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## Off 1

#### Immigration reform is up—Obama has leverage—that’s key to overcome GOP obstructionism

Jeff Mason, Reuters, 10/19/13, Analysis: Despite budget win, Obama has weak hand with Congress , health.yahoo.net/news/s/nm/analysis-despite-budget-win-obama-has-weak-hand-with-congress

Democrats believe, however, that Obama's bargaining hand may be strengthened by the thrashing Republicans took in opinion polls over their handling of the shutdown.

"This shutdown re-emphasized the overwhelming public demand for compromise and negotiation. And that may open up a window," said Ben LaBolt, Obama's 2012 campaign spokesman and a former White House aide.

"There's no doubt that some Republican members (of Congress) are going to oppose policies just because the president's for it. But the hand of those members was significantly weakened."

If he does have an upper hand, Obama is likely to apply it to immigration reform. The White House had hoped to have a bill concluded by the end of the summer. A Senate version passed with bipartisan support earlier this year but has languished in the Republican-controlled House.

"It will be hard to move anything forward, unless the Republicans find the political pain of obstructionism too much to bear," said Doug Hattaway, a Democratic strategist and an adviser to Hillary Clinton's 2008 presidential campaign.

"That may be the case with immigration - they'll face pressure from business and Latinos to advance immigration reform," he said.

#### Obama’s push locks-up a House vote, but the window is narrow

Bill Scher, The Week, 10/18/13, How to make John Boehner cave on immigration, theweek.com/article/index/251361/how-to-make-john-boehner-cave-on-immigration

Speaker John Boehner (R-Ohio) generally adheres to the unwritten Republican rule that bars him from allowing votes on bills opposed by a majority of Republicans, even if they would win a majority of the full House.

But he's caved four times this year, allowing big bills to pass with mainly Democratic support. They include repealing the Bush tax cuts for the wealthiest Americans; providing Hurricane Sandy relief; expanding the Violence Against Women act to better cover immigrants, Native Americans, and LGBT survivors of abuse; and this week's bill raising the debt limit and reopening the federal government.

Many presume the Republican House is a black hole sucking President Obama's second-term agenda into oblivion. But the list of Boehner's past retreats offers a glimmer of hope, especially to advocates of immigration reform. Though it has languished in the House, an immigration overhaul passed with bipartisan support in the Senate, and was given a fresh push by Obama in the aftermath of the debt limit deal.

The big mystery that immigration advocates need to figure out: What makes Boehner cave? Is there a common thread? Is there a sequence of buttons you can push that forces Boehner to relent?

Two of this year's caves happened when Boehner was backed up against hard deadlines: The Jan. 1 fiscal cliff and the Oct. 17 debt limit. Failure to concede meant immediate disaster. Reject the bipartisan compromise on rolling back the Bush tax cuts, get blamed for jacking up taxes on every taxpayer. Reject the Senate's three-month suspension of the debt limit, get blamed for sparking a global depression. Boehner held out until the absolute last minute both times, but he was not willing to risk blowing the deadline.

A third involved the response to an emergency: Hurricane Sandy. Conservative groups were determined to block disaster relief because — as with other federal disaster responses — the $51 billion legislative aid package did not include offsetting spending cuts. Lacking Republican votes, Boehner briefly withdrew the bill from consideration, unleashing fury from New York and New Jersey Republicans, including Gov. Chris Christie. While there wasn't a hard deadline to meet, disaster relief was a time-sensitive matter, and the pressure from Christie and his allies was unrelenting. Two weeks after pulling the bill, Boehner put it on the floor, allowing it to pass over the objections of 179 Republicans.

The fourth cave occurred in order to further reform and expand a government program: The Violence Against Women Act. The prior version of the law had been expired for over a year, as conservatives in the House resisted the Senate bill in the run-up to the 2012 election. But after Mitt Romney suffered an 18-point gender gap in his loss to Obama, and after the new Senate passed its version again with a strong bipartisan vote, Boehner was unwilling to resist any longer. Two weeks later, the House passed the Senate bill with 138 Republicans opposed.

Unfortunately for immigration advocates, there is no prospect of widespread pain if reform isn't passed. There is no immediate emergency, nor threat of economic collapse.

But there is a deadline of sorts: The 2014 midterm elections.

If we've learned anything about Boehner this month, it's that he's a party man to the bone. He dragged out the shutdown and debt limit drama for weeks, without gaining a single concession, simply so his most unruly and revolutionary-minded members would believe he fought the good fight and stay in the Republican family. What he won is party unity, at least for the time being.

What Boehner lost for his Republicans is national respectability. Republican Party approval hit a record low in both the most recent NBC/Wall Street Journal poll and Gallup poll.

Here's where immigration advocates have a window of opportunity to appeal to Boehner's party pragmatism. Their pitch: The best way to put this disaster behind them is for Republicans to score a big political victory. You need this.

A year after the Republican brand was so bloodied that the Republican National Committee had to commission a formal "autopsy," party approval is the worst it has ever been. You've wasted a year. Now is the time to do something that some voters will actually like.

There's reason to hope he could be swayed. In each of the four cases in which he allowed Democrats to carry the day, he put the short-term political needs of the Republican Party over the ideological demands of right-wing activists.

Boehner will have to do another round of kabuki. He can't simply swallow the Senate bill in a day. There will have to be a House version that falls short of activists' expectations, followed by tense House-Senate negotiations. Probably like in the most formulaic of movies, and like the fiscal cliff and debt limit deals, there will have to be an "all-is-lost moment" right before we get to the glorious ending. Boehner will need to given the room to do all this again.

But he won't do it without a push. A real good push.

#### The plan reverses these dynamics—sparks an inter-branch fight derailing the 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

#### Immigration key to ag

Abou-Diwan 1/28

(Antoine, “Bipartisan immigration proposal acknowledges agriculture's needs” January 28, 2013, Imperial Valley Press)

Bipartisan immigration proposal acknowledges agriculture's needs

The bipartisan proposal unveiled Monday paves the way to legalization of the nation’s 11 million undocumented immigrants with a program described as “tough but fair.”

It also addresses the concerns of the agricultural industry, whose labor pool by some estimates is composed of some 50 to 70 percent unauthorized workers.

“Agricultural workers who commit to the long-term stability of our nation’s agricultural industries will be treated differently than the rest of the undocumented population because of the role they play in ensuring that Americans have safe and secure agricultural products to sell and consume,” states the proposal.

Total farmworkers in Imperial County fluctuated between 8,000 and 11,000 in 2012, according to data from the Employment Development Department.

“There’s definitely recognition that agriculture will be taken care of,” said Steve Scaroni, a Heber farmer who has lobbied Washington extensively on immigration reform.

The proposal is based on four broad principles: a path to citizenship for unauthorized immigrants living in the United States, reform of the system to capitalize on characteristics that strengthen the economy, the creation of an effective employment verification system and improving the immigration process for future workers.

The principles are broad and many details need to be worked out.

“The principles acknowledge that the situation in agriculture is distinct and requires different treatment,” said Craig Regelbrugge, chairman of the Agricultural Coalition for Immigration Reform, a group that represents the landscape and nursery industry.

Access to a legal and stable work force is vital, Regelbrugge said, as is a workable program that eliminates or reduces hurdles for a future work force.

“We would like to see the agriculture legalization program attractive so there are incentives for them to work in the sector,” Regelbrugge noted.

The proposals also acknowledge that the United States immigration system is broken, and address criticism that not enough is being done to enforce existing immigration laws. To that end, Monday’s proposals are contingent on secure borders.

But, the acknowledgement of the agriculture sector’s needs allows for some optimism.

“As long as the labor supply solutions are there, we can support the enforcement solutions,” Regelbrugge said.

**Extinction**

**Lugar 2k**

(Richard, a US Senator from Indiana, is Chairman of the Senate Foreign Relations Committee, and a member and former chairman of the Senate Agriculture Committee. “calls for a new green revolution to combat global warming and reduce world instability,” pg online @ <http://www.unep.org/OurPlanet/imgversn/143/lugar.html>)

In a world confronted by global terrorism, turmoil in the Middle East, burgeoning nuclear threats and other crises, it is easy to lose sight of the long-range challenges. **But we do so at our peril.** One of the most daunting of them is meeting the world’s need for food and energy in this century. At stake is not only preventing starvation and saving the environment, but also world peace and security. History tells us that states may go to war over access to resources, and that poverty and famine have often bred fanaticism and terrorism. Working to feed the world will minimize factors that contribute to global instability and the proliferation of weapons of mass destruction. With the world population expected to grow from 6 billion people today to 9 billion by mid-century, the demand for affordable food will increase well beyond current international production levels. People in rapidly developing nations will have the means greatly to improve their standard of living and caloric intake. Inevitably, that means eating more meat. This will raise demand for feed grain at the same time that the growing world population will need vastly more basic food to eat. Complicating a solution to this problem is a dynamic that must be better understood in the West: developing countries often use limited arable land to expand cities to house their growing populations. As good land disappears, people destroy timber resources and even rainforests as they try to create more arable land to feed themselves. The long-term environmental consequences could be disastrous for the entire globe. Productivity revolution To meet the expected demand for food over the next 50 years, we in the United States will have to grow roughly three times more food on the land we have. That’s a tall order. My farm in Marion County, Indiana, for example, yields on average 8.3 to 8.6 tonnes of corn per hectare – typical for a farm in central Indiana. To triple our production by 2050, we will have to produce an annual average of 25 tonnes per hectare. Can we possibly boost output that much? Well, it’s been done before. Advances in the use of fertilizer and water, improved machinery and better tilling techniques combined to generate a threefold increase in yields since 1935 – on our farm back then, my dad produced 2.8 to 3 tonnes per hectare. Much US agriculture has seen similar increases. But of course there is no guarantee that we can achieve those results again. Given the urgency of expanding food production to meet world demand, we must invest much more in scientific research and target that money toward projects that promise to have significant national and global impact. For the United States, that will mean a major shift in the way we conduct and fund agricultural science. Fundamental research will generate the innovations that will be necessary to feed the world. The United States can take a leading position in a productivity revolution. And our success at increasing food production may **play a decisive** humanitarian **role in the survival of** billions of people and the health of **our planet.**

## Off 2

Text: The United States federal government should amend the War Powers Resolution of 1973 to include Unmanned Arial Vehicles in its definition of Armed Forces.

Don’t slander the drone – leads to a cycle of anger and violence

Carpenter ’11 (Charli Carpenter, associate professor of international relations at the University of Massachusetts, Amherst, and Lina Shaikhouni, “Foreign Policy: If Drones Had Feelings, They'd Be Hurt,” June 8, 2011, <http://www.npr.org/2011/06/08/137055338/the-nation-if-drones-had-feelings-theyd-be-hurt>)

Killer robots. Video-game warfare. Unlawful weapons. Terminators. Drone-attack commentary has become synonymous with **reports of civilian carnage, claims of international-law violations, and worries about whether high-tech robotic wars have become too easy and fun to be effectively prevented**. But the debate over drones is misleading the public about the nature of the weaponry and the law. It is also **distracting attention** from some more important and bigger issues: whether truly autonomous weapons should be permitted in combat, how to track the human cost of different weapons platforms and promote humanitarian standards in war, and whether targeted killings — by drones or SEAL teams — are lawful means to combat global terrorism. Based on our analysis of recent op-eds, we unpack four sets of misconceptions below and offer some sensible ways for the anti-drone lobby to reframe the debate.

Misconception No. 1: Drones Are "Killer Robots."

This is actually two assumptions; neither is precisely wrong, but both are misleading. First, **drones themselves are not necessarily "killers"**: They are used for many nonlethal purposes as well. Drones (unmanned aerial vehicles) can carry anything ranging from cameras to sensors to weapons and have been deployed for nonlethal purposes such as intelligence gathering and surveillance since the 1950s. Yet the nonlethal applications of drones are often lost in a discussion that treats the technology per se as deadly; 90 percent of the op-eds we analyzed focus solely on drones as killing machines.

Of course, it's true that drones can be used to kill. Some drones over Libya are now armed, and armed drones have been launching strikes in Afghanistan, Pakistan, and Yemen for years. Second, even **weaponized drones are not "killer robots**," despite the frequent reference in the op-eds we studied to "robotic weapons" or "robotic warfare." Their flight and surveillance systems are able to extract information from their environment and use it to move safely in a purposive manner, but the weapons themselves are controlled by a human operator and are not autonomous. With a human-in-the-loop navigating the aircraft and controlling the weapon, the "killer" aspect of these specific drones may be remote-controlled, but it's not robotic.

This important distinction is on a concerned public, but the distinction matters. Indeed, the debate over "killer robot drones" that actually aren't autonomous is preventing public attention from being directed to a more ground-breaking development in military technology: preparations to to truly autonomous weapons platforms, many of which are not drones at all. As Brookings Institution scholar , a shift toward fully autonomous weapons systems would represent a sea change in the very nature of war. Groups like the have called for a to stem or at least regulate these developments. Those worried about drones might usefully refocus their attention to on the debate over whether to keep humans in the loop for unmanned aerial vehicles and other weapons platforms globally. The big issue here is not drones per se. It is the extent to which life-and-death targeting decisions should ever be outsourced to machines.

## Off 3

#### The United States federal government should recognize the political and agentic capacities of killer robots.

**This cuts to the chase and solves 100% of the aff.**

## Off 4

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 vote negative to endorse political, rather than legal restrictions on Presidential war powers authority.

Goldsmith ‘12

Jack, Harvard Law School Professor, focus on national security law, presidential power, cybersecurity, and conflict of laws, Former Assistant Attorney General, Office of Legal Counsel, and Special Counsel to the Department of Defense, Hoover Institution Task Force on National Security and Law, March 2012, Power and Constraint, p. 205-209

