from the fall of the Berlin Wall and the 9/11 terrorist attacks to the 2008 financial crisis and the “Arab Spring.” These were all shocks to the international system, predictable perhaps in retrospect but predicted by very few experts or officials on the eve of their occurrence. This “failure” to predict specific strategic shocks does not mean we should abandon efforts to foresee disruptive change or look at all possible shocks as equally plausible. Most strategic shocks do not “come out of the blue.” We can understand and project long-term global trends and foresee at least some of their potential effects, including potential shocks and disruptive change. We can construct alternative futures scenarios to envision potential change, including strategic shocks. Based on trends and scenarios, we can take actions to avert possible undesirable outcomes or limit the damage should they occur. We can also identify potential opportunities or at least more desirable futures that we seek to seize through policy course corrections. We should distinguish “strategic shocks” that are developments that could happen at any time and yet may never occur. This would include such plausible possibilities as use of a nuclear device by terrorists or the emergence of an airborne human-to-human virus that could kill millions. Such possible but not inevitable developments would not necessarily be the result of worsening long-term trends. Like possible terrorist attacks, governments need to try to prepare for such possible catastrophes though they may never happen. But there are other potential disruptive changes, including those that create strategic shocks to the international system, that can result from identifiable trends that make them more likely in the future—for example, growing demand for food, water, energy and other resources with supplies failing to keep pace. We need to look for the “sand piles” that the trends are building and are subject to collapse at some point with an additional but indeterminable additional “grain of sand” and identify the potential for the sudden appearance of “butterflies” that might flap their wings and set off hurricanes. Mohamed Bouazizi, who immolated himself December 17, 2010 in Sidi Bouzid, Tunisia, was the butterfly who flapped his wings and (with the “force multiplier” of social media) set off a hurricane that is still blowing throughout the Middle East. Perhaps the metaphors are mixed, but the butterfly’s delicate flapping destabilized the sand piles (of rising food prices, unemployed students, corrupt government, etc.) that had been building in Tunisia, Egypt, and much of the region. The result was a sudden collapse and disruptive change that has created a strategic shock that is still producing tremors throughout the region. But the collapse was due to cumulative effects of identifiable and converging trends. When and what form change will take may be difficult if not impossible to foresee, but the likelihood of a tipping point being reached—that linear continuation of the present into the future is increasingly unlikely—can be foreseen. Foreseeing the direction of change and the likelihood of discontinuities, both sudden and protracted, is thus not beyond our capabilities. While efforts to understand and project long-term global trends cannot provide accurate predictions, for example, of the GDPs of China, India, and the United States in 2030, looking at economic and GDP growth trends, can provide insights into a wide range of possible outcomes. For example, it is a useful to assess the implications if the GDPs of these three countries each grew at currently projected average rates – even if one understands that there are many factors that can and likely will alter their trajectories. The projected growth trends of the three countries suggest that at some point in the next few decades, perhaps between 2015 and 2030, China’s GDP will surpass that of the United States. And by adding consideration of the economic impact of demographic trends (China’s aging and India’s youth bulge), there is a possibility that India will surpass both China and the US, perhaps by 2040 or 2050, to become the world’s largest economy. These potential shifts of economic power from the United States to China then to India would likely prove strategically disruptive on a global scale. Although slowly developing, such disruptive change would likely have an even greater strategic impact than the Arab Spring. The “rise” of China has already proved strategically disruptive, creating a potential China-United States regional rivalry in Asia two decades after Americans fretted about an emerging US conflict with a then-rising Japan challenging American economic supremacy. Despite uncertainty surrounding projections, foreseeing the possibility (some would say high likelihood) that China and then India will replace the United States as the largest global economy has near-term policy implications for the US and Europe. The potential long-term shift in economic clout and concomitant shift