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# CP:

#### By executive order, the President of the United States should commit the Solicitor General & White House Counsel’s Office to advance consultation with the Office of Legal Counsel and require written publication of Office of Legal Counsel opinions over current law regarding Indef Detetion The President should publicly pledge to act consistent with these opinions.

#### The Office of Legal Counsel should opine that the best interpretation of current law requires <<< >>>.

#### CP competes on ‘authority’ but solves – OLC rulings are binding as settled law, but crafting reduces links to net benefits

Trevor W. Morrison, October 2010 Columbia Law Professor

“STARE DECISIS IN THE OFFICE OF LEGAL COUNSEL,” Columbia Law Review, 110 Colum. L. Rev. 1448.

On the other hand, an OLC that says "yes" too often is not in the client's long-run interest. n49 Virtually all of OLC's clients have their own legal staffs, including the White House Counsel's Office in the White House and the general counsel's offices in other departments and agencies. Those offices are capable of answering many of the day-to-day issues that arise in those components. They typically turn to OLC when the issue is sufficiently controversial or complex (especially on constitutional questions) that some external validation holds special value. n50 For example, when a department confronts a difficult or delicate constitutional question in the course of preparing to embark upon a new program or course of action that raises difficult or politically sensitive legal questions, it has an interest in being able to point to a credible source affirming the [\*1462] legality of its actions. n51 The in-house legal advice of the agency's general counsel is unlikely to carry the same weight. n52 Thus, even though those offices might possess the expertise necessary to answer at least many of the questions they currently send to OLC, in some contexts they will not take that course because a "yes" from the in-house legal staff is not as valuable as a "yes" from OLC. But that value depends on OLC maintaining its reputation for serious, evenhanded analysis, not mere advocacy. n53 The risk, however, is that OLC's clients will not internalize the long-run costs of taxing OLC's integrity. This is in part because the full measure of those costs will be spread across all of OLC's clients, not just the client agency now before it. The program whose legality the client wants OLC to review, in contrast, is likely to be something in which the client has an immediate and palpable stake. Moreover, the very fact that the agency has come to OLC for legal advice will often mean it thinks there is [\*1463] at least a plausible argument that the program is lawful. In that circumstance, the agency is unlikely to see any problem in a "yes" from OLC. Still, it would be an overstatement to say that OLC risks losing its client base every time it contemplates saying "no." One reason is custom. In some areas, there is a longstanding tradition - rising to the level of an expectation - that certain executive actions or decisions will not be taken without seeking OLC's advice. One example is OLC's bill comment practice, in which it reviews legislation pending in Congress for potential constitutional concerns. If it finds any serious problems, it writes them up and forwards them to the Office of Management and Budget, which combines OLC's comments with other offices' policy reactions to the legislation and generates a coordinated administration position on the legislation. n54 That position is then typically communicated to Congress, either formally or informally. While no statute or regulation mandates OLC's part in this process, it is a deeply entrenched, broadly accepted practice. Thus, although some within the Executive Branch might find it frustrating when OLC raises constitutional concerns in bills the administration wants to support as a policy matter, and although the precise terms in which OLC's constitutional concerns are passed along to Congress are not entirely in OLC's control, there is no realistic prospect that OLC would ever be cut out of the bill comment process entirely. Entrenched practice, then, provides OLC with some measure of protection from the pressure to please its clients. But there are limits to that protection. Most formal OLC opinions do not arise out of its bill comment practice, which means most are the product of a more truly voluntary choice by the client to seek OLC's advice. And as suggested above, although the Executive Branch at large has an interest in OLC's credibility and integrity, the preservation of those virtues generally falls to OLC itself. OLC's nonlitigating function makes this all the more true. Whereas, for example, the Solicitor General's aim of prevailing before the Supreme Court limits the extent to which she can profitably pursue an extreme agenda inconsistent with current doctrine, OLC faces no such immediate constraint. Whether OLC honors its oft-asserted commitment to legal advice based on its best view of the law depends largely on its own self-restraint. 2. Formal Requests, Binding Answers, and Lawful Alternatives. - Over time, OLC has developed practices and policies that help maintain its independence and credibility. First, before it provides a written opinion, n55 OLC typically requires that the request be in writing from the head or general counsel of the requesting agency, that the request be as specific and concrete as possible, and that the agency provide its own written [\*1464] views on the issue as part of its request. n56 These requirements help constrain the requesting agency. Asking a high-ranking member of the agency to commit the agency's views to writing, and to present legal arguments in favor of those views, makes it more difficult for the agency to press extreme positions. Second, as noted in the Introduction, n57 OLC's legal advice is treated as binding within the Executive Branch until withdrawn or overruled. n58 As a formal matter, the bindingness of the Attorney General's (or, in the modern era, OLC's) legal advice has long been uncertain. n59 The issue has never required formal resolution, however, because by longstanding