DAVID BRIN is a science-fiction writer who in 1998 turned his imagination to a nonfiction book about privacy called The Transparent Society. Brin argued that individual privacy was on a path to extinction because government surveillance tools—tinier and tinier cameras and recorders, more robust electronic snooping, and bigger and bigger databases—were growing irreversibly more powerful. His solution to this attack on personal space was not to erect privacy walls, which he thought were futile, but rather to induce responsible government action by turning the surveillance devices on the government itself. A government that citizens can watch, Brin argued, is one subject to criticism and reprisals for its errors and abuses, and one that is more careful and responsible in the first place for fear of this backlash. A transparent government, in short, is an accountable one. "If neo-western civilization has one great trick in its repertoire, a technique more responsible than any other for its success, that trick is accountability," Brin argues, "[e]specially the knack—which no other culture ever mastered—of making accountability apply to the mighty."' Brin's notion of reciprocal transparency is in some ways the inverse of the penological design known as a "panopticon," made famous by the eighteenth-century English utilitarian philosopher Jeremy Bentham. Bentham's brother Samuel had designed a prison in Paris that allowed an "inspector" to monitor all of the inmates from a central location without the prisoners knowing whether or when they were being watched (and thus when they might be sanctioned for bad behavior). Bentham described the panopticon prison as a "new mode of obtaining power of mind over mind" because it allowed a single guard to control many prisoners merely by conveying that he might be watching.' The idea that a "watcher" could gain enormous social control over the "watched" through constant surveillance backed with threats of punishment has proved influential. Michel Foucault invoked Bentham's panopticon as a model for how modern societies and governments watch people in order to control them.' George Orwell invoked a similar idea three decades earlier with the panoptical telescreen in his novel 1984. More recently, Yale Law School professor Jack Balkin used the panopticon as a metaphor for what he calls the "National Surveillance State," in which governments "use surveillance, data collection, and data mining technologies not only to keep Americans safe from terrorist attacks but also to prevent ordinary crime and deliver social services." The direction of the panopticon can be reversed, however, creating a "synopticon" in which many can watch one, including the government.' The television is a synopticon that enables millions to watch the same governmental speech or hearing, though it is not a terribly robust one because the government can control the broadcast. Digital technology and the Internet combine to make a more powerful synopticon that allows many individuals to record and watch an official event or document in sometimes surprising ways. Video recorders placed in police stations and police cars, cell-phone video cameras, and similar tools increase citizens' ability to watch and record government activity. This new media content can be broadcast on the Internet and through other channels to give citizens synoptical power over the government—a power that some describe as "sousveillance" (watching from below)! These and related forms of watching can have a disciplining effect on government akin to Brin's reciprocal transparency. The various forms of watching and checking the presidency described in this book constitute a vibrant presidential synopticon. Empowered by legal reform and technological change, the "many"—in the form of courts, members of Congress and their staff, human rights activists, journalists and their collaborators, and lawyers and watchdogs inside and outside the executive branch—constantly gaze on the "one," the presidency. Acting alone and in mutually reinforcing networks that crossed organizational boundaries, these institutions extracted and revealed information about the executive branch's conduct in war—sometimes to adversarial actors inside the government, and sometimes to the public. The revelations, in turn, forced the executive branch to account for its actions and enabled many institutions to influence its operations. The presidential synopticonalso promoted responsible executive action merely through its broadening gaze. One consequence of a panopticon, in Foucault's words, is "to induce in the inmate a state of conscious and permanent visibility that assures the automatic functioning of power."' The same thing has happened in reverse but to similar effect within the executive branch, where officials are much more careful merely by virtue of being watched. The presidential synopticon is in some respects not new. Victor Davis Hanson has argued that "war amid audit, scrutiny, and self-critique" has been a defining feature of the Western tradition for 2,500 years.' From the founding of the nation, American war presidents have been subject to intense scrutiny and criticism in the unusually open society that has characterized the United States. And many of the accountability mechanisms described in this book have been growing since the 1970s in step with the modern presidency. What is new, however, is the scope and depth of these modern mechanisms, their intense legalization, and their robust operation during wartime. In previous major wars the President determined when, how, and where to surveil, target, detain, transfer, and interrogate enemy soldiers, often without public knowledge, and almost entirely without unwanted legal interference from within the executive branch itself or from the other branches of government.' Today these decisions are known inside and outside the government to an unprecedented degree and are heavily regulated by laws and judicial decisions that are enforced daily by lawyers and critics inside and outside the presidency. Never before have Congress, the courts, and lawyers had such a say in day-to-day military activities; never before has the Commander in Chief been so influenced, and constrained, by law. This regime has many historical antecedents, but it came together and hit the Commander in Chief hard for the first time in the last decade. It did so because of extensive concerns about excessive presidential power in an indefinite and unusually secretive war fought among civilians, not just abroad but at home as well. These concerns were exacerbated and given credibility by the rhetoric and reality of the Bush administration's executive unilateralism—a strategy that was designed to free it from the web of military and intelligence laws but that instead galvanized forces of reaction to presidential power and deepened the laws' impact. Added to this mix were enormous changes in communication and collaboration technologies that grew to maturity in the decade after 9/11. These changes helped render executive branch secrets harder to keep, and had a flattening effect on the executive branch just as it had on other hierarchical institutions, making connections between (and thus accountability to) actors inside and outside the presidency much more extensive.

# Case

## 1nc solvency frontline

Congress will ignore presidential circumvention of the WPR – strong political incentives

Druck 12 (Judah A. Druck, law associate at Sullivan & Cromwell LLP, Cornell Law School graduate, magna cum laude graduate from Brandeis University, “Droning On: The War Powers Resolution and the Numbing Effect of Technology-Driven Warfare,” <http://www.lawschool.cornell.edu/research/cornell-law-review/upload/Druck-final.pdf>)

Of course, despite these various suits, Congress has received¶ much of the blame for the WPR’s treatment and failures. For example, Congress has been criticized for doing little to enforce the WPR¶ in using other Article I tools, such as the “power of the purse,”76 or by closing the loopholes frequently used by presidents to avoid the WPR in the first place.77 Furthermore, in those situations where Congress¶ has decided to act, it has done so in such a disjointed manner as to render any possible check on the President useless. For example, during President Reagan’s invasion of Grenada, Congress failed to reach¶ an agreement to declare the WPR’s sixty-day clock operative,78 and¶ later faced similar “deadlock” in deciding how best to respond to President Reagan’s actions in the Persian Gulf, eventually settling for a bill¶ that reflected congressional “ambivalence.”79 Thus, between the lack of a “backbone” to check rogue presidential action and general ineptitude when it actually decides to act, Congress has demonstrated its¶ inability to remedy WPR violations.¶ Worse yet, much of Congress’s interest in the WPR is politically¶ motivated, leading to inconsistent review of presidential military decisions filled with post-hoc rationalizations. Given the political risk associated with wartime decisions,81 Congress lacks any incentive to act unless and until it can gauge public reaction—a process that oftenoccurs after the fact.82 As a result, missions deemed successful by the¶ public will rarely provoke “serious congressional concern” about presidential compliance with the WPR, while failures will draw scrutiny.83¶ For example, in the case of the Mayaguez, “liberals in the Congress¶ generally praised [President Gerald Ford’s] performance” despite theconstitutional questions surrounding the conflict, simply because the public deemed it a success.84 Thus, even if Congress was effective at¶checking potentially unconstitutional presidential action, it would only act when politically safe to do so. This result should be unsurprising: making a wartime decision provides little advantage for politicians, especially if the resulting action succeeds.85 Consequently, Congress itself has taken a role in the continued disregard for WPR¶ enforcement.¶ The current WPR framework is broken: presidents avoid it, courts¶ will not rule on it, and Congress will not enforce it. This cycle has¶ culminated in President Obama’s recent use of force in Libya, which¶ created little, if any, controversy,86 and it provides a clear pass to future presidents, judges, and congresspersons looking to continue the¶ system of passivity and deferment.

Can’t affect change

Petersson ’05 (Dag Petersson, Modinet Research Centre, University of Copenhagen, “Time and technology,” Environment and Planning D: Society and Space 2005, volume 23, pages 207-234)

The issue DeLanda's work leaves untouched is not how to steer away from ``the **pitfalls of essentialism**'' or how to avoid reintroducing ``essences through the back door'' (page 10) but rather the opposite: how to construct an ethics capable of selecting, resisting, or affecting these powerful diagrams. This is a task of some urgency, especially if what diagrams produce are our notions of ourselves and of our relations to the world, notions that are always becoming different from themselves. Chance and determinism are the only mechanisms of choice left in DeLanda's self-regulating universe (page 38). From the lack of an ethical perspective, his philosophy may risk becoming merely a description of a hyper-complex yet predetermined clockwork. It is because DeLanda avoids the Deleuzean notion of creativity in art, science, and philosophy that his immanent realism threatens to become politically closed, a tragedy of its own kind. Or is there an alternative reading?

Doesn’t go past theory – attributing agency by no means empiricizes their theory

Marres ’13 (Noortje Marres, Department of Sociology, Goldsmiths, University of London, “Why political ontology must be experimentalized: On ecoshow homes as devices of participation,” Social Studies of Science 43(3) 417–443)

However, we may also ask more open-ended questions about the changing status of ideas about the politics of non-humans. What, for instance, does it imply for the sensibilities that inform intellectual debates about this issue? The idea that non-humans have moral and political capacities has occupied social scientists and philosophers for many years, but it holds a special place in science and technology studies (STS). The claim that things have politics is one of the central contributions of STS to wider debates in social theory, and this claim is often singled out – positively or negatively – as the most distinctive feature of approaches developed in the field. Furthermore, it is often argued that recognizing non-humans as social and political agents has significant implications for a wide range of sociological and political concepts; taking non-humans into account transforms concepts of social order, power and morality (Harbers, 2005; Latour, 2005b). Finally, accounts in STS that consider the roles non-humans play in social and political life propose a very particular understanding of ontology, one that markedly differs from definitions of this term assumed in other fields. In attributing a politics to non-humans, one could say that work in STS has rendered ontology empirical. I will discuss this double movement in more detail below, but debates in STS about the politics of nonhumans tend to assume that ontological questions cannot be settled by theoretical means. Rather, such questions require detailed empirical investigation of social and political practices (Latour, 1988; Law, 2004; Mol, 2002). 2

One could argue, then, that the politics of non-humans is only the tip of the iceberg of a much wider conceptual reorientation in social and political research and theory. It does not just involve a re-conceptualization of the material dimension of politics, but also of a whole array of other phenomena as well, and ontology in particular. However, that the attribution of political capacities to non-humans should go hand in hand with an empiricization of ontology is **by no means self-evident**. Indeed, the idea that there is a politics to things is increasingly popular today, but on the whole, this **has not led to a wider engagement with political ontology** along the empirical lines proposed in STS. In political theory, the so-called object-oriented ontology and the ‘new materialism’ have received much attention in recent years, and this work has spawned renewed interest in the role of material and non-human entities in politics and democracy (Bennett, 2010; Frost, 2008; Harman, 2009). However, while this work extends political recognition to non-humans, it tends to remain invested in a theoretical definition of ontology (for a notable exception, see Bennett, 2010). One could think that this situation offers an opportunity for STS to reassert its distinctively empirical understanding of ontology. But here I would like to make a different argument. Insofar as the political capacities of nonhumans are gaining more widespread recognition today, **empirical ontology is itself being opened up for questioning.** Efforts to respecify the relation between ontology and politics in empirical terms, I will argue, **have remained limited** in some respects. Because of the ways in which ontology has been empiricized in STS, the recognition of nonhumans as political agents took a very particular form. For instance, **this recognition did not really extend to public forms of political and democratic life.** But there are opportunities today not just to reassert but to expand the project of the empiricization of ontology and to adopt what I will call here an ‘experimental ontology’.

## 1nc advantage frontline

The idea of the robot historian is so mired in abstraction no one can make relevant predictions

Petersson ’05 (Dag Petersson, Modinet Research Centre, University of Copenhagen, “Time and technology,” Environment and Planning D: Society and Space 2005, volume 23, pages 207-234)

Can these movement-images, which exist on any screen whose technicity has the capacity of forming them, have the power to protect DeLanda's diagrams from historical coagulation? Perhaps **not by themselves**, like some shield of armor, but they may play a fundamental role in a strategy against the temptation to historicize diagrams. The **technicity** of movement-images **is irreducible to any historization of abstract diagrams** because what a history first of all would have to subtract in order to organize or structure the diagrams is any **ambiguity between the writer and the object of history**. By rendering technicity as the measure of affect blocks, it is clear that the historical scholar is an image as well. Furthermore, he, she, or it (the killer-robot historian) is an image emphatically affected by its objects, which are images in their own right, and thus both, as one whole, are **always becoming different**, producing new blocks of affect. In technical terms: on the virtual plane, it is their higher symmetry that makes diagrams both able to immanently cause the production of images and at the same time unable to register and preserve their difference even though the diagrams are what preserve the very potentiality for difference. The consequence is that the historical requirement of a clear distinction between agent and object simply dissolves **on the plane of diagrams**. Therefore, a proper history of diagrams is impossible. A history of movement-images would take the form of a complex symbiotic evolution rather than of a chronicle over humankind's relationship to visual technology. Abstract diagrams are then certainly dislocated from the site where the most rigid histories prefer them to be: in the heads of brilliant and ambitious men and women. However, merely dissociating abstract diagrams from the lone genius is not enough. It must also be dissociated from the manifestation of the historical event itself, without becoming a transcendental instance. This is why the movement-images of visual machines are particularly suitable: because they do not follow the questionable strategy of privileging an alternative sense over vision in the attempt to dismantle the ocularcentric essentialism of Western thought. Instead, they celebrate the forces of vision and visuality (and visionaries and theorists and other illuminati) by affirming a nondialectical, indeed nonphenomenal notion of image. A historical event must last and be visible to as many people as possible. The screen, on the other hand, is hardly ever seen: unless it does something it is not seen at all. The images it carries (not the pictures) are measured by what they can do: what affect blocks they can produce, annihilate, and entrain ˆ not by how long they last. Pictures can certainly be manifestations of historical events, for they result from a symmetry-breaking process that makes them present in metric time and space. Several images can be involved in the crystalization of one picture, and millions of pictures may be the effect of one image. Hence, the dissociation between diagrams and manifestations of historical events is thus a matter of longitude and latitude: diagrams have a higher symmetry than both images and pictures and are affected only by other diagrams.

Robot history makes no sense – the drone is intimately related to human decisionmaking – means there’s no impact

Joshua Foust, former analyst at the Defence Intelligence Agency, 5/20/13, Human Agency and the Moral Imperative of Robot Warfare, joshuafoust.com/human-agency-and-the-moral-imperative-of-robot-warfare/

There have been a number of responses to my FP article on robot autonomy and warfare — some serious, some laughably unserious. Among the more serious and considered is Jay Adler. Writing for The Algemeiner, he brings up the biggest and, I think, most serious objection to increasing automation in warfare: human agency. He also, perhaps unintentionally, implies a further argument about the deterrence power of personal risk that is worth discussing as well.

Implied by all Foust argues is that human moral advancement in the conduct of war – a problematic, though nonetheless genuine notion acknowledged by just war, among other, theories – is exemplified by diminished numbers of casualties, especially civilian and what would amount to more effective winning. This is a seductively appealing argument on the face of it. If we must sometimes fight wars (well, really, we have to admit, it is far more often than sometimes) let us at least do it by killing as few people as possible, certainly as few women and children, in the classic formulation, and as few innocent civilians.

These are certainly goals to pursue, and the militaries of liberal democracies do most of the time pursue them. But I do not think this goal is the essence of human moral advancement in war. First, effectiveness in winning war has never been a problem. Since wars began, whenever exactly that was – two clans fighting over a cave and a fire? – most of the time one side has managed some kind of victory. Warring groups have always been effective at winning.

This is a fascinating counterargument, if only because the biggest challenge in the current “war” (I’m less and less comfortable with using the term “war” to define our many counterterrorism policies) is that there are not, in fact, clearly defined conditions under which one side or another can declare victory. While al Qaeda has very plainly as its goal the overthrow of enemy regimes and their replacement with a caliphate preaching their values, the U.S. does not have victory conditions.

This is a problem with how most American wars have been fought post-9/11: victory defined through absence, easily falsifiable and vaguely defined goals, little strategic thinking, and no consideration of alternatives. It is true of Afghanistan, and it is true of the “war on violent extremism” or whatever it’s called this week too.

So if we don’t really know what victory looks like, how can one argue that “effectiveness in winning war has never been problem?” That is actually the heart of the issue here: when it’s unclear what winning a war even means, are there lesser forms of violence that might at least manage the problem so warfare isn’t necessary? Adler doesn’t say.

 On the score of diminished civilian casualties, whatever increased human concern with are called the laws of war, through the mid twentieth century it can hardly be argued that humanity had achieved any form of advancement. More effectively lethal weapons produced, in fact, more killing, and more civilian death, on a scale previously unimaginable. Since the the second half of the twentieth century a pronounced characteristic of war, in the lethality of weaponry, has been that of profound technological disparity between warring parties. This has been so in all of the conflicts of the United States, of Israel over the past more than thirty years, of the Soviet Union and of Russia in Chechnya, for example. This has produced markedly lower comparative casualties on one side (not always a clear winner, as in the U.S. in Vietnam or Israel in Lebanon in 2006), though sometimes still comparatively massive casualties, even mostly civilian, as in Vietnam and the Iraq War, on the other. This disparity may be a happy development for the side with low numbers – not necessarily a winner, and not by any inherent necessity deserving of the benefit – but it cannot easily be argued that such a development is an advancement in the protection of human rights in war.

Unfortunately, this relies on a rather poisonous assumption that lies beneath the latest round of human rights advocacy against drones and against warfare. Weapons are indeed more effective at killing than ever before, but something remarkable has happened alongside that. Conflict, in general, is less common and less deadly than at any point in human history. The Norwegian Ministry of Foreign Affairs even registered a remarkable change during the deadliest part of the Iraq War: for several years running, no new conflicts had broken out anywhere in the world. They continue:

 The number of ongoing conflicts has declined since shortly after the end of the Cold War and the severity of armed conflict has generally declied since World War II. This fact sharply contradicts many pessimistic perspectives bolstered by media headlines from Iraq, Afghanistan, and Darfur. Research conducted by the Centre for the Study of Civil War at PRIO, using the most recently updated data collected in collaboration with the Uppsala Conflict Data Program (UCDP) at Uppsala University, indicates a more complex situation, with both reassuring and disturbing trends.