in political power and strategic position away from the US and the West and toward the East has implications for near-term policy choices. Policymakers could conclude, for example, that the West should make greater efforts to bring the emerging (or re-emerging) great powers into close consultation on the “rules of the game” and global governance as the West’s influence in shaping institutions and behavior is likely to significantly diminish over the next few decades. The alternative to finding such a near-term accommodation could be increasing mutual suspicions and hostility rather than trust and growing cooperation between rising and established powers—especially between China and the United States—leading to a fragmented, zero-sum world in which major global challenges like climate change and resource scarcities are not addressed and conflict over dwindling resources and markets intensifies and even bleeds into the military realm among the major actors. Neither of these scenarios may play out, of course. Other global trends suggest that sometime in the next several decades, the world could encounter a “hard ceiling” on resources availability and that climate change could throw the global economy into a tailspin, harming China and India even more than the United States. In this case, perhaps India and China would falter economically leading to internal instability and crises of governance, significantly reducing their rates of economic growth and their ability to project power and play a significant international role than might otherwise have been expected. But this scenario has other implications for policymakers, including dangers posed to Western interests from “failure” of China and/or India, which could produce huge strategic shocks to the global system, including a prolonged economic downturn in the West as well as the East. Thus, looking at relatively slowly developing trends can provide foresight for necessary course corrections now to avert catastrophic disruptive change or prepare to be more resilient if foreseeable but unavoidable shocks occur. Policymakers and the public will press for predictions and criticize government officials and intelligence agencies when momentous events “catch us by surprise.” But unfortunately, as both Yogi Berra and Neils Bohr are credited with saying, “prediction is very hard, especially about the future.” One can predict with great accuracy many natural events such as sunrise and the boiling point of water at sea level. We can rely on the infallible predictability of the laws of physics to build airplanes and automobiles and iPhones. And we can calculate with great precision the destruction footprint of a given nuclear weapon. Yet even physical systems like the weather as they become more complex, become increasingly difficult and even inherently impossible to predict with precision. With human behavior, specific predictions are not just hard, but impossible as uncertainty is inherent in the human universe. As futurist Paul Saffo wrote in the Harvard Business Review in 2007, “prediction is possible only in a world in which events are preordained and no amount of actions in the present can influence the future outcome.” One cannot know for certain what actions he or she will take in the future much less the actions of another person, a group of people or a nation state. This obvious point is made to dismiss any idea of trying to “predict” what will occur in the future with accuracy, especially the outcomes of the interplay of many complex factors, including the interaction of human and natural systems. More broadly, the human future is not predetermined but rather depends on human choices at every turning point, cumulatively leading to different alternative outcomes. This uncertainty about the future also means the future is amenable to human choice and leadership. Trends analyses—including foreseeing trends leading to disruptive change—are thus essential to provide individuals, organizations and political leaders with the strategic foresight to take steps mitigate the dangers ahead and seize the opportunities for shaping the human destiny. Peter Schwartz nearly a decade ago characterized the convergence of trends and disruptive change as “inevitable surprises.” He wrote in Inevitable Surprises that “in the coming decades we face many more inevitable surprises: major discontinuities in the economic, political and social spheres of our world, each one changing the ‘rules of the game’ as its played today. If anything, there will be more, no fewer, surprises in the future, and they will all be interconnected. Together, they will lead us into a world, ten to fifteen years hence, that is fundamentally different from the one we know today. Understanding these inevitable surprises in our future is critical for the decisions we have to make today …. We may not be able to prevent catastrophe (although sometimes we can), but we can certainly increase our ability to respond, and our ability to see opportunities that we would otherwise miss.