tradition the advice is treated as binding. n60 OLC protects that tradition today by generally refusing to provide advice if there is any doubt about whether the requesting entity will follow it. n61 This guards against "advice-shopping by entities willing to abide only by advice they like." n62 More broadly, it helps ensure that OLC's answers matter. An agency displeased with OLC's advice cannot simply ignore the advice. The agency might [\*1465] construe any ambiguity in OLC's advice to its liking, and in some cases might even ask OLC to reconsider its advice. n63 But the settled practice of treating OLC's advice as binding ensures it is not simply ignored. In theory, the very bindingness of OLC's opinions creates a risk that agencies will avoid going to OLC in the first place, relying either on their general counsels or even other executive branch offices to the extent they are perceived as more likely to provide welcome answers. This is only a modest risk in practice, however. As noted above, legal advice obtained from an office other than OLC - especially an agency's own general counsel - is unlikely to command the same respect as OLC advice. n64 Indeed, because OLC is widely viewed as "the executive branch's chief legal advisor," n65 an agency's decision not to seek OLC's advice is likely to be viewed by outside observers with skepticism, especially if the in-house advice approves a program or initiative of doubtful legality. OLC has also developed certain practices to soften the blow of legal advice not to a client's liking. Most significantly, after concluding that a client's proposed course of action is unlawful, OLC frequently works with the client to find a lawful way to pursue its desired ends. n66 As the OLC Guidelines put it, "when OLC concludes that an administration proposal is impermissible, it is appropriate for OLC to go on to suggest modifications that would cure the defect, and OLC should stand ready to work with the administration to craft lawful alternatives." n67 This is a critical component of OLC's work, and distinguishes it sharply from the courts. In addition to "providing a means by which the executive branch lawyer can contribute to the ability of the popularly-elected President and his administration to achieve important policy goals," n68 in more instrumental terms the practice can also reduce the risk of gaming by OLC's clients. And that, in turn, helps preserve the bindingness of OLC's opinions. n69 [\*1466] To be sure, OLC's opinions are treated as binding only to the extent they are not displaced by a higher authority. A subsequent judicial decision directly on point will generally be taken to supersede OLC's work, and always if it is from the Supreme Court. OLC's opinions are also subject to "reversal" by the President or the Attorney General. n70 Such reversals are rare, however. As a formal matter, Dawn Johnsen has argued that "the President or attorney general could lawfully override OLC only pursuant to a good faith determination that OLC erred in its legal analysis. The President would violate his constitutional obligation if he were to reject OLC's advice solely on policy grounds." n71 Solely is a key word here, especially for the President. Although his oath of office obliges him to uphold the Constitution, n72 it is not obvious he would violate that oath by pursuing policies that he thinks are plausibly constitutional even if he has not concluded they fit his best view of the law. It is not clear, in other words, that the President's oath commits him to seeking and adhering to a single best view of the law, as opposed to any reasonable or plausible view held in good faith. Yet even assuming the President has some space here, it is hard to see how his oath permits him to reject OLC's advice solely on policy grounds if he concludes that doing so is indefensible as a legal matter. n73 So the President needs at least a plausible legal basis for [\*1467] disagreeing with OLC's advice, which itself would likely require some other source of legal advice for him to rely upon. The White House Counsel's Office might seem like an obvious candidate. But despite recent speculation that the size of that office during the Obama Administration might reflect an intention to use it in this fashion, n74 it continues to be virtually unheard of for the White House to reverse OLC's legal analysis. For one thing, even a deeply staffed White House Counsel's Office typically does not have the time to perform the kind of research and analysis necessary to produce a credible basis for reversing an OLC opinion. n75 For another, as with attempts to rely in the first place on in-house advice in lieu of OLC, any reversal of OLC by the White House Counsel is likely to be viewed with great skepticism by outside observers. If, for example, a congressional committee demands to know why the Executive Branch thinks a particular program is lawful, a response that relies on the conclusions of the White House Counsel is unlikely to suffice if the committee knows that OLC had earlier concluded otherwise. Rightly or wrongly, the White House Counsel's analysis is likely to be treated as an exercise of political will, not dispassionate legal analysis. Put another way, the same reasons that lead the White House to seek OLC's legal advice in the first place - its reputation for [\*1468] providing candid, independent legal advice based on its best view of the law - make an outright reversal highly unlikely. n76 Of course, the White House Counsel's Office may well be in frequent contact with OLC on an issue OLC has been asked to analyze, and in many cases is likely to make it abundantly clear what outcome the White House prefers. n77 But that is a matter of presenting arguments to OLC in support of a particular position, not discarding OLC's conclusion when it comes out the other way. n78The White House is not just any other client, and so the nature of - and risks posed by - communications between it and OLC on issues OLC is analyzing deserve special attention. I take that up in Part III. n79 My point at this stage is simply that the prospect of literal reversal by the White House is remote and does not meaningfully threaten the effective bindingness of OLC's decisions.