 After a period of steady decline in the number of armed conflicts in the world, the downward trend has ended. Data from PRIO and Uppsala University indicates that the number of active conflicts is no longer sinking, but has held steady at 32 for three years in a row. Secondly, we are now in the longest period since World War II without interstate war (those fought between two or more countries). Moreover, we register no new conflicts of any type over the previous two years; this is the first time in the postwar period in which two years have passed with no new conflicts having broken out.

Obviously, new conflicts have broken out since that study was published, most visibly in the Middle East thanks to the Arab Spring. But despite these new conflicts, casualties remain remarkably low in historical context. King Leopold’s campaign in the Congo, for example, which killed 10 million people, has never been replicated before or since. Even the Congo’s own civil war in the 90s to the 2000s, one of the bloodiest of the modern age, didn’t directly kill even a significant percentage of that many innocents. Most of the 8 million or so who have died from that conflict died by being denied access to critical infrastructure and resources, not from conflict.

Wars just aren’t as massively deadly as they once were. When the Soviets invaded Afghanistan, prompting a massive U.S.-funded insurgency to unseat them, they eventually lost nearly 15,000 soldiers to combat. Upwards of 1.5 million Afghan civilians died, too. The current round of war there has killed a fraction as many during a longer period of conflict. Even the war in Iraq, though horrifying by any standard, killed only about a tenth as many civilians as the Iran-Iraq war two decades earlier, which killed over a million.

None of this excuses wars, especially those of choice based on lies, as Iraq was. These are abhorrent stains on our conscious and brutalize without purpose; there is just no justification for them.

But the numbers are difficult to avoid. War just isn’t as horrific as it was even 20 years ago, to say nothing of 30 years ago or more. Without excusing war, surely the lower frequency of conflict, and the lower casualties that result is, contra-Adler, a rather stunning advancement for human well being.

Back to Adler:

 This is, indeed, essential to the more general debate over the use of drones; in the current consideration, though, the matter is not machines using force (really, being used for), but machines using force autonomously. Autonomous weaponry removes the human moral agency of killing in war, could remove it, ultimately, from war altogether. Yet if anything can redeem the essential human crime of war, enact justice in the waging of it, it is precisely the complementary human moral agency of it.

This rests on a couple of interesting assumptions:

 Machine autonomy removes human moral agency for killing;

 Machine autonomy might remove moral agency from warfare altogether; and

 Human moral agency is necessary for “redeeming the essential human crime of war.”

Adler shares Human Rights Watch’s assumption that “fully autonomous machines” will lack empathy and moral agency. But, as I explained in my piece, this misunderstands what people mean when they talk about autonomous machine uses of force. At a basic level, the policymakers who approve the use of drones do not lack moral agency; if anything, the continued round of lawsuits directed at the CIA and Pentagon for drone strikes shows a clear chain of moral agency even if courts refuse to countenance the suits. The public holds officials accountable for what they order their soldiers, pilots, and machines to do, and despite the secrecy of the program clouding any effort to hold it accountable, there is little debate that the decision to use force must be critiqued at least as heavily as the specific method used to deliver force.

When one delves into the depths of what “full autonomy” means — and that is the category of automation HRW is campaigning again — then we’re dealing with machines that not only make decisions on their own, but who also have the capacity to learn. The assumption that machines will only learn to do evil but will never learn the value of doing good (showing restraint, practicing extreme precision humans just don’t have the patience for, behaving in a limited way) is just an assumption — one born more of lazy allusions to science fiction that was written before the Internet than anything based in the science of how machines learn.

Put simply, if an autonomous learning machine is programmed with our values, it will reflect those values. Think of Data from Star Trek (an autonomous machine capable of deciding without human input when and how to use deadly force, including when in command of a starship), rather than the Terminator (a favorite image of the anti-machine crowd).

But moreover, if anything, human agency is immaterial to this argument, and in a way fatally undermines Adler’s argument. If the trend of warfare overtime is for increasing sophistication to lead to decreased casualties and decreased burden on civilian populations — a point Adler kind of concedes in his final paragraph, then moral agency is still being employed to further lower casualties through increasingly sophisticated machines of war.

In many ways, officials appeal to drones as a human rights-driven response to counterterrorism — fewer belligerent casualties than outright warfare (true) and fewer civilian casualties than even traditional air wars (also true). The moral agency Adler appeals to with “pulling the trigger” doesn’t disappear when the decision to employ an autonomous weapon is used, anymore than moral agency disappears when an automated counter-mortar battery happens to kill a bunch of people laying timed rockets to attack a base in Afghanistan. It’s just expressed differently. The decision to employ hyper-precise machines is a moral decision to limit collateral damage, not an insidious decision to ignore collateral damage.

Such a decision, pace Adler, is not dehumanizing. It is, in fact, very deeply humanizing: showing that even “enemy” life has value that should be safeguarded to the greatest extent possible with human ingenuity.

No chance of autonomy

Zenko 13 (Micah Zenko is the Douglas Dillon fellow in the Center for Preventive Action (CPA) at the Council on Foreign Relations (CFR). Previously, he worked for five years at the Harvard Kennedy School and in Washington, DC, at the Brookings Institution, Congressional Research Service, and State Department's Office of Policy Planning, 3/19/2013, "This Is Not the Drone Debate We're Looking For", www.foreignpolicy.com/articles/2013/03/19/this\_is\_not\_the\_drone\_debate\_were\_looking\_for)

Meanwhile, human rights groups, legal scholars, and columnists are increasingly warning about the prospect of fully autonomous robots, which could conduct lethal strikes without a human being in the decision-making loop. While the U.S. military has long maintained autonomous defensive systems that launch counterbattery fire to suppress artillery and rocket attacks, Pentagon officials have repeatedly stated that there are no plans to develop fully autonomous drones for targeted killing operations. Although there should be clear limits on what decisions are made by robotic sensors and algorithms, this is not an imminent capability that presidents will possess, nor is it a practical near-term concern. Moreover, it is unrelated to the weapons platforms that have been used by the Bush and Obama administrations 420 times and counting.

The idea of object consciousness is a farce – even if it existed, there is no way for us to know it which means any attempt at historicization fails

Cole ’13 (Andrew, teaches English at Princeton University, “The Call of Things: A Critique of Object-Oriented Ontologies,” Minnesota Review Number 80, 2013)

In an essay called "Frenzy, Mechanism, Mysticism" (2002), Bergson writes, "Man will rise above earthly things only if a powerful equipment supplies him with the requisite fulcrum. He must use matter as a support if he wants to get away from matter. In other words, the mystical summons up (appelle ) the mechanical" (1932, 166). As if this point were not big enough, he continues: "So let us not merely say . . . that the mystical summons up (appelle ) the mechanical. We must add that the body, now larger, calls for a bigger soul, and that mechanism should mean mysticism" (339). The world has a soul, just as Eckhart thought. But—and this is crucial for Bergson—just because the world is animate with the hubbub of élan vital does not mean that consciousness itself dissolves:

Theories of physical determinism which are rife at the present day are far from displaying the same clearness, the same **geometrical rigour**. They point to molecular movements taking place in the brain: consciousness is supposed to arise out of these at times in some mysterious way. . . . [W]e are to think of an invisible musician playing behind the scenes while the actor strikes a keyboard the notes of which yield no sound: consciousness must be supposed to come from an unknown region and to be superimposed on the molecular vibrations, just as the melody is on the rhythmical movements of the actor. But, whatever image we fall back upon, we do not prove and we never shall prove by any reasoning that the psychic fact is fatally determined by the molecular movement. For in a movement we may find the reason of another movement, but not the reason of a conscious state. (1910, 147-48)

**Here is a reminder for all those "object-oriented humans" who seek to "decenter the human"** by equating consciousness with the vitalities [End Page 113] and intensities. For even Bergson in his most mystical moments refuses this equation and formulates his philosophy accordingly: (1) pace Deleuze's misreading in Bergsonism (1988), Bergson himself talks about consciousness as similar to, but in the last instance distinct from, the élan vital that animates the rest of the world; (2) he presciently poses the "hard problem of consciousness" just in the way David Chalmers has done in The Conscious Mind (1996) for research and philosophy concerning the mind/brain distinction: conscious experience is irreducible to the material and, for that matter, to other "weird" and funny formulations. In short, as Bergson shows us, consciousness cannot be explained away and is rather an ever more pressing topic because of the relevance of vitality.7

These newer areas, however, may just as well avoid talking about consciousness, because the term itself is **distorted by its history of usage, an accretion of error, and so forth**. I can sympathize with the distaste for "consciousness," because it admits philosophical frustration and forces you into Kantianism. It is a mind bender to take that old Kantian lesson that consciousness is always consciousness of something and write it from the point of view of objects. What would you write? Well, you would write something about "withdrawn objects," as Harman does, just as Kant would write of things-in-themselves—with the key difference being that philosophers who absorb the Kantian lesson know the limits of their discourse, whereas those who flout that lesson take off into flights of pure reason, speculating about the interior life of objects and getting inside the heads of things. (The other key difference for Harman, of course, is Heidegger, whom Harman needs to revise because he does not help with this one Kantian fundamental: Heidegger admits that human attention and awareness—that is, what constitutes a subject—are special aspects of human consciousness needing philosophical analysis.) **The Kantian problem remains in place:** if there is something that cannot be thought, then maybe it cannot be thought. **You cannot write your way any closer to the object**, circle the wagons of indirection and allusion around it as you may. Until such a time as there is a materialist, realist, or—let us just say— scientific explanation for the necessity of the conscious experience of, say, the color red to accompany the reception of electromagnetic radiation in the cones of your eyeball, **the problem of consciousness qua consciousness will remain on the table**. And until the universe demands that we extend this idea and pose a "hard problem of things"—and I credit Harman for attempting to offer one in his critique of Chalmers (Harman 2009b, 268-69, 272)—there will always be irreducible consciousness, always be idealism, always be objects and subjects infinitely [End Page 114] variously positioned in relation to one another. Talk of "thingly" consciousness as vitality or voice will not "indicate" much of anything but a philosopher's love of language, consumer goods, and entertaining thing-examples like hailstones and tar, aardvarks and baseball. Nor will objects be seen as they wish to be seen in the more specialized attempts by some speculative realists to suggest that objects perceive their secondary qualities—this being just one result of the critique of the distinction between primary and secondary qualities (Meillassoux 2008). For its refusal to find these problems to be problems at all, then, speculative realism amounts to what Hegel called "dogmatic realism," which cannot help but posit "the objective as the real ground of the subjective" (1977, 127).

The aff instrumentalists the agency of objects by speaking for them – privileges the human domain of logocentrism which turns case – stop talking about objects!

Cole ’13 (Andrew, teaches English at Princeton University, “The Call of Things: A Critique of Object-Oriented Ontologies,” Minnesota Review Number 80, 2013)

If, so the idea goes, we make objects mute owing to our instrumental approach to them, we need to relate to them differently so that they will tell stories about themselves. Make them "utter a word." "Make them talk ." Let's stop "talking." Or at least, **let's allow the objects to be heard**. For, as Jane Bennett says in Vibrant Matter (2010), we can "give a voice to a thing-power" (2). She elaborates: "I will try to give voice to a vitality intrinsic to materiality" (3). When things actualize this "thing-power" they make a "call": "Stuff exhibited its thing-power: it issued a call, even if I did not quite understand what it was saying" (4). [End Page 111] And where we fail to understand is right where we endeavor to know and speak the language of their call.6

Graham Harman, the leading figure of the speculative realist movement and by far its best writer, celebrates another (and, as we will soon see, related) idea in Latour—the idea that "propositions" are "actants"; they are not "'positions, things, substances, or essences pertaining to a nature made of mute objects for the talkative mind, but occasions given to different entities to enter into contact.'" Harman names this way of thinking "new occasionalism" and describes it as "Latour's single greatest breakthrough in metaphysics, one that will be associated with his name for centuries to come" (Harman 2009a, 82). It is the idea that when we speak of things, we put them into contact with one another and ourselves. But it is not just that we view propositions as actants. Rather, as Latour tells it, when we consider that "neither world nor words but propositions differ from one another," we reduce the "yawning gap" of Kantianism to a hair's width of difference between propositions (1999, 142, fig. 4.4). We suddenly are in a new place, in which nothing is mute and all is abuzz with propositions in close contact with others. Latour is emphatic about the results: "We are allowed to speak interestingly by what we allow to speak interestingly " (144). While Latour aligns the "proposition" with the idea of "articulation," it is hard to see what is significantly different here from the old but forgotten way of understanding propositions in the most ornate and complex of Logos theology in the work of John Duns Scotus, whose contribution to the ontology of propositions, the discovery of the propositional relays between people and things, can be summed up in one choice phrase: the univocity of being . Being is inseparable from propositionality. Voice matters.

My critique so far is not that the Logos principle is all bad. Quite the opposite: to think about the Logos principle requires one to think broadly about the history of philosophy and—more importantly— how our sense of that history reconfigures itself when something new comes along. Here, in such a history, one discovers that at the center of the new philosophical project to decenter the human and elevate things lies the patent human mode of self-presencing—speaking being—that depends not only on the Logos principle, as Derrida long ago established in Of Grammatology (1976), but also, and more profoundly, I would suggest, on the languages of mysticism and idealism by which things speak and propose. I do not see that speculative realists, or vitalists, are aware of the **complicated philosophical history that underlies their project to "make things speak."** Despite their attempts to question Derrida's criticism of ontotheology, this aspect of [End Page 112] Logocentrism 101 has not been addressed (Harman 2012, 196-97; Morton 2012, 207, 218-19; Bryant 2011, 40, 86, 276).

Trying to ontologize the object dooms their politics to reductionism and a sissy fight of metaphysical truths