Method is good

Gregory R. Beabout 2008 is an adjunct fellow of the Center for Economic Personalism and Associate Professor of Philosophy at Saint Louis University Challenges to Using the Principle of Subsidiarity for Environmental Policy; 5 U. St. Thomas L.J. 210 (2008)

Economics offers many insights into how the world around us works, much more than would be possible to summarize even in a full-length law review article with many footnotes.5 From among those many insights, I have selected three "propositions" that demonstrate the fundamental points that economics is necessary, but not sufficient, to address environmental issues and that economics is necessary, but not sufficient, to reconcile the obligations of faith toward the poor and the need to protect the environment. By "propositions" I mean fundamental truths about human behavior and the natural world that we ignore at our peril, truths as basic as the laws of gravity or humanity's susceptibility to sin. We can write statutes or regulations that ignore these-and Congress, legislatures, and regulators the world over frequently do-but such measures risk the same fatal results as bridges built without accounting for gravity. These propositions I will offer are economic "theory," but they are theory in the sense that the laws of gravity are a theory and are founded upon economic insights spanning hundreds of years of careful analyses, testing of hypotheses, and rigorous debates. That does not mean all economists agree on all policy implications or that every prediction by an economist comes true. It does mean that the core principles of the discipline are not mere matters of opinion

and that economics is not a "point of view" to be accorded equal weight with folk tales or political preferences. All theories of how the world works are not equal -some work better than others and the ones that work deserve greater weight in policy debates than the ones that do not. Economics' great strength is that it is a concise and powerful theory that explains the world remarkably well. Those who ignore its insights are doomed to fail. Science fiction author Robert Heinlein coined the phrase "TANSTAAFL" as a shorthand way of saying "There Ain't No Such Thing As A Free Lunch" in his classic 1966 science fiction novel The Moon is a Harsh Mistress, in which he described a revolution by residents of lunar colonies against oppressive governments on Earth in 2076.6 Heinlein had the revolutionaries emblazon TANSTAAFL on their flag and wove the principle through the free lunar society he imagined-a place where even air cost people money. "No free lunch" means that everything costs something. Everything. No exceptions. At a minimum, if I spend my time doing one activity, I cannot spend that time doing something else. Economists refer to the idea that resources devoted to one activity are unavailable for other activities as "opportunity cost." If we do X, we cannot use those resources to do Y. The failure to recognize that there is an opportunity cost to committing resources to any given use can have disastrous consequences because when we do not recognize that our actions have costs we cannot intelligently consider our alternatives. And if we cannot assess the costs and benefits of our alternatives, we cannot make reasoned choices among them.7 In short, tradeoffs matter, and we need to pay attention to them.

#### Best studies prove growth solves conflict

Jedidiah **Royal 10**, Director of Cooperative Threat Reduction at the U.S. Department of Defense, “Economic Integration, Economic Signalling And The Problem Of Economic Crises”, in Economics of War and Peace: Economic, Legal and Political Perspectives, ed. Goldsmith and Brauer, p. 213-215

Second, on a dyadic level. Copeland's (1996. 2000) theory of trade expectations suggests that 'future expectation of trade' is a significant variable in understanding economic conditions and security behaviour of states. He argues that interdependent states are likely to gain pacific benefits from trade so long as they have an optimistic view of future trade relations. However, if the expectations of future trade decline, particularly for difficult to replace items such as energy resources, the likelihood for conflict increases, as states will be inclined to use force to gain access to those resources. Crises could potentially be the trigger for decreased trade expectations either on its own or because it triggers protectionist moves by interdependent states.4 Third, others have considered the link between economic decline and external armed conflict at a national level. Blomberg and Hess (2002) find a strong correlation between internal conflict and external conflict, particularly during periods of economic downturn. They write, The linkages between internal and external conflict and prosperity are strong and mutually reinforcing. Economic conflict tends to spawn internal conflict, which in turn returns the favour. Moreover, the presence of a recession lends to amplify the extent to which international and external conflicts self-rein force each other. (Blombcrj! & Hess. 2002. p. 89) Economic decline has also been linked with an increase in the likelihood of terrorism (Blomberg. Hess. & Weerapana, 2004). which has the capacity to spill across borders and lead to external tensions. Furthermore, crises generally reduce the popularity of a sitting government. "Diversionary theory" suggests that, when facing unpopularity arising from economic decline, sitting governments have increased incentives to fabricate external military conflicts to create a 'rally around the flag' effect. Wang (1996), DeRouen (1995), and Blombcrg. Mess, and Thacker (2006) find supporting evidence showing that economic decline and use of force are at least indirectly correlated. Gelpi (1997), Miller (1999). and Kisangani and Pickering (2009) suggest that the tendency towards diversionary tactics arr greater for democratic states than autocratic states, due to the fact that democratic leaders are generally more susceptible to being removed from office due to lack of domestic support. DeRouen (2000) has provided evidence showing that periods of weak economic performance in the United States, and thus weak Presidential popularity, are statistically linked to an increase in the use of force.

#### Solves their impacts

Griswold, Trade Policy Studies @ Cato, 4/20/’7,

(Daniel, Trade, Democracy and Peace, http://www.freetrade.org/node/681

A second and even more potent way that trade has promoted peace is by promoting more economic integration. As national economies become more intertwined with each other, those nations have more to lose should war break out. War in a globalized world not only means human casualties and bigger government, but also ruptured trade and investment ties that impose lasting damage on the economy. In short, globalization has dramatically raised the economic cost of war.

AT SHUTDOWN -----THIS is about GOP defunding health care which says that democrats and white house will strike down

#### Their ev is media hype—GOP opposition isn’t immovable—House GOP strategy makes a deal likely

Chris Weignant, 9/18/13, The Boehner and the Restless, www.chrisweigant.com/2013/09/18/the-boehner-and-the-restless/