#### OLC can resolve WPA questions quickly and effectively

Cornelia Pillard Feb 2005 Supreme Court Inst, G-town U Law, former DOJ Deputy Asst Att Gen

<http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1190&context=facpub>

Michigan Law Review, 103.4, “The Unfulfilled Promise of the Constitution in Executive Hands”, 103 Mich. L. Rev. 676-758

Just as the SG is the federal government's chief litigator, the head of the Office of Legal Counsel is the executive branch's chief legal advisor. The Attorney General has formally delegated the legal-advice-giving part of his statutory responsibility to OLC.104 OLC has no enforcement or litigation responsibilities, and is devoted exclusively to giving legal advice. OLC's role within the executive branch has evolved over the years, with tasks calling for legal and, especially, constitutional judgment migrating to OLC, while more politicized tasks, like OLC's short involvement in vetting potential judicial nominees, being reassigned elsewhere.105 OLC's core work is to provide written and oral legal opinions to others within the executive branch, including the president, the Attorney General, and heads of other departments. In practice, the White House and the Attorney General are by far the most frequent requesters, often asking complex, momentous questions, frequently on short notice. OLC clients may seek opinions on matters such as the sustainability of a claim of executive privilege, or the lawfulness in a particular circumstance of a quarantine, detention, or use of military force. OLC has been consulted when troops have been sent abroad and when international criminals were arrested overseas.106 Much of OLC's work is more quotidian, including topics such as the constitutionality under the Appointments Clause of various boards and commissions, or the scope of an agency's statutory authority to alter a regulation or settle a case in a particular way. Its opinions "involve domestic problems, international issues, pet plans of bureaucrats, the application of the Constitution and the laws to administrative policies and procedures, the powers and jurisdictions of departments and agencies, the advisability of contemplated actions, [and various mundane and] momentous matters." 107 OLC traditionally requires that requests for advice come from the head or general counsel of the requesting agency, that advice-seekers submit their own view of the question to OLC, and that independent agencies (not already presumptively bound) agree in advance to abide by the advice - even oral advice - that OLC delivers.108 The agreement to be bound forestalls opportunistic advice-shopping by entities willing to abide only by advice they like, and it preserves the resources and authority of OLC against being treated merely as an extra source of legal research on issues that other lawyers or officials will ultimately resolve for themselves.109