Brassier 11

The Speculative Turn: Continental Materialism and Realism

 edited by Levi R. Bryant, Nick Srnicek, Graham Harman

18. However, in the absence of any understanding of the relationship between 'meanings' and things meant—the issue at the heart of the epistemological problematic which Latour dismisses but which has preoccupied an entire philosophical tradition from Frege through Sellars and up to their contemporary heirs the claim that nothing is metaphorical is ultimately indistinguishable from the claim that everything is metaphorical.10 The metaphysical difference between words and things, concepts and objects, vanishes along with the distinction between representation and reality: 'It is not possible to distinguish for long between those actants that arc going to play the role of "words" and those that will play the role of "things'". (2.4.5). ®n dismissing the cpistemological obligation to explain what meaning is and how it relates to things that are not meanings, Latour, like all postmodernists—his own protestations to the contrary notwithstanding—reduces everything to meaning, since the difference between 'words' ami 'things' turns out to be 110 more than a functional difference subsumed by the concept of'actant'—that is to say, it is a merely nominal difference encompassed by the metaphysical function now ascribed to the metaphor 'actant'. Sincc for Latour the latter encompasses everything from hydroelectric powerplants to toothfairies, it follows that every possible difference between powerplants and fairies—i.e. differences in the mechanisms through which they affect and are a fleeted by other entities, whether those mechanisms are currently conceivable or not—is supposed to be unproblematically accounted for by this single conceptual metaphor. 19. This is reductionism with a vengeance; but because it occludes rather than illuminates differences in the ways in which different parts of the world interact, its very lack of explanatory purchase can be brandished as a symptom of its irreductive prowess by those who are not interested in understanding the difference between wishing and engineering. Latour writes to reassure those who do not really want to know. If the concern with representation which lies at the heart of the unfolding episteinological problematic from Descartes to Scllars was inspired by the desire not just to understand but to assist science in its effort to explain the world, then the recent wave of attempts to liquidate epistemology by dissolving representation can be seen as symptomatic of that cognophobia which, from Nietzsche through Heidegger and up to Latour, has fuelled a concerted effort on the part of some philosophers to contain if not neutralize the disquieting implications of scientific understanding." 20. While irreductionists prate about the 'impoverishment' attendant upon the cpistcmological privileging of conceptual rationality, all they have to offer by way of alternative is a paltry metaphorics that occludes every real distinction through which representation yields explanatory understanding. 21. Pace Latour, there is a non-negligible difference between conceptual categories and the objects to which they can be properly applied. But because he is as oblivious to it as the post-structuralists he castigates, Latour's attempt to contrast his 'realism' to postmodern 'irrealism' rings hollow: he is invoking a difference which he cannot make good on. By collapsing the reality of the difference between concepts and objects into differences in force between genetically construed 'actant s', Latour merely erases from the side of'things' ('forces') a distinction which textualists deny from the side of'words' ('signifiers'). 22. Mortgaged to the cognitive valence of metaphor but lacking the resources to explain let alone legitimate it, Latour's irrcductionism cannot be understood as a theory, where the latter is broadly construed as a series of systematically interlinked propositions held together by valid argumentative chains. Rather, Latour's texts consciously rehearse the metaphorical operations they describe: they are 'networks' trafficking in 'word-things' of varying 'power', nexuses of'translation' between octants' of differing 'force', etc. In this regard, they are exercises in the practical know-how which Latour exalts, as opposed to demonstrative prepositional structures governed by cognitive norms of cpistemic veracity and logical validity. But this is just to say that the ultimate import of Latour's work is prescriptive rather than descriptive—indeed, given that Issues of epistemic veracity and validity arc irrelevant to Latour, there is nothing to prevent the cynic from concluding that Latour's politics fneo-liberal) and his religion (Roman Catholic) provide the most telling indices of those forces ultimately motivating his antipathy towards rationality, critique, and revolution. 23. In other words, Latour's texts are designed to do things: they have been engineered in order to produce an cfTcct rather than establish a demonstration. Far from trying to prove anything, Latour is explicitly engaged in persuading the susceptible into embracing his irreductionist worldview through a particularly adroit deployment of rhetoric. This is the traditional modus operandi of the **sophist**. But only the most brazen of sophists denies the rhetorical character of his own assertions: 'Rhetoric cannot account for the force of a sequence of sentences because if it is called 'rhetoric' then it is weak and has already lost'. {2.4.1) This resort to an already metaphorized concept of'force' to mark the extra-rhetorical and thereby allegedly 'real' force of Latour's own 'sequence of sentences' marks the nee plus ultra of sophistry.'2 24. Irreductionism is a species of correlationism: the philosopheme according to which the human and the non-human, society and nature, mind and world, can only be understood as reciprocally correlated, mutually interdependent poles of a fundamental relation. Corrclationists arc wont to dismiss the traditional questions which have preoccupied metaphysicians and epistemologists—questions such as 'What isX?' and 'How do we know X?'—as false questions, born of the unfortunate tendency to abstract one or other pole of the correlation and consider it in isolation from its correlate. For the correlationist, since it is impossible to separate the subjective from the objective, or the human from the non-human, it makes no sense to ask what anything is in itself, independently of our relating to it. By the same token, once knowledge has been reduced to technical manipulation, it is neither possible nor desirable to try to understand scientific cognition independently of the nexus of social practices in which it is invariably implicated. Accordingly, correlationism sanctions all those variants of pragmatic instrumentalism which endorse the primacy of practical 'know-how' over theoretical 'knowing-that' Sapience becomes just another kind of sentience—and by no means a privileged kind either. 25. Ultimately, correlationism is not so much a specific philosophical doctrine as a general and highly versatile strategy for deflating traditional metaphysical and epistemological concerns by reducing both questions of'being' and of'knowing1 to concatenations of cultural form, political contestation, and social practice. By licensing the wholesale conversion of philosophical problems into symptoms of non-philosophical factors (political, sociocultural, psychological, etc.), correlationism provides the (often unstated) philosophical premise for the spate of twentieth century attempts to dissolve the problems of philosophy into questions of politics, sociology, anthropology, and psychology. To reject correlationism and reassert the primacy of the epistemology-metaphysics nexus is not to revert to a reactionary philosophical purism, insisting that philosophy remain uncontaminatcd by politics and history. It is simply to point out that, while they are certainly socially and politically nested, the problems of metaphysics and epistemology nonetheless possess a relative autonomy and remain conceptually irreducible—just as the problems of mathematics and physics retain their relative autonomy despite always being implicated within a given socio-historical conjuncture. The fact that philosophical discourse is non-mathematical and largely (but by no means entirely) unformalized (but certainly not unfonnalizable), does not provide a legitimate warrant for disregarding its conceptual specificity and reducing it to a set of ideological symptoms. Again, this is not to assert (absurdly) that the problems of metaphysics or epistemology have no social determinants or political ramifications, but simply to point out that they can no more be understood exclusively in those terms than can the problems of mathematics or physics. 26. To refuse corrclationism's collapsing of epistemology into ontology, and of ontology into politics, is not to retreat into reactionary quietism but to acknowledge the need to forge new conditions of articulation between politics, epistemology, and metaphysics. The politicization of ontology marks a regression to anthropomorphic myopia; the ontologization of politics falters the moment it tries to infer political prescriptions from metaphysical description. Philosophy and politics cannot be metaphysically conjoined; philosophy intersects with politics at the point where critical epistemology transects ideology critique. An emancipatory politics oblivious to epistemology quickly degenerates into metaphysical fantasy, which is to say, a religious substitute.'3 The failure to change the world may not be unrelated to the failure to understand it. 27. The assertion of the primacy of correlation is the condition for the post-modcrn dissolution of the cpistcmology-mctaphvsics nexus and the two fundamental distinctions concomitant with it: the sapience-sentience distinction and the conceptobject distinction. In eliding the former, correlationism eliminates epistemology by reducing knowledge to discrimination. In eliding the latter, correlationism simultaneously reduces things to concepts and concepts to things. Each reduction facilitates the other: the erasure of the epistemological difference between sapience and sentience makes it easier to collapse the distinction between concept and object; the elision of the metaphysical difference between concept and object makes it easier to conflate sentience with sapience. Thus Latour's reduction of things to concepts (objects to 'act ants') is of a piece with his reduction of concepts to things ('truth' to force). 28. The rejection of correlationism entails the reinstatement of the critical nexus between epistemology and metaphysics and its attendant distinctions: sapience/sentience; concept/object. We need to know what things are in order to measure the gap between their phenomenal and noumcnal aspects as well as the difference between their extrinsic and intrinsic properties. To know (in the strong scientific sense) what something is is to conceptualize it. This is not to say that things arc identical with their concepts. The gap between conceptual identity and non-conceptual difference—between what our concept of the object is and what the object is in itself—is not an ineffable hiatus or mark of irrecuperable altcrity; it can be conceptually converted into an identity that is not of the concept even though the concept is of it. Pace Adorno, there is an alternative to the negation of identity concomitant with the conccpt's failure to coincide with what it aims at: a negation of the concept determined by the object's non-conceptual identity, rather than its lack in the concept. Pace Deleuze, there is an alternative to the affirmation of difference as non-representational concept (Idea) of the thing itself: an affirmation of identity in the object as ultimately determining the adequacy of it s own conceptual representation. The difference between the conceptual and the extra-conceptual need not be characterized as lack or negation, or converted into a positive concept of being as Ideal diffcrcncc-in-itsclf: it can be presupposed as already-given in the act of knowing or conception. But it is presupposed without being posited. This is what distinguishes scientific representation and governs its stance towards the object.'4 29. What is real in the scientific representation of the object does not coincide with the object's quiddity as conceptually circumscribed—the latter is what the concept means and what the object is; its metaphysical quiddity or essence—but the scientific posture is one which there is an immanent yet transcendental hiatus between the reality of the object and its being as conceptually circumscribed: the posture of scientific representation is one in which it is the former that determines the latter and forces its perpetual revision. Scientific representation operates on the basis of a stance in which something in the object itself determines the discrepancy between its material reality—the fact that it is, its existence—and its being, construed as quiddity, or what it is. The scientific stance is one in which the reality of the object determines the meaning of its conception, and allows the discrepancy between that reality and the way in which it is conceptually circumscribed to be measured. This should be understood in contrast to the classic correlationist model according to which it is conceptual meaning that determines the 'reality' of the object, understood as the relation between representing and represented.

## 2NC

## 2nc circumvention

WPR IAFH authority is explicitly superseded by the AUMF – it also doesn’t even prohibit use

Goldsmith ’13 (Jack, Henry L. Shattuck Professor at Harvard Law School, “Response to Peter Spiro on the Senate’s Syrian AUMF, and a Request for Clarity,” September 4, 2013, <http://www.lawfareblog.com/2013/09/response-to-peter-spiro-on-the-senates-syrian-aumf-and-a-request-for-clarity/>)

Section 4 terminates the congressional authorization after 60 (or 90) days, but it does not affirmatively prohibit the President from using force at that point, and thus it allows the President to **fall back** on his claims of inherent presidential power (which, I argued, are enhanced by the draft AUMF). I thus do not see how the 90-day limit of Section 4 “will almost certainly stick” because it applies “the WPR timeline to Syria.” The WPR has something important that this AUMF doesn’t – a requirement in Section 5(c) that the President “terminate any use of United States Armed Forces” after 60 (or 90) days. Only if there is such an affirmative prohibition on presidential power in the draft AUMF would the President be in a Jackson category 3 situation. But there is no such affirmative prohibition on presidential use of force in the draft AUMF – only a removal of authorization after 90 days. Thus I believe I am right that the draft AUMF does not prohibit the President from using force pursuant to his inherent powers after 90 days. After 90 days the President would be in Jackson category 2, not Jackson category 3.

But on an issue that Peter did not raise (but that his post caused me to see), matters are yet more complex. (Very complex – sorry). Does Section 5(b) of the WPR itself, as opposed to Section 4 of the draft AUMF, apply to bar the President from engaging in “hostilities” after 90 days of military activity in Syria? Even if it did, it **would not prevent the President from using significant Libya-like military “force** from a distance” (at a minimum, drones, cruise missiles, cyber) in Syria, in light of the narrowing interpretation the administration gave the WPR in the Libya matter. But does the WPR apply, even in theory? Section 2(c) of the draft AUMF says that the AUMF constitutes specific statutory authorization for presidential use of force within the meaning of section 8(a)(1) of the WPR, and that, taken alone, would mean that Section 2(c) suspends the automatic termination requirement of Section 5(b) of the WPR. However, Section 4 of the draft AUMF adds that the authorization (and thus, perhaps, the suspension of the WPR termination provision) applies “within the limits of the authorization established under this Section.” Does that mean that the self-executing prohibition on military hostilities in Section 5(b) kicks in 90 days after the initial bombing in Syria? Or 90 days after the running of the 90-day window authorized by the Senate’s AUMF? (I.e. after 180 days?) Whichever it is, it would not mean that the WPR prevents war from a distance in Syria, for reasons stated above. But qualifying what I said this morning, and setting aside even more complex counterarguments not now worth mentioning, it might block the President from introducing (or keeping) combat ground troops in Syria, pursuant to his inherent power, after 90 (or 180!) days.

The AUMF is congressional authorization of targeting practices that make the WPRs timeline irrelevant

LII No Date (Cornell Legal Information Institute, “Commander in Chief Powers,” <http://www.law.cornell.edu/wex/commander_in_chief_powers>)

After the Kennedy, Johnson, and Nixon Administrations spent nearly a decade committing U.S. troops to Southeast Asia without Congressional approval, in 1973 Congress responded by passing the War Powers Resolution. The Resolution sought to halt the erosion of Congress's ability to participate in war-making decisions, an aim furthered by the Resolution's requirement that the President communicate to Congress the commitment of troops within 48 hours. Further, the statute requires the President to remove all troops after 60 days if Congress has not granted an extension.

Commander in Chief Powers Post-9/11

The terrorist attacks of September 2001 created new complications for the separation of powers within the war powers sphere. After September 11, the United States Congress passed the Authorization for Use of Military Force against Terrorists (AUMF). While the AUMF did not officially declare war, the legislation **provided the President with more authority** upon which to exercise his constitutional powers as Commander in Chief. As the U.S. Supreme Court explained in Youngstown Sheet & Tube Co. v. Sawyer, Presidential Commander in Chief powers increase when Congressional intent supports the actions taken by the Commander in Chief. The AUMF served as that expression of Congressional intent.

President George W. Bush, his cabinet, and his military advisers determined that the al Qaeda terrorist network had financed and perpetrated the September 11 attacks. They also determined that the Taliban, a group in control of the Afghanistan government, had permitted al Qaeda to operate and train its members within Afghanistan's borders. Thus, the President used military force to invade the country in an effort to destroy the al Qaeda network and topple the Taliban.

## 2nc doesn’t apply to politics

Can’t extend the assumptions of OOO to politics

Marres ’13 (Noortje Marres, Department of Sociology, Goldsmiths, University of London, “Why political ontology must be experimentalized: On ecoshow homes as devices of participation,” Social Studies of Science 43(3) 417–443)

A turn to ontology in the study of politics has been in the works for some time. Authors in fields as diverse as geography, political theory, sociology and cultural studies have argued that the roles of objects, animals and matter in political and public life deserve more explicit recognition (Barry, 2001; Bennett, 2010; Braun and Whatmore, 2010; Frost, 2008; Hawkins, 2006; Latour, 2005a). This work argues that some areas of the social sciences have paid insufficient attention to the materiality of politics and democracy and describes how non-human entities – from bees to plastic water bottles and home-made food – inspire and organize political and public action. Many of these studies refer to STS and, more specifically, to actor–network theory (ANT) and ‘material–semiotic’ approaches developed in this field, approaches that have long sought to reinsert non-humans in the analysis of social, political and moral life (Callon et al., 2001; Irwin and Michael, 2003; Latour, 1988; Law, 2004). 4 It could therefore be argued that recent work on material politics ‘extends’ ontological perspectives developed in STS to the analysis of political and public life, which are then understood as constituting distinctive fields of enquiry. Such a characterization is problematic, however, insofar it assumes that ‘science’ and ‘politics’ or ‘public life’ constitute sharply distinct objects of enquiry**, an assumption that work in STS has contested**. In STS, arguments about the politics of non-humans are closely connected to the much broader project of developing ontological perspectives of science, technology, society and politics, highlighting their mutual entanglement. In advocating for a shift from epistemology to ontology, STS describes how science and technology change the world materially, socially, technologically, morally and politically; in so doing, STS moves beyond established traditions in philosophy and sociology of science (Woolgar and Lezaun, 2013). Whereas earlier scholars approached science as principally a form of knowledge, concerned with the representation of reality, STS proposes to understand technoscience as a distinct mode of intervention, foregrounding the empirical transformations of the world effected by these means (Latour, 1988; Law, 2004; see also Hacking, 1983): after the introduction of plutonium, the production of new proteins through molecular mechanics and the birth of birth control pills, we lived in different worlds (Hacking, 2004; Latour, 1999).

This general argument has significant political implications because it attributes to science and technology a number of effects normally located in the domain of politics. In the account of ontology given in STS, science and technology are understood to involve attempts to change the world; they help to decide which actors acquire power and influence and who might emancipate themselves. However, this account requires further elaboration and specification because, on closer examination, this kind of ontological account of politics is quite different from how politics is normally understood: as a distinctive activity that depends on specific institutions and requires particular procedures or forms of public life (De Vries, 2007). This is another reason why it may well be a **mistake to say that the ontological perspective that STS has developed** in accounting for the relations between science, technology and society is now being ‘extended’ to politics and democracy.

Doesn’t work in practice

Marres ’13 (Noortje Marres, Department of Sociology, Goldsmiths, University of London, “Why political ontology must be experimentalized: On ecoshow homes as devices of participation,” Social Studies of Science 43(3) 417–443)

This distinction between constituting and constituted democracy makes it possible to say that, on the one hand, non-humans qualify as participants in social and political life and, on the other hand, that there is no need for such non-human entities to be explicitly recognized as participants in the public or democracy. The participation of non-humans, in other words, does not require modification of the forms of public and democratic life. The distinction between constituting and constituted democracy makes it possible to ascribe a politics to non-humans while leaving untouched the level on which democracy is constituted as a distinct normative ideal or a more narrowly defined institutional and public form (Papadopoulous, 2010). This solution can be recognized among others in earlier work in ANT, which privileged public dialogue and the parliament as the relevant democratic forms. However, it seems that this solution to the problem of how to insert non-humans in democracy is no longer working, as it is becoming more **difficult to relegate the role of non-humans in political and public life** to the plane of constituting phenomena, insofar as objects, technologies and settings today are explicitly invested with normative capacities. In fields as diverse as ethical consumption and ubiquitous computing. This invites long-time experts on political ontology in STS to think again.