The politico-media empire which writes the rules of the Washington "What Serious People Are Saying" game have apparently decided that the government shutdown is now melodramatically going to happen. Cue ominous organ music blast (dum Dum DUM!). The key word in that opening sentence is "melodramatically," because our government can now be seen as nothing more than a continuing soap opera. Call it "As The Boehner Turns," or perhaps more appropriately "The Boehner And The Restless." Personally, I don't buy it. I'm taking the contrarian position on this one. John Boehner just announced that the House will vote on a continuing resolution (to continue funding the government past the first of October) which attempts to "defund" Obamacare, and that the vote will happen this Friday. Across Washington, in newsrooms everywhere, pearls were clutched and editors swooned (and had to be revived with smelling salts). The sky is falling! The shutdown will happen! Oh, my goodness! What a calamity! The melodrama was turned up to eleven, and the knob was then snapped off. The car was about to careen off the cliff (right before the commercial break), so stay tuned, folks.... But, as I said, I don't buy it. In fact, I will go so far as to say that the timing of the vote increases the chances that the government shutdown will not in fact happen. The vote, I suspect, is nothing more than John Boehner showboating within his own caucus -- nothing more than a sop to the rabid Tea Party members who are demanding this showdown. The reason I reach this conclusion is that if Boehner were truly serious about using this bill as his only negotiating position, he would have waited until the last minute to introduce it. Instead, he's going to hold a vote this Friday. There are three basic endgames which are possible in the showdown. The first is that Senate Democrats and President Obama wake up one morning and, in astonishment, blurt out, "What were we thinking? Obamacare sucks! Let's repeal the signature legislation of Barack Obama's term in office!" They then leap out of bed, pass the House's bill and sign it into law. Obamacare is dead! Well, this isn't really true, since the House "defunding" Obamacare doesn't actually defund something like 80 percent of Obamacare, but whatever. The chances of this scenario happening are precisely zero, so it's a moot point. The second endgame is that the House Republicans refuse to budge, the Senate and the House can't agree on a continuing resolution, and the government shuts down at the start of next month. This is what the media is salivating over, with full soundtrack and all the melodrama they can heap upon it. What a great start to the fall season for the soap opera that is Washington! The chances of this happening are unknown, but I predict that they are one whale of a lot smaller than the media would have you currently believe. And, as I said, holding the vote this Friday means the chances of a shutdown actually happening have just grown even smaller. If Boehner really wanted this scenario to happen (he's publicly said he does not, for the record), then he would use the clock to his advantage and delay the vote on the Tea Party bill until, perhaps, next Friday -- giving the Senate almost no time to react. But he's not taking this route, which is the main point everyone seems to be missing (or willfully ignoring, to boost ratings for the soap opera). The third scenario is the most likely. John Boehner, following a script he has used in the past, allows the Tea Party to pillage and riot for a very precise amount of time. He allows their "take no prisoners" bill to be voted on. There is no guarantee that it'll even pass -- another fact many media types are ignoring today. Boehner has had to ignobly yank quite a few bills from the floor before the vote because he simply cannot round up enough votes within his own party to pass them. This could happen with Friday's bill, although it is more likely that Boehner will allow the vote even if he knows it will fail (because doing so will strengthen his position). But say for the sake of conversation that it does pass. The Tea Party will triumphantly proclaim victory, and the Senate will quickly dispose of the bill in one fashion or another -- leaving us right back at square one. The Senate leaders will then meet with the White House and come up with a budget bill which is acceptable to sane Republicans in the Senate, but which does not touch Obamacare's funding. The Senate will pass this bill, and send it over to the House (technically the House has to originate spending bills, but this can be dealt with by a gimmick, as it always is). The ball will be back in Boehner's court. Boehner has already cancelled vacation days scheduled for next week. The House will be in session. And it'll have enough time to act before the deadline is reached. Boehner will (again, he's done this before, folks) reluctantly tell his Tea Party members "well, we tried our hardest, but it didn't work." And then -- at the last minute, no doubt -- he'll put the Senate bill on the House floor for a vote, breaking the Republican "Hastert Rule" once again. Virtually all the Democrats will vote for it, and at least a few dozen Republicans will join them (those in such safe districts that they don't worry about Tea Party primary challenges, for the most part). The bill will pass. A few minor concessions may be wrung from the budget itself, as a sort of consolation prize for House Republicans ("See? We did get some sort of victory!"), and this tweaked bill will go back to the Senate for a vote. The Senate will pass it, and it will thus be placed upon Obama's desk for his signature. Obama, of course, will sign it. The only real question in this scenario is how close we come to hitting the deadline. Maybe the government will temporarily "shut down" for a day or two as the last Senate vote happens, at worst. But some sort of budget will be in place, until the next time this budgetary plot device arises (which seems to be planned for December, just so we can all have a holiday special for the Washington soap opera). Call me an optimist if you will, but this still seems the most-likely scenario. Boehner, by holding the big vote early, is signaling that there will be plenty of time to fix things at the last minute after he tosses the Tea Party their bone. The Tea Partiers will experience a few days of euphoria and then be consumed with white-hot rage when they don't ultimately get their way. Primary challenges will be threatened all around. Talk radio and the conservative echo chamber in the media will explode with angst and denunciation. But we will have a budget, and the government will not shut down.