# DA:

#### Terrorist capabilities are degraded- they still have operational intent though

McLaughlin 2013 [John McLaughlin was a CIA officer for 32 years and served as deputy director and acting director from 2000-2004. He currently teaches at the Johns Hopkins University's School of Advanced International Studies and is a Non-Resident Senior Fellow at the Brookings Institution July 12, 2013 “Terrorism at a moment of transition” http://security.blogs.cnn.com/2013/07/12/terrorism-at-a-moment-of-transition/]

On targets, jihadists are now pulled in many directions. Many experts contend they are less capable of a major attack on the U.S. homeland. But given the steady stream of surprises they’ve sprung – ranging from the 2009 “underwear bomber” to the more recent idea of a surgically implanted explosive – it is hard to believe they’ve given up trying to surprise us with innovations designed to penetrate our defenses.¶ We especially should remain alert that some of the smaller groups could surprise us by pointing an attacker toward the United States, as Pakistan’s Tehrik e Taliban did in preparing Faizal Shazad for his attempted bombing of Times Square in 2010.¶ At the same time, many of the groups are becoming intrigued by the possibility of scoring gains against regional governments that are now struggling to gain or keep their balance – opportunities that did not exist at the time of the 9/11 attacks.¶ Equally important, jihadists are now learning from their mistakes, especially the reasons for their past rejection by populations where they temporarily gained sway.¶ Documents from al Qaeda in the Islamic Maghreb, discovered after French forces chased them from Mali, reveal awareness that they were too harsh on local inhabitants, especially women. They also recognized that they need to move more gradually and provide tangible services to populations – a practice that has contributed to the success of Hezbollah in Lebanon.¶ We are now seeing a similar awareness among jihadists in Syria, Tunisia, Libya, and Yemen. If these “lessons learned” take hold and spread, it will become harder to separate terrorists from populations and root them out.¶ Taken together, these three trends are a cautionary tale for those seeking to gauge the future of the terrorist threat.¶ Al Qaeda today may be weakened, but its wounds are far from fatal. It is at a moment of transition, immersed in circumstances that could sow confusion and division in the movement or, more likely, extend its life and impart new momentum.¶ So if we are ever tempted to lower our guard in debating whether and when this war might end, we should take heed of these trends and of the wisdom J. R. R. Tolkien has Eowyn speak in “Lord of the Rings”: "It needs but one foe to breed a war, not two ..."

#### Civilian trials would send Al Qaeda fighters back to battle

Taylor 2009 [Stuart S. Taylor, Jr. is an author and freelance journalist focusing on legal and policy issues, National Journal contributing editor, (occasionally) Stanford Law School lecturer and practicing lawyer, and nonresident senior fellow at the Brookings Institution January 30, 2009 National Journal “Obama's Dangerous Detainees” http://www.nationaljournal.com/njmagazine/or\_20090117\_2727.php]