### 2NC XT Advantage

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 edited by Levi R. Bryant, Nick Srnicek, Graham Harman

18. However, in the absence of any understanding of the relationship between 'meanings' and things meant—the issue at the heart of the epistemological problematic which Latour dismisses but which has preoccupied an entire philosophical tradition from Frege through Sellars and up to their contemporary heirs the claim that nothing is metaphorical is ultimately indistinguishable from the claim that everything is metaphorical.10 The metaphysical difference between words and things, concepts and objects, vanishes along with the distinction between representation and reality: 'It is not possible to distinguish for long between those actants that arc going to play the role of "words" and those that will play the role of "things'". (2.4.5). ®n dismissing the cpistemological obligation to explain what meaning is and how it relates to things that are not meanings, Latour, like all postmodernists—his own protestations to the contrary notwithstanding—reduces everything to meaning, since the difference between 'words' ami 'things' turns out to be 110 more than a functional difference subsumed by the concept of'actant'—that is to say, it is a merely nominal difference encompassed by the metaphysical function now ascribed to the metaphor 'actant'. Sincc for Latour the latter encompasses everything from hydroelectric powerplants to toothfairies, it follows that every possible difference between powerplants and fairies—i.e. differences in the mechanisms through which they affect and are a fleeted by other entities, whether those mechanisms are currently conceivable or not—is supposed to be unproblematically accounted for by this single conceptual metaphor. 19. This is reductionism with a vengeance; but because it occludes rather than illuminates differences in the ways in which different parts of the world interact, its very lack of explanatory purchase can be brandished as a symptom of its irreductive prowess by those who are not interested in understanding the difference between wishing and engineering. Latour writes to reassure those who do not really want to know. If the concern with representation which lies at the heart of the unfolding episteinological problematic from Descartes to Scllars was inspired by the desire not just to understand but to assist science in its effort to explain the world, then the recent wave of attempts to liquidate epistemology by dissolving representation can be seen as symptomatic of that cognophobia which, from Nietzsche through Heidegger and up to Latour, has fuelled a concerted effort on the part of some philosophers to contain if not neutralize the disquieting implications of scientific understanding." 20. While irreductionists prate about the 'impoverishment' attendant upon the cpistcmological privileging of conceptual rationality, all they have to offer by way of alternative is a paltry metaphorics that occludes every real distinction through which representation yields explanatory understanding. 21. Pace Latour, there is a non-negligible difference between conceptual categories and the objects to which they can be properly applied. But because he is as oblivious to it as the post-structuralists he castigates, Latour's attempt to contrast his 'realism' to postmodern 'irrealism' rings hollow: he is invoking a difference which he cannot make good on. By collapsing the reality of the difference between concepts and objects into differences in force between genetically construed 'actant s', Latour merely erases from the side of'things' ('forces') a distinction which textualists deny from the side of'words' ('signifiers'). 22. Mortgaged to the cognitive valence of metaphor but lacking the resources to explain let alone legitimate it, Latour's irrcductionism cannot be understood as a theory, where the latter is broadly construed as a series of systematically interlinked propositions held together by valid argumentative chains. Rather, Latour's texts consciously rehearse the metaphorical operations they describe: they are 'networks' trafficking in 'word-things' of varying 'power', nexuses of'translation' between octants' of differing 'force', etc. In this regard, they are exercises in the practical know-how which Latour exalts, as opposed to demonstrative prepositional structures governed by cognitive norms of cpistemic veracity and logical validity. But this is just to say that the ultimate import of Latour's work is prescriptive rather than descriptive—indeed, given that Issues of epistemic veracity and validity arc irrelevant to Latour, there is nothing to prevent the cynic from concluding that Latour's politics fneo-liberal) and his religion (Roman Catholic) provide the most telling indices of those forces ultimately motivating his antipathy towards rationality, critique, and revolution. 23. In other words, Latour's texts are designed to do things: they have been engineered in order to produce an cfTcct rather than establish a demonstration. Far from trying to prove anything, Latour is explicitly engaged in persuading the susceptible into embracing his irreductionist worldview through a particularly adroit deployment of rhetoric. This is the traditional modus operandi of the **sophist**. But only the most brazen of sophists denies the rhetorical character of his own assertions: 'Rhetoric cannot account for the force of a sequence of sentences because if it is called 'rhetoric' then it is weak and has already lost'. {2.4.1) This resort to an already metaphorized concept of'force' to mark the extra-rhetorical and thereby allegedly 'real' force of Latour's own 'sequence of sentences' marks the nee plus ultra of sophistry.'2 24. Irreductionism is a species of correlationism: the philosopheme according to which the human and the non-human, society and nature, mind and world, can only be understood as reciprocally correlated, mutually interdependent poles of a fundamental relation. Corrclationists arc wont to dismiss the traditional questions which have preoccupied metaphysicians and epistemologists—questions such as 'What isX?' and 'How do we know X?'—as false questions, born of the unfortunate tendency to abstract one or other pole of the correlation and consider it in isolation from its correlate. For the correlationist, since it is impossible to separate the subjective from the objective, or the human from the non-human, it makes no sense to ask what anything is in itself, independently of our relating to it. By the same token, once knowledge has been reduced to technical manipulation, it is neither possible nor desirable to try to understand scientific cognition independently of the nexus of social practices in which it is invariably implicated. Accordingly, correlationism sanctions all those variants of pragmatic instrumentalism which endorse the primacy of practical 'know-how' over theoretical 'knowing-that' Sapience becomes just another kind of sentience—and by no means a privileged kind either. 25. Ultimately, correlationism is not so much a specific philosophical doctrine as a general and highly versatile strategy for deflating traditional metaphysical and epistemological concerns by reducing both questions of'being' and of'knowing1 to concatenations of cultural form, political contestation, and social practice. By licensing the wholesale conversion of philosophical problems into symptoms of non-philosophical factors (political, sociocultural, psychological, etc.), correlationism provides the (often unstated) philosophical premise for the spate of twentieth century attempts to dissolve the problems of philosophy into questions of politics, sociology, anthropology, and psychology. To reject correlationism and reassert the primacy of the epistemology-metaphysics nexus is not to revert to a reactionary philosophical purism, insisting that philosophy remain uncontaminatcd by politics and history. It is simply to point out that, while they are certainly socially and politically nested, the problems of metaphysics and epistemology nonetheless possess a relative autonomy and remain conceptually irreducible—just as the problems of mathematics and physics retain their relative autonomy despite always being implicated within a given socio-historical conjuncture. The fact that philosophical discourse is non-mathematical and largely (but by no means entirely) unformalized (but certainly not unfonnalizable), does not provide a legitimate warrant for disregarding its conceptual specificity and reducing it to a set of ideological symptoms. Again, this is not to assert (absurdly) that the problems of metaphysics or epistemology have no social determinants or political ramifications, but simply to point out that they can no more be understood exclusively in those terms than can the problems of mathematics or physics. 26. To refuse corrclationism's collapsing of epistemology into ontology, and of ontology into politics, is not to retreat into reactionary quietism but to acknowledge the need to forge new conditions of articulation between politics, epistemology, and metaphysics. The politicization of ontology marks a regression to anthropomorphic myopia; the ontologization of politics falters the moment it tries to infer political prescriptions from metaphysical description. Philosophy and politics cannot be metaphysically conjoined; philosophy intersects with politics at the point where critical epistemology transects ideology critique. An emancipatory politics oblivious to epistemology quickly degenerates into metaphysical fantasy, which is to say, a religious substitute.'3 The failure to change the world may not be unrelated to the failure to understand it. 27. The assertion of the primacy of correlation is the condition for the post-modcrn dissolution of the cpistcmology-mctaphvsics nexus and the two fundamental distinctions concomitant with it: the sapience-sentience distinction and the conceptobject distinction. In eliding the former, correlationism eliminates epistemology by reducing knowledge to discrimination. In eliding the latter, correlationism simultaneously reduces things to concepts and concepts to things. Each reduction facilitates the other: the erasure of the epistemological difference between sapience and sentience makes it easier to collapse the distinction between concept and object; the elision of the metaphysical difference between concept and object makes it easier to conflate sentience with sapience. Thus Latour's reduction of things to concepts (objects to 'act ants') is of a piece with his reduction of concepts to things ('truth' to force). 28. The rejection of correlationism entails the reinstatement of the critical nexus between epistemology and metaphysics and its attendant distinctions: sapience/sentience; concept/object. We need to know what things are in order to measure the gap between their phenomenal and noumcnal aspects as well as the difference between their extrinsic and intrinsic properties. To know (in the strong scientific sense) what something is is to conceptualize it. This is not to say that things arc identical with their concepts. The gap between conceptual identity and non-conceptual difference—between what our concept of the object is and what the object is in itself—is not an ineffable hiatus or mark of irrecuperable altcrity; it can be conceptually converted into an identity that is not of the concept even though the concept is of it. Pace Adorno, there is an alternative to the negation of identity concomitant with the conccpt's failure to coincide with what it aims at: a negation of the concept determined by the object's non-conceptual identity, rather than its lack in the concept. Pace Deleuze, there is an alternative to the affirmation of difference as non-representational concept (Idea) of the thing itself: an affirmation of identity in the object as ultimately determining the adequacy of it s own conceptual representation. The difference between the conceptual and the extra-conceptual need not be characterized as lack or negation, or converted into a positive concept of being as Ideal diffcrcncc-in-itsclf: it can be presupposed as already-given in the act of knowing or conception. But it is presupposed without being posited. This is what distinguishes scientific representation and governs its stance towards the object.'4 29. What is real in the scientific representation of the object does not coincide with the object's quiddity as conceptually circumscribed—the latter is what the concept means and what the object is; its metaphysical quiddity or essence—but the scientific posture is one which there is an immanent yet transcendental hiatus between the reality of the object and its being as conceptually circumscribed: the posture of scientific representation is one in which it is the former that determines the latter and forces its perpetual revision. Scientific representation operates on the basis of a stance in which something in the object itself determines the discrepancy between its material reality—the fact that it is, its existence—and its being, construed as quiddity, or what it is. The scientific stance is one in which the reality of the object determines the meaning of its conception, and allows the discrepancy between that reality and the way in which it is conceptually circumscribed to be measured. This should be understood in contrast to the classic correlationist model according to which it is conceptual meaning that determines the 'reality' of the object, understood as the relation between representing and represented.

## 2nc robot historian

Impossible project – it’s ridiculous that we can conceive how objects act in themselves

Wolfendale 12

<http://speculations.squarespace.com/storage/Noumenons%20New%20Clothes_Pt1_Wolfendale.pdf>

I'm in the process of finishing my PhD at the University of Warwick. I have a broad base of philosophical interests that span both the analytic (e.g., inferentialist philosophy of language) and continental traditions (e.g., deleuzian process metaphysics). I do not see myself as 'bridging' the divide between traditions as much as simply doing my best to act as if it isn't there. My current interests focus upon the methodological interface between the philosophy of rationality and metaphysics. In this I am heavily influenced by both Kant and Sellars, but I draw many of my resources from the post-Kantian work of Heidegger and the post-Sellarsian work of Brandom. My ultimate goal is to elaborate a systematic transcendental approach to the philosophy of rationality (which I call fundamental deontology) which can then be used as the basis for the critical delimitation of metaphysics as an a posteriori form of inquiry continuous with empirical science.

What all this reveals is that Harman’s reading cannot be an interpretation of the substance of Heidegger’s ideas, even one that Heidegger himself would disagree with. It is possible to read thinkers against themselves, but this requires that there is some essential element present in their work that the work itself fails to live up to.33 The element that Harman tries to unearth in Heidegger’s tool-analysis simply isn’t there.34 The only reason he can propose to extend the intentional relation between Dasein and its tools to cover all interactions between entities is that he has stripped this relation of everything that makes it recognisably Heideggerian. He has excised the structure of projective understanding wholesale, and thereby completely abandoned the semantic and epistemological framework within which the encounter with the tool is described. This becomes clear once we ask the question: just what would it be for a screen door to encounter a knife as a knife?35 To say that this is for it to be affected by it in a way that is common to all knives is to say nothing that warrants using the word “encounter” in an intentional sense. The screen door has nothing that could qualify it as having anything like an awareness of generality. There is no hermeneutic “as” circumscribing its engagements with things. This leaves us saying that what it is for a screen door to interact with a knife qua knife is for it to be affected in the way that knives affect screen doors. This is an empty tautology unworthy of metaphysical scrutiny.36

Complete knowledge of the object is impossible – means their framework is a nonstarter

Wolfendale 12

<http://speculations.squarespace.com/storage/Noumenons%20New%20Clothes_Pt1_Wolfendale.pdf>

I'm in the process of finishing my PhD at the University of Warwick. I have a broad base of philosophical interests that span both the analytic (e.g., inferentialist philosophy of language) and continental traditions (e.g., deleuzian process metaphysics). I do not see myself as 'bridging' the divide between traditions as much as simply doing my best to act as if it isn't there. My current interests focus upon the methodological interface between the philosophy of rationality and metaphysics. In this I am heavily influenced by both Kant and Sellars, but I draw many of my resources from the post-Kantian work of Heidegger and the post-Sellarsian work of Brandom. My ultimate goal is to elaborate a systematic transcendental approach to the philosophy of rationality (which I call fundamental deontology) which can then be used as the basis for the critical delimitation of metaphysics as an a posteriori form of inquiry continuous with empirical science.

The most explicit presentation it has so far received is in Harman’s criticism of James Ladyman and Don Ross’ Every Thing Must Go, which I will quote at length: Let’s imagine that we were able to gain exhaustive knowledge of all properties of a tree (which I hold to be impossible, but never mind that for the moment). It should go without saying that even such knowledge would not itself be a tree. Our knowledge would not grow roots or bear fruit or shed leaves, at least not in a literal sense. Even in the case of God, the exhaustive knowledge of a tree and creation of a tree would have to be two separate acts. Now, it has sometimes been objected to this point that it is a straw man. After all, who confuses knowledge of a tree with an actual tree? The answer, of course, is that no one does, since no one could openly identify a thing with knowledge of it and still keep a straight face. Yet the point is not that people defend this view openly, which they do not. Rather, the point is that many people uphold a model of the real that entails that knowledge of a tree and a real tree would be one and the same, and hence their views are refuted by reductio ad absurdum. Namely, if someone holds that there is an isomorphic relationship between knowledge and reality, such that reality can be fully mathematized, then it also follows that a perfect mathematical model of a thing should be able to step into the world and do the labor of that thing. But this is absurd.78 The essence of this argument is the attempt to derive the impossibility of complete knowledge of a thing from the ontological distinction between a thing and our knowledge of it. Although it sometimes appears that this invocation of non-identity is an argument for withdrawal proper, it is really an argument for the epistemic component of premise (iii) of the argument from excess. The rejection of complete knowledge must then be leveraged into a rejection of partial knowledge, as is clear from the article just quoted, which finishes the above section with a short appeal to the mereological component of the argument from excess discussed above.79 The inference from ontological distinction to the impossibility of complete knowledge once more takes the form of a reductio ad absurdum. The principle that underlies it is the claim that complete knowledge of a thing would somehow have to be identical to the thing, thereby contradicting ontological distinction. It is this principle which is nowhere given a detailed analysis, and which we must therefore reconstruct. The major problem we face here is that Harman’s use of the term “knowledge” is never really backed up by an epistemology that could answer questions about the distinction between completeness and incompleteness, how this relates to the distinction between correctness and incorrectness, and whether knowledge of an object is composed of distinct representations. I have thus endeavoured to reconstruct the argument on the basis of reasonable assumptions about what Harman means by knowledge, the most important of which is that although Harman tends to simply talk about knowledge of an object as a unitary phenomenon (e.g., knowing a tree), the notion of completeness/incompleteness implies that this must be composed out of correct representations of distinct features of the object (e.g., its species, size, shape, colouration, location, etc.).

## 2nc no autonomy

Even if they’re developed – the technology is too unreliable to be used

Foust 10/8 (Joshua Foust, former analyst at the Defence Intelligence Agency, "Soon, Drones May Be Able to Make Lethal Decisions on Their Own," [www.nationaljournal.com/national-security/soon-drones-may-be-able-to-make-lethal-decisions-on-their-own-20131008](http://www.nationaljournal.com/national-security/soon-drones-may-be-able-to-make-lethal-decisions-on-their-own-20131008))

Roff says that because LARs are not sophisticated enough to meaningfully distinguish between civilians and militants in a complex, urban environment, they probably would not be effective at achieving a constructive military end-- if only because of how a civilian population would likely react to self-governing machines firing weapons at their city. "The idea that you could solve that crisis with a robotic weapon is naïve and dangerous," she said.