#### Trends go neg—GOP crazies are uniting under Boehner

Ryan Grim, HuffPo, 9/19/13, Ted Cruz, Liberal Hero, May Have Just Bailed Washington Out Of The Shutdown Crisis , www.huffingtonpost.com/2013/09/19/ted-cruz-shutdown-house-republicans\_n\_3954461.html?utm\_hp\_ref=politics

In one moment, with one statement, Sen. Ted Cruz (R-Texas) managed Wednesday to accomplish what House GOP leaders, Republican senators and the Wall Street Journal editorial page had failed to do for months: Persuade rank-and-file House Republicans that shutting down the government in an attempt to defund Obamacare was simply impossible.

On Wednesday, after House leaders said they'd go forward with the defund strategy Cruz had been pitching with ads on Fox News, his response boiled down to 'Thanks, you're on your own.'

"Harry Reid will no doubt try to strip the defund language from the continuing resolution, and right now he likely has the votes to do so," Cruz said in a statement. "At that point, House Republicans must stand firm, hold their ground, and continue to listen to the American people."

On the surface, House Republicans were seething. Members openly accused Cruz and his allies, Sens. Mike Lee (R-Utah) and Marco Rubio (R-Fla.), of waving the white flag before the fight had even begun. One House GOP aide even called Cruz a "joke, plain and simple."

But by admitting that he had no ability in the Senate to back up the House effort to defund Obamacare, and saying so on the same day that House Republicans had announced they would support the Cruz-inspired strategy, Cruz has inadvertently done more than any other lawmaker to avert a government shutdown.

"Cruz officially jumped the shark this week," said one GOP operative allied with House leadership, who, like others, requested anonymity to speak critically about fellow Republicans. "He's doing for the House Leaders what they couldn't do for themselves. House rank-and-file members are uniting with Boehner, Cantor over Ted Cruz's idiotic position."

#### There’s sufficient negotiating room now

Matthew Yglesias, Slate, 9/18/13, The Odds of a Government Shutdown Are Falling, Not Rising, www.slate.com/blogs/moneybox/2013/09/18/government\_shutdown\_odds\_falling\_not\_rising.html

A Jonathan Weisman Ashley Parker piece headlined "House Bill Cuts Health Funds, Raising Odds of U.S. Shutdown" is going to alarm a lot of New York Times readers tomorrow morning.

But read on to the second graf of the piece and you'll see that the odds are not rising at all. What's happening is that John Boehner is preparing to pass an appropriations bill that also defunds Obamacare that he knows perfectly well stands no chance of passing, and he's hoping that doing this will placate the right wing of the his caucus for when he surrenders.

Here they explain:

 House leaders are hoping the vote on the defunding measure will placate conservatives once the Democratically controlled Senate rejects it. The House, they are betting, would then pass a stopgap spending measure unencumbered by such policy baggage and shift the argument to the debt ceiling, which must be raised by mid-October if the government is to avoid an economically debilitating default.

The key thing to remember here is that the House, as a discretionary decision, operates by the "Hastert Rule" in which only bills that are supported by a majority of GOP members can be brought to the floor for a vote. There is no Hastert-compliant appropriations bill that can pass the Senate. But there very likely is majority support in the House for the kind of "clean" funding bill that can also pass the Senate. All that has to happen is for John Boehner to violate the Hastert Rule. And the Hastert Rule isn't actually a rule, it's something Boehner has put aside many times. But it's also a rule he can't flagrantly ignore, lest his caucus get too grumpy and depose him. The operating theory here is that if Boehner has the whole House GOP indulge the maximalist faction by all passing a defuding bill, that creates enough room to move to later violate the Hastert Rule and pass a continuing resolution.

If anything is happening to the odds of a shutdown, in other words, they're falling, not rising.

Capital key determines uniqueness—overcomes House GOP opposition

Heidi Moore, The Guardian, 9/10/13, Syria: the great distraction, www.theguardian.com/commentisfree/2013/sep/10/obama-syria-what-about-sequester

Political capital – the ability to horse-trade and win political favors from a receptive audience – is a finite resource in Washington. Pursuing misguided policies takes up time, but it also eats up credibility in asking for the next favor. It's fair to say that congressional Republicans, particularly in the House, have no love for Obama and are likely to oppose anything he supports. That's exactly the reason the White House should stop proposing policies as if it is scattering buckshot and focus with intensity on the domestic tasks it wants to accomplish, one at a time.