Indeed, the Pentagon said on January 13 that 18 of the approximately 500 Guantanamo detainees already released have definitely returned "to the fight" against America and that another 43 are suspected of doing so. Critics gave these claims little credibility because the Pentagon refused to provide details.¶ Meanwhile, human-rights activists have been seeking to create the false impressions that not many of the Guantanamo detainees are dangerous; that those who are can be prosecuted; and that the rest can be safely released.¶ But the military has determined that only about 60 of the 250 detainees could be released relatively safely, if other countries would take them, and that only 80 of the rest (including 9/11 mastermind Khalid Shaikh Mohammed) could face trial for war crimes by Bush's special "military commissions."¶ Obama may decide that more than 60 are not dangerous. Otherwise, that leaves 110 or so detainees who are considered both too dangerous to release and not-prosecutable; at least, military commission prosecutors have found no basis for charging them or (in some cases) the charges have been dismissed.¶ The number who could be prosecuted might well be lower than 80 if Obama follows through on his declared intent to move any and all prosecutions of detainees to ordinary federal or military courts. The president-elect reportedly, and in my view rightly, plans to suspend use of the military commissions. They have been an international embarrassment, in part because their rules allow for use of some evidence obtained through coercive interrogation.¶ Some of the apparently dangerous detainees could not be convicted because there is no (or not enough) evidence that they have acted on their declared intent to kill Americans; some because the evidence against them was obtained by intelligence sources and methods too sensitive to be aired in a public trial or even shown to defendants; and some (perhaps including Qahtani) because the only strong evidence was obtained through coercive interrogation, involves hearsay, or is otherwise inadmissible.¶ The "prosecute or release" approach demanded by groups such as the ACLU and Amnesty International "fails to recognize the United States' legitimate interest in holding individuals fighting against it in armed conflict," in the words of a recent commentary by Georgetown law professor David Cole, whose view on this carries extra weight because he is a leading human-rights lawyer and Bush critic.¶ "There are .... as many as 100 detainees, who may not be prosecutable for a specific offense but who are too dangerous to release -- e.g., admitted Al Qaeda or Taliban fighters who have said that they would return to the battle in Afghanistan if released," Cole added. "These individuals can continue to be held for the duration of the ongoing armed conflict with the Taliban and Al Qaeda -- as prisoners of war, without criminal charge or criminal trial."

#### Nuclear terrorism breaks the taboo- causes escalation

Bin ‘9 (5-22-09 About the Authors Prof. Li Bin is a leading Chinese expert on arms control and is currently the director of Arms Control Program at the Institute of International Studies, Tsinghua University. He received his Bachelor and Master Degrees in Physics from Peking University before joining China Academy of Engineering Physics (CAEP) to pursue a doctorate in the technical aspects of arms control. He served as a part-time assistant on arms control for the Committee of Science, Technology and Industry for National Defense (COSTIND).Upon graduation Dr. Li entered the Institute of Applied Physics and Computational Mathematics (IAPCM) as a research fellow and joined the COSTIND technical group supporting Chinese negotiation team on Comprehensive Test Ban Treaty (CTBT). He attended the final round of CTBT negotiations as a technical advisor to the Chinese negotiating team. Nie Hongyi is an officer in the People’s Liberation Army with an MA from China’s National Defense University and a Ph.D. in International Studies from Tsinghua University, which he completed in 2009 under Prof. Li Bin. )

**The nuclear taboo is a** kind **of international norm and this type of norm is supported by the promotion of the norm through international social exchange.** **But at present the increased threat of nuclear terrorism has lowered people’s confidence that nuclear weapons will not be used**. **China and the United States have a broad common interest in combating nuclear terrorism.** **Using technical and institutional measures to break the foundation of nuclear terrorism and lessen the possibility of a nuclear terrorist attack can not only weaken the danger of nuclear terrorism itself but also** strengthen people’s confidence in the nuclear taboo**, and in this way preserve an international environment beneficial to both China and the United States.** **In this way even if there is crisis in China-U.S. relations caused by conflict, the nuclear taboo can also help both countries reduce suspicions about the nuclear weapons problem, avoid miscalculation and thereby reduce the** danger of a nuclear war**.**

# K:

#### Their security reps are inaccurate and cause action-reaction cycles. Such cycles are the root of violence and make extinction inevitable.