Any autonomous weapons system is **unlikely to be used** by the military, except in extraordinary circumstances, argued Will McCants, a fellow at the Brookings Saban Center and director of its project on U.S. Relations with the Islamic World. "You could imagine a scenario," he says, "in which LAR planes hunted surface-to-air missiles as part of a campaign to destroy Syria's air defenses." It would remove the risk to U.S. pilots while exclusively targeting war equipment that has no civilian purpose.

But such a campaign is unlikely to ever happen. "Ultimately, the national security staff," he said, referring to personnel that make up the officials and advisers of the National Security Council, "does not want to give up control of the conflict." The politics of the decision to deploy any kind of autonomous weaponry matters as much as the capability of the technology itself. "With an autonomous system, the consequences of failure are worse in the public's mind. There's something about human error that makes people more comfortable with collateral damage if a person does it," McCants said.

## 2nc alt ov

The The alternative is to reject legal restrictions on war powers in favor of political restrictions—they’re the only check on presidential authority—it’s empirically effective in every application because the government thinks it’s effective—that’s Goldsmith—more evidence

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>

Finally, the models of the political foundations of constitutionalism allow a demystifying and less ominous interpretation of Schmitt’s insistence that the public’s role under constitutionalism is in effect restricted to negative measures – either rejection of proposals in a referendum or, in extreme cases, resistance to the ruling power.22 In the models we have canvassed, political groups exert influence on incumbents and competitors for powers not through persuasion or democratic deliberation, but through credible threats of resistance or armed conflict. In the lurid context of Weimar these ideas call up associations with torchlight rallies and thuggish street violence – “soccer-stadium democracy” – but this is to overlook that a credible threat of mass public resistance to exploitative action by incumbents can be necessary for the health of constitutionalism and democratic institutions. As Schmitt put it, “the ancient problem of ‘resistance against the tyrant’ remains, that is, resistance against injustice and misuse of state power, and the functionalistic-formalistic hollowing out of the parliamentary legislative state is not able to resolve it.”23 Here too, Schmitt’s distinction between legality and legitimacy opens up a way of thinking about constitutionalism that proves more fruitful, because more politically realistic, than liberal insistence that legitimacy can straightforwardly be reduced to legality.

Specifically solves the aff—[ ]

It’s also a method question which indicts all their truth claims which is prior to them being able to weigh the aff

War on terror empirics prove

Deborah Pearlstein, Woodrow Wilson School for Public and International Affairs, Visiting Scholar, Princeton University Law and Security Program Director, Fall 2005, ARTICLE: Finding Effective Constraints on Executive Power: Interrogation, Detention, and Torture, 81 Ind. L.J. 1255

The phrase "civil society" has been used widely and loosely to describe a wide range of domestic and international non-governmental organizations (NGOs) including major humanitarian, environmental, and human rights organizations (such as CARE, Doctors Without Borders, Greenpeace, and Amnesty International), as well as religious organizations, civic networks, and a range of traditional nonprofit entities (from arts and cultural organizations to health care centers to domestic advocacy groups). n98 Independent media outlets are not commonly included in the category of "civil society"--given their for-profit motivation--but the free press has some claim to similar status: non-governmental entities that ideally function as a watchdog on official conduct. While NGOs and the press have historically been understood as forces essential to the sound functioning of democracy, n99 the growth since World War II of [\*1280] highly professionalized international organizations, sophisticated domestic advocacy groups, and highly capitalized media corporations has prompted growing criticism of these entities as, ironically, undemocratic ("Who elected the NGOs?") or even anti-democratic in nature. n100 To the extent that constraining the power of one branch of government is a sign of a well-functioning democracy, the conduct of the U.S. Government in the "war on terror" has provided rich material for testing the democracy-enhancing effectiveness (vel non) of civil society. Indeed, civil society's ability to act as an effective constraint in the context of human intelligence operations would be particularly impressive given that government intelligence operations have always presented a special challenge for effective oversight. A web of laws and regulations governing the use of classified information--driven in significant measure by appropriate policy interests in protecting U.S. intelligence sources and methods--requires that much of the work of the House and Senate Intelligence Oversight Committees be carried out in secret. n101 The committees, responsible for reviewing the activities of more than two dozen civilian and military intelligence agencies, are chronically overburdened and limited by structural and staffing failings. n102 And although law requires the executive to keep [\*1281] House and Senate intelligence committees informed of all intelligence-gathering activities, n103 the post-September 11 executive has regularly resisted sharing information even with members of Congress. n104 Because of these limits, civil society organizations that typically bring expert advice to Congress on a range of issues--from agricultural technology to drug approval to school lunch programs--are limited in their ability to review and consult on intelligence policy in practice. n105 It was for these and other reasons that, in the first years following the attacks of September 11, a number of signs suggested civil society would be of limited effectiveness in checking detention and interrogation operations. The post-September 11th media has been widely criticized for having abandoned critical assessment or analysis of executive "war on terror" activities. n106 The decades-old practice employed by human-rights NGO's of "naming and shaming" similarly (and relatedly) was unsuccessful at either calling attention to or remedying the serious torture and abuse in U.S. custody that began in 2002. n107 But while assessing the impact of civil society on effecting policy shifts is a difficult proposition--first and foremost because of the difficulty in isolating civil society as the [\*1282] cause of a particular effect--there is reason here to suspect that civil society attention paid to the abuse and torture in U.S. operations played a significant role in driving executive policy change where the co-equal branches of government did not, or could not, act. Consider first, and perhaps foremost, the executive response to the publication and subsequent investigative coverage of the photographs of torture at Abu Ghraib in April 2004. n108 Nearly two years' worth of letter writing, and some investigative reporting failed to capture public attention and therefore bring public pressure to bear on executive policy-making, but a handful of photographs from one "war on terror" prison (of the dozens then and still in operation worldwide) shifted the public discourse overnight. Media coverage of torture, interrogation, and abuse was sweeping. Within weeks of the initial story on CBS News, the Abu Ghraib scandal was on the covers of Time, Newsweek, and U.S. News & World Report. The Washington Post published a three-part series about U.S. interrogation operations, published previously secret statements of witnesses to the events at Abu Ghraib, and published additional photos of the abuse (causing its website traffic to soar). n109 Public opinion polls conducted two weeks after the photos were released found that seventy-seven percent of Americans believed the abuse they had seen could not be justified. n110 Within weeks of the airing of the photos (in contrast to the months that had, by then, passed since the worst of the abuses in the summer/fall of the previous year), the President appeared on Arab television to condemn prisoner abuse; n111 the United States released some three hundred prisoners from the Abu Ghraib facility; n112 and the Department of Defense launched multiple major investigations into U.S. detention and interrogation operations overseas. n113 At the same time, the Army ordered its Criminal Investigation Division (CID) to review all detainee abuse and death cases in Iraq and Afghanistan then on file--requiring that every investigation conducted into the cases to [\*1283] date be reopened and reviewed anew. n114 The FBI requested information related to prisoner abuse from all of its agents who had served at Guantanamo Bay, causing several previously unreported incidents to come to light. n115 And the Pentagon issued a series of policy orders to address the now widely publicized cases of detainees dying in U.S. custody: Army commanders were admonished to immediately report the death of any detainee to military law enforcement authorities, and the bodies of detainees could not be released until an Armed Forces medical examiner decided whether an autopsy was required. n116 It is easy to contend with some certainty that public attention to the issue of prisoner treatment helped drive these steps; it is more difficult to determine whether the executive response that followed amounted to a shift in course. Nonetheless, while some Pentagon investigations had been launched before publication of the photos, the post-publication investigations were generally broader in scope, n117 and in at least one [\*1284] case, redesigned to address more senior levels of command. n118 The results of the investigations in and of themselves were rich in information, including extensively documenting abusive and unlawful practices. n119 This information in turn helped form the basis for civil lawsuits against Pentagon officials, n120 and various disciplinary actions against some of those involved. n121 While these actions surely did not address all existing causes of abuse or secure full accountability for those responsible, it is noteworthy that, in an era of one-party control of the political branches, anything happened at all. Throughout this period, there was not a single court order, act of Congress, or direct election that mandated the executive's actions--what change did come was fundamentally the result of the force of civil society pressure disfavoring executive conduct. A more complex example of civil society-driven impact may be found in the response to the President's nomination, in early November 2004, of former White House Counsel Alberto Gonzales to become Attorney General--after the initial furor surrounding Abu Ghraib photos had begun to die down. Although Gonzales had played a key role in the administration's development of detention and interrogation policy (as [\*1285] emerged in the flood of leaked documents that appeared in the post-Abu Ghraib frenzy), n122 Gonzales's nomination was initially welcomed warmly by bipartisan leaders throughout Washington, and media coverage focused on his personal triumph in achieving this level of success. n123 By the time of the Gonzales confirmation hearings in January 2005--despite the President's having won popular reelection in the interim--all eight Democrats on the Senate Judiciary Committee voted against confirmation, n124 and thirty-six Senators voted against Gonzales in the full Senate; the vote was the second narrowest to confirm an Attorney General nominee in eighty years. n125 More significantly, on the eve of the January confirmation hearing, the Administration for the first time formally withdrew the August 2002 OLC opinion narrowly defining torture--a move characterized by mainstream media as a "significant[] retreat[]" and a "sharply scal[ed] back" version of its previous position. n126 The 2002 OLC memorandum was replaced with a new OLC opinion aimed directly at defusing a resurgent media focus on torture; in marked contrast to the 2002 version, the new memorandum began with the statement: "Torture is abhorrent both to American law and values and to international norms." n127 Between the bold nomination in November and the confirmation struggle and policy reversal by January, what forces functioned to influence executive behavior? There is a strong argument that NGO activism was a driving force in refocusing congressional attention, shifting the media coverage, and deploying strategic advocacy which was pivotal in swaying events. Immediately following the nomination, human rights NGOs launched a classic advocacy campaign. Memos drafted by advocacy organizations were circulated broadly throughout Washington, D.C. outlining Gonzales's role in devising [\*1286] interrogation policy and relaxing the prohibition against torture and cruel treatment of detainees. n128 The memos formed the basis of a growing list of questions by congressional staff. The memos also provided the substantive basis for a strategy of op-eds, editorial board writings in the districts of key congressional members, and national media commentary. n129 Central to these efforts was a letter signed by twelve retired high-ranking military officers, including former Chairman of the Joint Chiefs of Staff General John Shalikashvili, urging Members of the Judiciary Committee to sharply question Gonzales about his role in shaping torture and interrogation policies. n130 According to military historian Richard H. Kohn, quoted in an article in the Washington Post, this action by a retired group of military officers was unprecedented. n131 Dozens of national media outlets, including virtually all mainstream press, covered the military letter. n132 Questioned in press briefings about the import of the letter, a White House spokesman engaged the debate: "We adhere to our laws and our treaty obligations. That's the policy of the United States government, and that's what we expect to be followed." n133 It should be emphasized that any executive shift in response to the furor over the Gonzales nomination was limited; in the end, Gonzales was confirmed, having given the Senate committee only equivocal answers on some of the difficult questions of what interrogation methods the executive was prepared to allow. And while the White [\*1287] House rescinded the 2002 OLC torture memo on the eve of Gonzales' confirmation hearings, it maintained vigorously through 2005 that existing legal bans on the use of "cruel, inhuman and degrading treatment" (in particular, U.S. treaty obligations under the Convention Against Torture) do not apply outside the territory of the United States, and (although there is no basis in the treaties or laws banning such treatment that would suggest one agency is at all distinct from the other in required compliance) the same laws that bind the U.S. Armed Forces do not equally bind the CIA. n134 But there is little question that the executive was pressured to change its stated policy stance in response to public questions, and that actions were taken that likely would not have been without the orchestrated pressure. Perhaps most importantly, the lessons of the Gonzales nomination emboldened anti-coercion advocates. The incipient coalition of military leaders was developed over the succeeding months, and played a pivotal role in securing Senator McCain's public engagement on the question of torture, and the eventual overwhelming passage of McCain's amendment to ban cruel, inhuman, or degrading treatment wherever U.S. officials operate. n135 Civil society [\*1288] played a forcing function in jumpstarting other structural mechanisms for change; without its engagement, it is unclear whether Congress or the Executive would to this day have taken action to address detainee torture or abuse.

The executive believes it works which is sufficient

Jack Goldsmith, Harvard Law School Professor, focus on national security law, presidential power, cybersecurity, and conflict of laws, Former Assistant Attorney General, Office of Legal Counsel, and Special Counsel to the Department of Defense, Hoover Institution Task Force on National Security and Law, March 2012, Power and Constraint, p. 240-3

There is a paradox in the human rights community's belief that waterboarding is still on the table, despite the unprecedented accountability and pushback of the past decade. That accountability and pushback resulted because human rights organizations, like many others throughout the presidential synopticon, believed that there was inadequate accountability and push-back and fought hard to achieve more. Many in the presidential synopticon, especially in the human rights community, remain alarmed by what they see as endless and undefined war, excessive presidential secrecy, insufficient judicial review of the President's actions, too much surveillance, inadequate congressional involvement, and many other evils of the post-9/11 presidency. They continue to push hard against the government with lawsuits, FOIA requests, accountability campaigns, and strident charges against public officials. This is all very healthy for the presidency and for national security. The continued efficacy of the presidential synopticon depends on just this type of skeptical attitude about the synopticon's efficacy. This paradox points to larger truths. In writing this book I spoke with dozens of people who represented every perspective in the presidential synopticon, including Bush and Obama administration officials, military and intelligence officers, federal judges, members of Congress and their staffs, journalists and their editors, bloggers and other new media representatives, inspectors general, lawyers throughout the national security bureaucracy, and leaders of prominent human rights organizations. They all shared three traits. First, they were serious, knowledgeable, and principled in their approach to quite different jobs. Second, they saw the topics of transparency, law, and accountability in the war on terrorism from the perspective of the institutions for which they worked. Put less charitably, they all had biases—mostly hidden to themselves—in their approach to counterterrorism issues. (So too did I, as much as I tried to transcend them.) And finally, they all believed that they were on the losing end of the stick in trying to influence U.S. counterterrorism policies and their associated accountability mechanisms. This last trait is perhaps the most important. President Obama and his Attorney General believe the executive branch leaks like a sieve, that the New York Times' publication of these secrets harms national security, and that the executive branch should crack down more on journalists and their sources. Editors and journalists at the Times believe the executive branch hoards too many secrets, manipulates the secrecy system, and unduly harasses journalists. The CIA believes it spends way too much time reporting to and responding to investigations by politicized congressional intelligence committees that don't understand what they are doing. The intelligence committees believe the CIA underreports its activities and cannot be trusted. The Defense Department too complains about its committees' burdensome reporting requirements, as well as their micromanagement of military affairs. The armed services committees believe the same of the military as the intelligence committees do of the CIA. Many in the executive branch believe inspectors general are biased and in Congress's pocket; Congress believes they are under-resourced and need more authorities. National security lawyers think they are besieged bastions of independence holding the executive branch in check; activist and media critics believe the lawyers are apologists for executive power. Conservatives believe Michael Ratner's Center for Constitutional Rights sympathizes with terrorists and achieved illegitimate victories in the Supreme Court that have hamstrung the President and emboldened terrorists. Michael Ratner believes he won a few battles but lost the war because Barack Obama, building on judicial and congressional efforts, institutionalized military detention and military commissions and extended the war paradigm to more countries than George W. Bush did. Many lower court judges are unhappy that the Supreme Court dumped on them the duty to make terrorist detention policy from whole cloth in habeas corpus cases, and are frustrated that Congress has not stepped in to fill the void. Some critics charge that these judges have released way too many GTMO detainees; others charge that they have released too few. Congress believes Barack Obama would endanger national security by trying GTMO terrorists in civilian trials in the United States; Barack Obama believes that Congress endangers national security by barring these trials. And so on, and so on. In 1788, in the fifty-first Federalist Paper, James Madison famously announced that the U.S. Constitution embodied the "important idea" that a well-structured government is one in which "its several constituent parts may, by their mutual relations, be the means of keeping each other in their proper places."' Madison believed that a properly designed government "would check interest with interest, class with class, faction with faction, and one branch of government with another in a harmonious system of mutual frustration," as Columbia historian Richard Hofstadter put it in his classic 1948 book, The American Political Tradition." If Madison were alive today, he would be astonished and probably appalled to see the gargantuan presidency exercising so much power, much of it in secret, in an endless global war against non-state actor terrorists. He would also be surprised by the reticulate presidential synopticon that has grown up to watch, check, and legitimate the presidency in war. But after adjusting to the modern world and studying the vitriolic clashes of the last decade between the presidency and its synopticon, Madison would discover a harmonious system of mutual frustration undergirding a surprising national consensus—a consensus always fruitfully under pressure from various quarters—about the proper scope of the President's counterterrorism authorities. And then the father of the Constitution would smile.