The president is scheduled to speak six times this week, mostly about Syria. That includes evening news interviews, an address to the nation, and numerous other speeches. Behind the scenes, he is calling members of Congress to get them to fall into line. Secretary of State John Kerry is omnipresent, so ubiquitous on TV that it may be easier just to get him his own talk show called Syria Today.

It would be a treat to see White House aides lobbying as aggressively – and on as many talk shows – for a better food stamp bill, an end to the debt-ceiling drama, or a solution to the senseless sequestration cuts, as it is on what is clearly a useless boondoggle in Syria.

There's no reason to believe that Congress can have an all-consuming debate about Syria and then, somehow refreshed, return to a domestic agenda that has been as chaotic and urgent as any in recent memory. The President should have judged his options better. As it is, he should now judge his actions better.

Produces a budget compromise even if it looks impossible now

Joe Klein, TIME, 9/11/13, Obama and Syria: Stumbling Toward Damascus, swampland.time.com/2013/09/11/obama-and-syria-stumbling-toward-damascus/

There are domestic consequences as well. This was supposed to be the month when the nation’s serious fiscal and budgetary problems were hashed out, or not, with the Republicans. There was a chance that a coalition could be built to back a compromise to solve the debt-ceiling problem and the quiet horrors caused by sequestration and to finally achieve a long-term budget compromise. But any deal would have required intense, single-minded negotiation, including political protection, or sweeteners, for those Republicans who crossed the line. Precious time has been wasted. And, after Syria, it will be difficult for any member of Congress to believe that this President will stick to his guns or provide protection.

Obama effectively deploying capital—every day matters

Patrick Reis, National Journal, 9/16/13, Obama Dares Republicans to Defy Tea Party on Obamacare, Shutdown Deal, www.nationaljournal.com/whitehouse/obama-dares-republicans-to-defy-tea-party-on-obamacare-shutdown-deal-20130916

President Obama took a swipe at the Hard Right on Monday, accusing tea-party-aligned House Republicans of gambling with the nation's economy by threatening to shut down the government unless Obamacare is defunded.

In a sprawling economic speech, Obama called on Congress to avert a government shutdown by passing a budget, and he insisted he would brook no wrangling over a raise in the debt ceiling. Obama said such a shutdown, or even the possibility of default, would damage the still-fragile economic recovery.

Specifically, the president went after Republicans who say they won't vote for any budget deal that does not nullify the Affordable Care Act. "I cannot remember a time when one faction of one party promises economic chaos if it can't get 100 percent of what it wants," Obama said. "That's never happened before, and that's what happening right now."

Obama appealed to the rest of the Republican Party for help in brokering a budget compromise, challenging members to break with those calling for defunding Obamacare.

"Are some of these folks so beholden to one extreme wing of their party that they're willing to tank our whole economy?" he said. "Are they willing to hurt people?"

By going after one GOP "faction" and appealing to the other, Obama is seeking leverage in a tactical dispute that has vexed Republicans all summer. In one camp are legislators—headlined by Sen. Ted Cruz of Texas—who are insisting that the party shut down the government unless funding is stripped for the health care law. Other Republicans, including much of the party's leadership, say they too want to defund the health care law, but they see connecting Obamacare to a government shutdown as too politically risky.

In seeking to further divide the camps, Obama is hoping to avert a government shutdown while also achieving some Democratic policy aims, such as rollbacks of the sequester-induced spending cuts that Obama on Monday said were hurting economic growth.

The government's current budget is set to expire Oct. 1. If Congress cannot pass a budget before then—a possibility that seems increasingly likely as days dwindle on the legislative calendar—it has the option forestall shutdown by passing a short-term extension.

Obama has a small window for the budget debate—his capital is key to resolution

AP, 9/12/13, Syria debate on hold, Obama refocuses on agenda, www.timesleader.com/news/apbusiness/569385542543256648058/Syria-debate-on-hold-Obama-refocuses-on-agenda

With a military strike against Syria on hold, President Barack Obama tried Thursday to reignite momentum for his second-term domestic agenda. But his progress could hinge on the strength of his standing on Capitol Hill after what even allies acknowledge were missteps in the latest foreign crisis.

"It is still important to recognize that we have a lot of things left to do here in this government," Obama told his Cabinet, starting a sustained White House push to refocus the nation on matters at home as key benchmarks on the budget and health care rapidly approach.

"The American people are still interested in making sure that our kids are getting the kind of education they deserve, that we are putting people back to work," Obama said.