## ext—synopticon

Solves unconstrained power

Jack Goldsmith, Harvard Law School Professor, focus on national security law, presidential power, cybersecurity, and conflict of laws, Former Assistant Attorney General, Office of Legal Counsel, and Special Counsel to the Department of Defense, Hoover Institution Task Force on National Security and Law, March 2012, Power and Constraint, p. 250-2

The fourth thing that will happen is that the much-criticized accountability mechanisms, which had already grown in strength during the first decade after 9/11, will grow in strength yet more. The media, motivated by new forms of executive branch secrecy, will redouble its efforts to report from the shadows. Congress, bucked up by the media and an alarmist human rights community, will worry about the unprecedented new authorities it is conferring on the presidency. Many of the authorities will involve granting the President discretion to do things in secret that, if abused, would seriously harm civil liberties. And so in granting these powers—especially the ones concerning electronic surveillance and other novel forms of intelligence collection—Congress will require that a secret court review the President's general plans in advance to make sure they are constitutional, and will require the inspector general in many agencies to constantly review the President's actions and to report the many mistakes and errors it finds to Congress. The new authorities will also be conditioned on executive branch officials compiling burdensome compliance reports for Congress, which in turn will require hordes of executive branch lawyers to monitor and guarantee compliance. Congress may cut back on the Freedom of Information Act a bit and may not confer new causes of action against the government. But clever, motivated, well-financed human rights organizations will find ways to bring novel claims against the novel forms of presidential power they deem scary. And independent courts, having mastered their fear of wartime judicial review in the decade after 9/11, will, despite criticisms after the next attack, and especially after the passage of a few years, grant some of these novel claims. This revived presidential synopticon will discover that some of the new authorities exercised by the presidency in secret at the outset of the new crisis led to mistakes and abuses that the nation will regret, especially as the threat appears to recede over time. And so the cycle will begin again. It might seem that we should just get the balance of presidential authorities and presidential accountability right in the first place, before the next attack arrives, in order to prevent it. But we are prisoners of informational uncertainty and psychological biases, and government is an imperfect science. We do not know in advance exactly what must be done to keep us safe, and our concerns about the threat recede as the indicia of the threat recede from public view. Like the framers of the Constitution, we worry about a too-powerful government, and especially a too-powerful presidency, almost as much as we do about national security. And we know that every new expansion of presidential power brings the possibility of mistake, abuse, or unnecessary restriction of liberty. We nonetheless expand the President's powers over time, especially at the dawn of a crisis, as national security threats grow more menacing and labyrinthine. A bigger and bigger presidency is necessary, and has necessary drawbacks. The same is true of the presidential synopticon. It has grown, and will continue to grow, in step with the presidency it watches. And it generates many problems of its own. But it also belies the many apocalyptic claims that we are living in an era of unrestrained presidential power.

## at perm

The permutation is impossible because we’ve impact turned the aff—

**No net benefit because the alt solves and the K turns the case—perms have to be net beneficial**

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

## ov

Liberal legalism culminates in unending peripheral violence—law creates an inside/outside subject distinction based on racial divisions and incentivizes imperialism and colonialism under the guise of civilizing the savage other through appeals to scientism and rationality—that’s Dossa

[pick yer impact modules]

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.

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## impact—memmi

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.

## impact—imperialism

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.

Extinction

Santos, LA editor and writer, 7/31/’6

(Juan, “Apocalypse No!” <http://www.energybulletin.net/node/18788>)

It's simple. And obvious. We find ourselves in the midst of the **most rapid mass extinction** in Earth's history; we have the power to all-but **end life on Earth**. We can do so with nuclear weapons, today, **in Iran,** or simply by turning the ignition switch on our automobiles and gliding over paved surfaces where nothing can live. A little more carbon dioxide, just a little, will tip the scale - unleashing our potential for matching the greatest mass extinction ever – the one called The Great Dying. Science has given us until roughly 2012 to take radical action to change the course we're on. **In the next six years**, they tell us, we will determine the fate of the Earth. **With the US and its** white colonial puppet Israel on a **nuclear collision course with Iran and Syria, we may have less time than that.**250 million years ago 95% of all species died. Only one large land animal was left. Carbon dioxide and methane – the two most deadly of the greenhouse gases – were responsible. We can do it again. We've followed the script, we know our lines, and we've reached the final scene. For that reason, this is a most exciting juncture for the Armageddon mongers among us. That's most of who believe in the colonizer's religion, in the Beast, the Great Tribulation, the Four Horsemen, the Seven Seals, and the other visions of St. John the Apocalyptic, whose hallucinogenic fantasies penetrated clearly into the essence, unveiling the inevitable end, the direction this civilization must head and the end it must reach. Fundamentalist Christians everywhere are working overtime to "bring it on"; they want to fulfill the conditions for the return of Christ, whose first priority and purpose in action, according to the book of the Revelation, will be the destruction of the Earth. But first, the fundamentalists believe, they must be certain of two things: the stability and existence of the white colonial settler state of Israel, and that the "gospel" is "preached to every creature" on Earth. Throughout history the "gospel" has been "preached" through conquest. Otherwise there might not have been a single Christian in the Americas, Africa, or, for that matter, Europe. Christianity spread with the Roman Empire, and, in the midst of the Inquisitions, "spread" to the Americas in the wake of the Conquest, a conquest in which as many as 100 million native people died. It spread to Africa in the late 1800s as Europe divided the continent and colonized it in wars that cost another 50 million lives. It spread like a disease, bringing death to millions as part of the two greatest, most racist Holocausts in the history of "civilization." A practical interpretation of the fundamentalist perspective might view the matter this way: the fundamentalists believe that they have failed to conquer the world, and Jesus, or the Antichrist (there's little functional difference – both come as Destroyers) will come back and conquer it for them in the battle of Armageddon. For this scenario to unfold requires the existence of Israel, and, at a minimum, that every living human has heard the "good news" of "salvation." Then, Jesus will come back with a vengeance. Everything will be under control; everything will be dead. And if it's not, then there's always the Last Judgment for backup. The images of the "end times," the symbols of the Revelation, Armageddon, and the rest are familiar throughout "Christendom" – the lands and peoples conquered by the church and its allies – the people who survived, at least. For many of us, they serve as a frame of reference that's not only familiar, but normal – images lodged, unquestioned, in the subconscious and that function as a mythic encoded drama – a script about where we come from, where we are, and the nature of our destiny. Like all such encoded dramas this one frames our identity. It's the myth we're living, as Joseph Campbell would have it. It doesn't matter if you "believe" in it or not. If you live in a "Christian Nation" and think you're not a "Christian" – if you think you're above all that, put aside the question of "belief" for a moment. Dwell, instead, with the images: The Beast; Armageddon; the Seventh Seal, and watch as their compelling power asserts itself. A Way of Death Our current sense of self is no more sustainable than our current use of energy or technology. - Jensen Since the dropping of the Bomb on Hiroshima the cultural identity based on these images has been shattering. **No one openly admitted that "success," according to the script, meant success as the total domination and destruction of Life on Earth** –even though we are on the brink of doing just that - or that the essence of civilization's "meaning" is to be found etched in the shadows burnt by the Bomb's atomic flash into Hiroshima's walls. No teacher openly tells a room full of school children "**Success means destruction and meaning, in our culture, means death.**" In the US, elements of the sixties generation either clearly understood the matter – beginning with Allen Ginsberg's Howl and the onset of the Black movement for freedom – or they were caught up in the mass discontent that spread like a wave from Ground Zero, and from the worldwide anti-colonial uprisings of the post-war era. The most conscious elements of humanity got the deeper message – often at great personal cost: not only that the Bomb is evil, or that slavery, conquest and genocide are evil, but that this way we live is a way of death, in its entirety. Many understood that there must be an alternative, and they were by no means naïve or merely "idealistic" in demanding it "NOW." They were, rather, speaking the language of life, a language most were unable to hear or speak. This was the impetus behind the great cultural transformations of that time. Much of the exploration, the seeking of a way out of here, led toward an embrace of various forms of salvationist ideology and practice – Marxist, Buddhist, Hindu and their thousand and one New Age variations - none of which break the fundamental mold of the civilization that shaped them. So much has changed for nothing to have changed. But underlying much of these explorations and permeating the approach of many of the explorers was a "new" – actually ancient, paradigm – one ultimately grounded in the science of ecology and the intuition of ecologists and those close to the Earth – holistic thinking. This approach to the world has gained a toehold in Western Civilization over the last 35 years or so - just soon enough for many to begin to remember what indigenous peoples have always held close. The Earth is one living being. And now, as a species and as a planet of living beings, we have nothing but a toehold between us and the abyss. It's not just the bomb, of course, it's the whole thing **– the Earth isn't "dying" – we're killing Her.** **This is the Apocalypse; Mass Extinction, Peak Oil, Agricultural Collapse, Ecosystem Collapse, Nuclear W**ar: the Apocalypse goes by many names**. Its most occult name is "Everyday Life."** **Our "way of life" has never worked on planet Earth and it never will – every empire in world history has collapsed, every empire overshot its "resources" – and this empire will be no different.**We've had, as Daniel Quinn has put it, our Great Forgetting of our place on Earth. Now, we urgently need a Great Remembering. Resource Wars and Fascism: Babylon's Way Out Those in power rule by force, and the sooner we break ourselves of illusions to the contrary, the sooner we can at least begin to make reasonable decisions about whether, when, and how we are going to resist. - Jensen Cognizant that life itself has but a bare toehold on the planet, the bible thumpers are thumping, the business as usual clock is ticking, and the empire builders are gunning for oil. They don't think that when it goes down, they'll go down with us. The bible-ists think they'll be "raptured" into "Heaven." The capitalists and super capitalists have their own brand of "rapture." They plan to buy the lifeboats, to live in ease, squeezing the earth for every copper cent and ounce of oil left in Her. And they mean for their progeny to rule what is left after the wall comes tumbling down. That's what today's massive and deliberate redistribution of wealth and resources toward the rich is about. They mean to run what's left on "clean nuke," as Bush calls it, even though – like the reserves of coal, oil, and natural gas, uranium will mostly be depleted by 2100. They plan to control the world's nuclear weaponry, as best they can, and thus what remains of the oil. As the rest of the world sinks into oil starvation, economic depression, and mass starvation, no one – the US imperialists hope - will be able to challenge their dominance of the Earth's "resources." In the meantime, they mean to overthrow or face down the Big 3, the oil rich 3, the new evil axis of Iraq, Iran, and of course, the newest target – Venezuela. Bolivia will not be far behind; it's also hydrocarbon-rich, and its government is no more "cooperative" than the rest. Mexico, with its stolen elections, and Saudi Arabia, with its bloated royal family, are under control, for the moment, and Bush, the idiot savant, will never let go of Iraq. **The current US/ Israeli assault on Lebanon and Hizbollah is phase two of a plan to gain strategic control over the Middle East.** US Secretary of State Condoleezza **Rice calls it a "New Middle East," in the same spirit as the "New World Order" declared by Bush1.** Prominent members of the Bush 2 administration, such as Vice President Cheney, Defense Secretary Donald Rumsfeld and others linked to the "Project for a New American Century", **speak openly of a Pax Americana and openly advocate that the US totally dominate the globe militarily, beginning with the Middle East.** **The aim is to crush non-state resistance groups like Hamas and Hizbollah, to squeeze Syria**, and lay the groundwork for a massive assault on Iran – whose vast reserves of oil and Islamic ideology represent the most formidable block to utter US power over the region and its oil reserves, and thus, over the world. "**It is time for a new Middle East, it is time to say to those who do not want a different kind of Middle East that we will prevail; they will not**," Rice said in Jerusalem. The Project for a New American Century says Iran is "rushing to develop ballistic missiles and nuclear weapons as a deterrent to American intervention..." Even the hint that Iran might – one distant day - combine its vast reserves of hydrocarbons with a nuclear capacity to defend them and thus remove them permanently from the grasp of the American Empire, **has unleashed a storm of preparations for a major war - even a nuclear wa**r - **one pitting the US, Israel and Turkey against Iran and its ally Syria. Such an aggression could readily draw China, Russia, or even France into the fray in an effort to protect their own stakes in Iran's oil, lighting the fuse of a nuclear Armageddon.** Make no mistake, however – the elites of each of these nations mean to milk Mother Earth of fossil fuels for their own benefit – not that of the US, and certainly not in the interest of planetary stability and the sustenance of Life. This is a way of death -rebel state, rogue state and Empire alike. Only Cuba is different at all, and it has no oil. All civilization is about power and the addiction to power; Euro-American culture is permeated with nothing but power; all the West does is in its pursuit. For now, at least, they're the "experts." Enter the era of resource wars and fascism. It's "necessary" if "civilization" and our "way of life" and "standard of living" are continue for even a while – even for the elites. We are entering the dark tunnel of the new era now. The US's colonial war of occupation in Iraq is a resource war. The overt threats against Iran, the rumblings and assassination plots against Venezuela and the bombing of Lebanon portend more of the same. As the economy – and thus the civilization – based on oil runs dry, as it can no longer deliver, as it consumes itself in "economic downturns" the powerful will see only one choice. War and mass repression. As the availability of cheap energy evaporates, as oil production peaks, Third World economies will begin to collapse, even as the Green Revolution – the hydrocarbon based agricultural "miracle" that has led to a doubling of the Earth's population – also begins to collapse Starvation, mass rebellion and insurrection will become the order of the day for already impoverished peoples on a global scale. With the onset of increasingly dramatic impacts of global warming and the rapidly escalating depletion of the world's aquifers much of the Third World may become as desperate and chaotic as sub-Saharan Africa is today. The Pentagon has developed plans, not only for resource wars, but for dealing with a global and vastly accelerating refugee crisis – their aim is to keep the refugees out of the First World entirely. This is the backdrop for today's targeting and scapegoating of migrant populations within the US and Europe. Under such conditions the ruling elites see migrant peoples as a potential source of acute internal instability. As the Empire seeks to establish its hegemony over oil and to maintain its hegemony over its Third World puppets while suppressing its colonized and dispossessed populations at "home"; as it is forced to become increasingly brutal to carry out its aims (witness Lebanon) **mass discontent and rebellion could erupt, even in the belly of the beast.**It would seem that **mass repression –- even open fascism -– are the only things that might keep the peasants –- us – starving in line.** Peoples of color within the US will be the first and most visible mass targets. But **every targeted group – including women, will be increasingly at risk of overt, violent repression as the State careens toward open fascism.**If the destroyers have their way, there will be no light at the end of the tunnel we are entering, only starvation, limited but ceaseless resource wars, and the **thousand year reign** of the **Anti-Christ** **- a permanent new Reich.**

**Their other option is Armageddon.**

## 2nc object fiat

No link—the objects of the resolution are statutory and judicial restrictions and the war powers authority of the President—the CP fiats neither

Counter-interpretation—the CP must be an opportunity cost to the plan—any other interpretation is arbitrary and destroys neg ground—

Their interpretation destroys all neg ground—all counterplans address the aff harms—solvency becomes theoretically illegitimate—

We don’t fiat away impacts—the cp creates a policy that we read solvency evidence for

The CP is the core of the topic—it’s a question of authority being bad—only the CP focuses the debate to that—their interp proliferates to thousands of end X military policy affs—those are unpredictable and shift the topic away from the core question

This is the key academic question

Sinnar, assistant professor of law at Stanford Law School, May 2013

(Shirin, “Protecting Rights from Within? Inspectors General and National Security Oversight,” 65 Stan. L. Rev. 1027, Lexis)

More than a decade after September 11, 2001, the debate over which institutions of government are best suited to resolve competing liberty and national security concerns continues unabated. While the Bush Administration's unilateralism in detaining suspected terrorists and authorizing secret surveillance initially raised separation of powers concerns, the Obama Administration's aggressive use of drone strikes to target suspected terrorists, with little oversight, demonstrates how salient these questions remain. Congress frequently lacks the [\*1029] information or incentive to oversee executive national security actions that implicate individual rights. Meanwhile, courts often decline to review counterterrorism practices challenged as violations of constitutional rights out of concern for state secrets or institutional competence. n1 These limitations on traditional external checks on the executive - Congress and the courts - have led to increased academic interest in potential checks within the executive branch. Many legal scholars have argued that executive branch institutions supply, or ought to supply, an alternative constraint on executive national security power. Some argue that these institutions have comparative advantages over courts or Congress in addressing rights concerns; others characterize them as a second-best option necessitated by congressional enfeeblement and judicial abdication.

## ext—object fiat

It’s the key question for the topic

Bradley, professor of law at Duke, and Morrison, professor of law at Columbia, May 2013

(Curtis A. and Trevor W., PRESIDENTIAL POWER, HISTORICAL PRACTICE, AND LEGAL CONSTRAINT, 113 Colum. L. Rev. 1097, Lexis)

**The relationship between law and presidential power is** **not merely a matter of academic debate**. **Whether**, **how**, **and to what extent presidential decisionmaking is subject to legal constraint is a** central issue **in the practice of modern government**, as illustrated by two recent episodes. First, in March 2011, the Obama Administration initiated military operations against Libya without congressional authorization, and then continued them past the statutory sixty-day limit set forth in the War Powers Resolution. Critics treated this episode as evidence that the executive branch did not take seriously constitutional and statutory limits [\*1100] on the use of military force. n8 Despite a low likelihood that courts would resolve the dispute, however, the Obama Administration offered public legal justifications, based heavily on arguments from historical practice, for both the initial deployment of military force in Libya and its continuation past the sixty-day point. n9 The felt need of the executive branch to justify itself in legal terms might be puzzling if the law were not playing any constraining role, but it is difficult to discern precisely what that role might have been. Second, in the summer of 2011, a confrontation developed between the Obama Administration and Republican leaders in Congress over whether to raise the statutory debt ceiling to accommodate the government's increased borrowing. When a legislative extension of the ceiling appeared unlikely, some commentators suggested, based on either novel constitutional arguments or pure policy grounds, that the President could and should unilaterally exceed the debt ceiling. n10 Others insisted that such unilateral action would be unconstitutional because it would usurp Congress's constitutional authority "to borrow money on the credit of the United States." n11 President Obama did not attempt to address the issue unilaterally and instead continued to seek a legislative extension of the ceiling, which he ultimately obtained. Nor did the President attempt or even threaten a unilateral extension when the issue resurfaced in late 2012 and early 2013 in connection with the so-called "fiscal cliff," by which time such an action appeared to be off the table altogether. It might be that the President felt constrained not to pursue a unilateral extension by legal concerns about such a course of action, but it is also possible that political considerations would have driven the President to a similar decision. n12 In this context too, then, the role of law is unclear. Episodes like these underscore the importance of thinking carefully not just about the general question whether the President is constrained by law, but **more particularly about what it means to say that the President is so constrained**, **and how such constraints operate**. On issues of executive power unlikely to come before the courts, one familiar idea - espoused by James Madison in The Federalist Papers - is that members of Congress have sufficient personal motivations and professional resources to protect Congress's institutional prerogatives [\*1101] from executive incursions. n13 A number of scholars have concluded, however, that such checking is not as consistent or robust as is often assumed, and that whether Congress curbs presidential power depends more often on partisan political considerations or situation-specific policy objections than on any systematic effort to protect institutional prerogatives. n14 If Congress is not as reliable a check on presidential power as Madison and others envisioned, there is arguably a greater need for other mechanisms of constraint in this area, including legal constraints. In the absence of judicial review, however, it is fair to ask how the legal constraints might operate.

8. Blame the topic -- rejecting counterplans is a bad corrective for a difficult aff year. Enforcing "fairness" through theory is ad hoc, erratic, and leaves the ground of each debate uncertain until the end.

## 1NR

#### Most predictable statement of what they do

#### No warrant for why they don’t have to. Even if methodology comes first, that doesn’t mean they get out of all the links to our arguments. They have presented this policy as the best example of the policy implementation of the aff, so if we win that it fails to solve their advocacy or leads to worse impacts that’s a reason why the aff is a bad idea.

Predictions and scenario building are valuable for decision-making, even if they’re not perfect

**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.

Alt fails – prediction-based policymaking inevitable

Danzig 11

Richard Danzig, Center for a New American Security Board Chairman, Secretary of the Navy under President Bill Clinton, October 2011, Driving in the Dark Ten Propositions About Prediction and National Security, http://www.cnas.org/files/documents/publications/CNAS\_Prediction\_Danzig.pdf

The Propensity to Make Predictions – and to Act on the Basis of Predictions – Is Inherently Human

“No one can predict the future” is a common saying, but people quite correctly believe and act otherwise in everyday life. In fact, daily life is built on a foundation of prediction. One expects (predicts) that housing, food and water will be safe and, over the longer term, that saved money will retain value. These predictions are typically validated by everyday experience. As a consequence, people develop expectations about prediction and a taste, even a hunger, for it. If security in everyday life derives from predictive power, it is natural to try to build national security in the same way.

This taste for prediction has deep roots.16 Humans are less physically capable than other species but more adept at reasoning.17 Reasoning is adaptive; it enhances the odds of survival for the species and of survival, power, health and wealth for individuals. Reasoning depends on predictive power. If what was benign yesterday becomes unpredictably dangerous today, it is hard to develop protective strategies, just as if two plus two equals four today and five tomorrow, it is hard to do math. Rational thought depends on prediction and, at the same time, gives birth to prediction. Humans are rational beings and, therefore, make predictions.

The taste for prediction has roots, moreover, in something deeper than rationality. Emotionally, people are uncomfortable with uncertainty and pursue the illusion of control over events beyond their control. Systematic interviews of those who have colostomies, for example, show that people are less depressed if they are informed that their impaired condition will be permanent than if they are told that it is uncertain whether they will be able to return to normal functioning.19 Citing this and other work, Daniel Gilbert concludes that “[h]uman beings find uncertainty more painful than the things they’re uncertain about.”20 An “illusion of control,” to employ a term now recognized in the literature of psychology, mitigates the pain of uncertainty.21 People value random lottery tickets or poker cards distributed to themselves more than they do tickets or cards randomly assigned to others.22 A discomfort with uncertainty and desire for control contribute to an unjustifiable over-reliance on prediction.

2. Requirements for Prediction Will Consistently Exceed the Ability to Predict

The literature on predictive failure is rich and compelling.23 In the most systematic assessment, conducted over 15 years ending in 2003, Philip Tetlock asked 284 established experts24 more than 27,000 questions about future political and economic outcomes (expected electoral results, likelihoods of coups, accession to treaties, proliferation, GDP growth, etc.) and scored their results.25 Collateral exercises scored predictive achievement in the wake of the breakup of the Soviet Union, the transition to democracy in South Africa and other events. There are too many aspects of Tetlock’s richly textured discussion to permit a simple summary, but his own rendering of a central finding will suffice for this discussion: “When we pit experts against minimalist performance benchmarks – dilettantes, dart-throwing chimps, and assorted extrapolation algorithms – we find few signs that expertise translates into greater ability to make either ‘well calibrated’ or ‘discriminating’ forecasts.”26

As described below,27 there are strong reasons for a high likelihood of failure of foresight when DOD attempts to anticipate the requirements for systems over future decades. Recent experience makes this point vividly. Over the past 20 years,28 long-term predictions about the strategic environment and associated security challenges have been wrong, like most multi-year predictions on complex subjects.29 It is simple to list a halfdozen failures:30 American defense planners in 1990 did not anticipate the breakup of the Soviet Union, the rapid rise of China, Japan’s abrupt transition from decades of exceptional economic growth to decades of no growth,31 an attack like that on September 11, 2001 or the United States invasions of (and subsequent decade-long presences in) Afghanistan and Iraq.32

So, in this light, why does the defense community repeatedly over-invest in prediction?

A common conceptual error intensifies the hunger for prediction. History celebrates those who made good predictions. Because Winston Churchill’s fame rests on, among other things, his foresight about German militarism and the accuracy of his demands for preparation for World War II, it appears evident that confident prediction is the road to success. Yet it is an error to focus on numerators (instances of success) without asking about denominators (instances of failure).

33 Accordingly, there is a tendency to ignore Churchill’s failures in many other predictions (his disastrous expectations from military operations in Gallipoli, his underestimation of Gandhi, etc.). There is also a tendency to ignore the great number of other predictors who are not celebrated by history because they failed in analogous circumstances.

Moreover, prediction is subject to refinement and is often a competitive enterprise. As a result, predictive power is like wealth – gaining some of it rarely satisfies the needs of those who receive it. Predictive power intensifies the demand for more predictive power.

Tell a national security advisor that another country is likely to develop a nuclear weapon, and – after all his or her questions have been answered about the basis of the prediction – he or she will want to know when, in what numbers, with what reliability, at what cost, with what ability to deploy them, to mount them on missiles, with what intent as to their use, etc. It is no wonder that U.S. intelligence agencies are consistently regarded as failing.

Whatever their mixtures of strengths and weaknesses, they are always being pushed to go beyond the point of success.

Put another way, the surest prediction about a credible prediction is that it will induce a request for another prediction. This tendency is intensified when, as is commonly the case, prediction is competitive. If you can predict the price of a product but I can predict it faster or more precisely, I gain an economic advantage. If I can better predict the success of troop movements over difficult terrain, then I gain a military advantage. As a result, in competitive situations, my fears of your predictive power will drive me to demand more prediction regardless of my predictive power. Moreover, your recognition of my predictive power will lead you to take steps to impair my predictive ability.34 Carl von Clausewitz saw this very clearly: “The very nature of interaction is bound to make [warfare] unpredictable.”35

These inherent psychological and practical realities will consistently lead to over-prediction. People are doomed repeatedly to drive beyond their headlights.

#### Guest workers key to ag

Serrano 12

(Alfonso, “Bitter Harvest: U.S. Farmers Blame Billion-Dollar Losses on Immigration Laws” Sept. 21, 2012, TIME Business & Money)

Farming operations nationwide, from New York to Georgia to California, are reeling from similar labor shortages despite offering domestic workers competitive packages that include 401(k) plans and health insurance. Almost in unison, farmers complain that even when they are able to lure domestic workers to what often amounts to high-skilled, grueling work, it’s not long before they abandon the job.

North Carolina, whose four main crops are valued at $2 billion, has seen its labor supply vanish since nearby Alabama and South Carolina enacted restrictive immigration laws. “Clearly, immigration reform is as much a federal issue as maintaining our military or managing our money supply,” says Larry Wooten, president of the North Carolina Farm Bureau. “And this state-by-state regulation, with hyperenforcement, is putting pressure on farming operations here in North Carolina and across the country.”

With the federal government sitting on the sidelines, some state legislatures in response to that pressure have started to consider enacting guest-worker programs, often after heavy lobbying from agricultural and business groups. Utah, for example, recently approved a program that, starting this year, will allow undocumented immigrants to work in the state legally as long as they pass background checks. The measure, though, is subject to federal approval.

Several other states, including California, Oklahoma and Vermont, have considered similar legislation. In Texas last year, Republicans signed off on a party platform that calls for a national guest-worker program. And just before the GOP convention in August, the Republican National Committee approved a platform on immigration that calls for a guest-worker program.

“We feel strongly that there has never been a greater need for federal leadership for immigration reform,” says Walden. “The United States farmer is still the most efficient in the world, and if we want to be in charge of our food security and our economy and add favorably to our balance of payments, we need to support a labor force for agriculture.”

#### Key to prevent farm-labor crisis

Plumer 1/29

(Brad, “We’re running out of farm workers. Immigration reform won’t help.” January 29, 2013, Washington Post)

“It’s a simple story,” says Edward Taylor, an agricultural economist at U.C. Davis and one of the study’s authors. ”By the mid-twentieth century, Americans stopped doing farm work. And we were only able to avoid a farm-labor crisis by bringing in workers from a nearby country that was at an earlier stage of development. Now that era is coming to an end.”

Taylor and his co-authors argue that the United States could face a sharp adjustment period as a result. Americans appear unwilling to do the sort of low-wage farm work that we have long relied on immigrants to do. And, the paper notes, it may be difficult to find an abundance of cheap farm labor anywhere else — potential targets such as Guatemala and El Salvador are either too small or are urbanizing too rapidly. So the labor shortages will keep getting worse. And that leaves several choices. American farmers could simply stop growing crops that need a lot of workers to harvest, such as fruits and vegetables. Given the demand for fresh produce, that seems unlikely. Alternatively, U.S. farms could continue to invest in new labor-saving technologies, such as “shake-and-catch” machines to harvest fruits and nuts. “Under this option,” the authors write, “capital improvements in farm production would increase the marginal product of farm labor; U.S. farms would hire fewer workers and pay higher wages.” That could be a boon to domestic workers — studies have found that 23 percent of U.S. farm worker families are below the poverty line. In the meantime, however, farm groups are hoping they can fend off that day of reckoning by revamping the nation’s immigration laws. The bipartisan immigration-reform proposal unveiled in the Senate on Monday contained several provisions aimed at boosting the supply of farm workers, including the promise of an easier path to citizenship.

WPR reform empirically is too controversial to pass—Obama gets drawn in.

**CCR 9** (Center for Constitutional Rights, “Restore. Protect. Expand. Amend the War Powers Resolution”, <http://ccrjustice.org/files/CCR_White_WarPowers.pdf>, ZBurdette)

Secondly, the War Powers Resolution correctly recognized that even congressional silence, inaction or even implicit approval does not allow the president to engage in warfare – but it failed to provide an adequate enforcement mechanism if the president did so. Under the resolution, wars launched by the executive were supposed to be automatically terminated after 60 or 90 days if not affirmatively authorized by Congress – but this provision proved unenforceable. Presidents simply ignored it, Congress had an insufficient interest in enforcing it and the courts responded by effectually saying: if Congress did nothing, why should we?

Reforming the War Powers Resolution is a project that will require leadership from the President and the political will of Congress, working together in the service and preservation of the Constitution. In light of the abuses that have taken place under the Bush administration, it is the responsibility of a new administration to insist on transparency in the drafting of new legislation.

There is a long history of attempts to revise the War Powers Resolution. As new legislation is drafted, though, it will be important to focus on the central constitutional issues. Much time has been spent in debating how to address contingencies. It will be impossible to write into law any comprehensive formula for every conceivable situation, though; much more important will be establishing the fundamental principles of reform:

## 2NC—Link turns the case

Link alone turns the case—political squabbling over authority allows the executive to ignore restraints.

**CCR 9** (Center for Constitutional Rights, “Restore. Protect. Expand. Amend the War Powers Resolution”, <http://ccrjustice.org/files/CCR_White_WarPowers.pdf>, ZBurdette)

In a great many instances, neither the President nor Congress, nor even the courts have been willing to trigger the War Powers Resolution mechanism. This is in part because the courts will not enforce the Resolution where Congress is either silent or acts ambiguously, even though the law clearly requires the troops to be withdrawn in such circumstances. In 1999, in the case of Yugoslavia, Congress voted not to authorize war, yet failed to pass legislation ordering the troops home and in fact funded the military action. Clearly, without reform of the legislation to address its weaknesses and without a concerted effort by a new executive in concert with Congress, the debate over war powers and responsibilities will remain paralyzed.

War Powers in the George W. Bush Years

In instances where Congress is too opposed, divided, conflicted or unsure to affirmatively authorize warfare, both the Constitution and the War Powers Resolution require that the United States not go to war. And yet, the Bush administration repeatedly forged ahead in defiance of the law, relying on an unconstitutional claim of executive power and the cynical political expectation that Congress would not want to be responsible for withholding support from American troops or ending a war once it was launched.