The White House plans to use next week's five-year anniversary of the 2008 financial collapse to warn Republicans that shutting down the government or failing to raise the debt limit could drag down the still-fragile economy. With Hispanic Heritage Month to begin Monday, Obama is also expected to press for a stalled immigration overhaul and urge minorities to sign up for health care exchanges beginning Oct. 1.

Among the events planned for next week is a White House ceremony highlighting Americans working on immigrant and citizenship issues. Administration officials will also promote overhaul efforts at naturalization ceremonies across the country. On Sept. 21, Obama will speak at the Congressional Black Caucus Gala, where he'll trumpet what the administration says are benefits of the president's health care law for African-Americans and other minorities.

Two major factors are driving Obama's push to get back on track with domestic issues after three weeks of Syria dominating the political debate. Polls show the economy, jobs and health care remain Americans' top concerns. And Obama has a limited window to make progress on those matters in a second term, when lame-duck status can quickly creep up on presidents, p

articularly if they start losing public support.

LINK

Plan causes Obama to use necessary political capital for budget debates to unsuccessfully preserve his war power authority

Carrie Budoff Brown, Jake Sherman, Politico, 9/4/13, President Obama’s political capital spreads thin, dyn.politico.com/printstory.cfm?uuid=59456290-12C8-4DCA-970E-0856C9FA6E6C

President Barack Obama faced a heavy lift in Congress this fall when his agenda included only budget issues and immigration reform.

Now with Syria in the mix, the president appears ready to spend a lot of the political capital that he would have kept in reserve for his domestic priorities.

A resolution authorizing the use of force in Syria won’t make it through the House or the Senate without significant cajoling from the White House. That means Obama, who struggles to get Congress to follow his lead on almost everything, could burn his limited leverage convincing Democrats and Republicans to vote for an unpopular military operation that even the president says he could carry out with or without their approval.

“The only effect is — and I don’t mean this to be dismissive in any way — it will be taking up some time and there be some degree of political capital expended by all,” said Sen. Bob Corker (R-Tenn.), the Foreign Relations Committee ranking member who helped draft the Senate resolution. “At the end of the day, it’s a tough vote for anybody because the issue is trying to draft an authorization knowing that they’re going to implement it.”

The West Wing says it’s too early to know how Obama’s surprise decision to seek congressional authorization will affect the rest of his agenda, but his advisers are betting that a win could usher in other domestic successes. A failed vote, however, would undoubtedly weaken him.

A senior administration official said the effort could build some trust between the White House and Republicans that might ease tensions in negotiations over the budget and other issues.

White House aides have long argued that success begets success. Their latest test of that theory was the broad bipartisan Senate vote for comprehensive immigration reform bill, which was supposed to compel the House to act. So far, it has not — and House Republicans don’t think the Syria vote will be any different.

“The idea that passing the authorization for use of military force in Syria would give the administration more leverage in future political debates is absurd,” one senior GOP leadership aide said. “They are currently spending political capital they don’t have.”

Convergence of a war power fight during the budget showdown undermines needed capital and focus

Paul Kane, Washington Post, 9/7/13, Syria resolution could stall, articles.washingtonpost.com/2013-09-07/politics/41856008\_1\_chemical-weapons-syria-resolution-damascus

President Obama’s decision to seek congressional approval of military strikes against Syria threatens to make an already contentious fall agenda on Capitol Hill even more unstable, heightening the chance of political gridlock.

Congressional leaders, who will return Monday after a five-week break, had planned to use September to position their caucuses for a showdown over government funding levels and a bid to increase the federal debt limit, the third clash over the debt since 2011. The two sides are also jockeying over a proposed immigration overhaul and a continuing struggle over the farm bill, which was a victim of a conservative revolt over food stamps.

Instead, the first order of business is the question of whether to support missile strikes in response to Syrian President Bashar al-Assad’s alleged chemical attack on civilians. Rank-and-file lawmakers, many of whom were demanding congressional input on the decision, now appear stunned that it is before them amid so many other divisive issues.

“We’re having trouble walking and chewing gum already. This doesn’t make it any easier,” 10-term Rep. Frank A. LoBiondo (R-N.J.) said last week as he left a classified briefing on Syria.

The convergence of these issues sets up a complicated negotiating environment, with the Syria question burning up a significant amount of political capital for both Democratic and Republican leaders.

War power debate pushes the agenda past its breaking point

Norm Ornstein, resident scholar at the American Enterprise Institute, 9/5/13, Why John Boehner Still Can't Have It All, www.theatlantic.com/politics/archive/2013/09/why-john-boehner-still-cant-have-it-all/279365/

When I heard the president, that challenge was my first thought. My second was the larger dynamic of a congressional schedule already attenuated and overbooked. The House is scheduled to be in session for four days beginning September 9, four days beginning September 17, and one more day, September 30, a total of nine this month. It has scheduled only 14 days in October, and all of eight in November. Now, let's see, what do they have to do? Start with keeping the government functioning via appropriations or continuing resolutions for the fiscal year that starts October 1. Then there is the debt ceiling, with the drop-dead date for raising it coming somewhere around mid-October (the House is set to be away from October 12-27.) And there is the farm bill, with an urgent need to resolve it before September 30, when the current extension expires.

It is hard to imagine that Congress will resolve the Syria issue in a couple of days of debate, especially since the House will be inclined to write and debate its own resolution, several committees will be clamoring to hold hearings, and most members will want to take time on the floor to explain their positions. Just as important, Syria will occupy the full time and attention of all the major players here, including congressional leaders, executive officials, and the media. But resolving the showdowns over spending and the debt limit, with their own end-game negotiations, also require the full time and attention of the same players, with the possible exceptions of the chairs of the money committees, the Treasury secretary, the head of OMB, and so on. And they can't make any decisions without the involvement of their superiors.

#### Government shutdown collapses the economy

Yi Wu, Policy Mic, 8/27/13, Government Shutdown 2013: Still a Terrible Idea , www.policymic.com/articles/60837/government-shutdown-2013-still-a-terrible-idea

Around a third of House Republicans, many Tea Party-backed, sent a letter last week calling on Speaker John Boehner to reject any spending bills that include implementation of the Affordable Care Act, otherwise known as Obamacare. Some Senate Republicans echo their House colleagues in pondering this extreme tactic, which is nothing other than a threat of government shutdown as neither congressional Democrats nor President Obama would ever agree on a budget that abolishes the new health care law. Unleashing this threat would amount to holding a large number of of the federal government's functions, including processing Social Security checks and running the Centers for Disease Control, hostage in order to score partisan points. It would be an irresponsible move inflicting enormous damage to the U.S. economy while providing no benefit whatsoever for the country, and Boehner is rightly disinclined to pursue it.

Government shutdowns are deleterious to the economy. Two years ago in February 2011, a similar government shutdown was looming due to a budget impasse, and a research firm estimated that quater's GDP growth would be reduced by 0.2 percentage points if the shutdown lasted a week. After the budget is restored from the hypothetical shutdown, growth would only be "partially recouped," and a longer shutdown would result in deeper slowdowns. Further, the uncertainties resulting from a shutdown would also discourage business. A shutdown was avoided last-minute that year, unlike in 1995 during the Clinton administration where it actually took place for four weeks and resulted in a 0.5 percentage-point dent in GDP growth. Billions of dollars were cut from the budget, but neither Boehner nor the Republicans at the time were reckless enough to demand cancellation of the entire health care reform enacted a year before.

Besides the economic effects in numbers, a shutdown this year will harm some of the most vulnerable, while at the same time not shutting down government policies that have been the most intrusive upon American people. "Essential services" would continue running, but what the federal government deems "essential" often does not coincide with what we consider essential. In the 1995 shutdown, the cleanup of toxic waste at 609 sites came to a halt. Who knows how many people were affected by the poisonous substances left over unattended?Similarly, health and welfare services for veterans were pulled back as well. Yet, a government shutdown does nothing to stop the operations of Drug Enforcement Administration (DEA), which is considered an "essential service" despite the failed War on Drugs having done much more harm than good. The NSA wiretapping program, which some consider to violate civil liberties, would likely be unaffected, as would the TSA pat-downs.

To force a budget without Obamacare, the signature legislation of the administration, in this manner would be akin to threatening to shut down all government agencies unless Social Security or the EPA is done away with here and now. If during the Bush years in 2006 the Democrats told the president to sign a budget ceasing all military operations in Iraq and Afghanistan or face a shutdown, not only would Bush refuse to comply, Republicans would be calling Democrats traitors to the country. One can in principle support privatization of Social Security or oppose government regulation of health care, but legislating by hostage-taking is inimical to democracy. American people should be worried, additionally, as some Republicans are also considering using the debt ceiling this fall to bring down Obamacare. Not raising the debt ceiling when it is reached can be even more dangerous for us than a government shutdown. As economist Alice Rivlin explained, it would cause the U.S. to default and become a "deadbeat country" like Greece. In the stern words of Austan Goolsbee, such default would be "the first default in history caused purely by insanity."