Der Derian 98 (James, Professor of Political Science – University of Massachusetts, On Security, Ed. Lipschutz, p. 24-25)

No other concept in international relations packs the metaphysical punch, nor commands the disciplinary power of "security." In its name, peoples have alienated their fears, rights and powers to gods, emperors, and most recently, sovereign states, all to protect themselves from the vicissitudes of nature--as well as from other gods, emperors, and sovereign states. In its name, weapons of mass destruction have been developed which have transfigured national interest into a security dilemma based on a suicide pact. And, less often noted in international relations, in its name billions have been made and millions killed while scientific knowledge has been furthered and intellectual dissent muted. We have inherited an ontotheology of security, that is, an a priori  argument that proves the existence and necessity of only one form of security because there currently happens to be a widespread, metaphysical belief in it. Indeed, within the concept of security lurks the entire history of western metaphysics, which was best described by Derrida "as a series of substitutions of center for center" in a perpetual search for the "transcendental signified." Continues... [7](http://libcat1.cc.emory.edu:32888/20050307122932441313c0%3Dwww.ciaonet.org%3A80/book/lipschutz/lipschutz12.html#note7) In this case, Walt cites IR scholar Robert Keohane on the hazards of "reflectivism," to warn off anyone who by inclination or error might wander into the foreign camp: "As Robert Keohane has noted, until these writers `have delineated . . . a research program and shown . . . that it can illuminate important issues in world politics, they will remain on the margins of the field.' " [8](http://libcat1.cc.emory.edu:32888/20050307122932441313c0%3Dwww.ciaonet.org%3A80/book/lipschutz/lipschutz12.html%22%20%5Cl%20%22note8) By the end of the essay, one is left with the suspicion that the rapid changes in world politics have triggered a "security crisis" in security studies that requires extensive theoretical damage control. What if we leave the desire for mastery to the insecure and instead imagine a new dialogue of security, not in the pursuit of a utopian end but in recognition of the world as it is, other than us ? What might such a dialogue sound like? Any attempt at an answer requires a genealogy: to understand the discursive power of the concept, to remember its forgotten meanings, to assess its economy of use in the present, to reinterpret--and possibly construct through the reinterpretation--a late modern security comfortable with a plurality of centers, multiple meanings, and fluid identities. The steps I take here in this direction are tentative and preliminary. I first undertake a brief history of the concept itself. Second, I present the "originary" form of security that has so dominated our conception of international relations, the Hobbesian episteme of realism. Third, I consider the impact of two major challenges to the Hobbesian episteme, that of Marx and Nietzsche. And finally, I suggest that Baudrillard provides the best, if most nullifying, analysis of security in late modernity. In short, I retell the story of realism as an historic encounter of fear and danger with power and order that produced four realist forms of security: epistemic, social, interpretive, and hyperreal. To preempt a predictable criticism, I wish to make it clear that I am not in search of an "alternative security." An easy defense is to invoke Heidegger, who declared that "questioning is the piety of thought." Foucault, however, gives the more powerful reason for a genealogy of security: I am not looking for an alternative; you can't find the solution of a problem in the solution of another problem raised at another moment by other people. You see, what I want to do is not the history of solutions, and that's the reason why I don't accept the word alternative. My point is not that everything is bad, but that everything is dangerous, then we always have something to do. The hope is that in the interpretation of the most pressing dangers of late modernity we might be able to construct a form of security based on the appreciation and articulation rather than the normalization or extirpation of difference. Nietzsche transvalues both Hobbes's and Marx's interpretations of security through a genealogy of modes of being. His method is not to uncover some deep meaning or value for security, but to destabilize the intolerable fictional identities of the past which have been created out of fear, and to affirm the creative differences which might yield new values for the future. Originating in the paradoxical relationship of a contingent life and a certain death, the history of security reads for Nietzsche as an abnegation, a resentment and, finally, a transcendence of this paradox. In brief, the history is one of individuals seeking an impossible security from the most radical "other" of life, the terror of death which, once generalized and nationalized, triggers a futile cycle of collective identities seeking security from alien others--who are seeking similarly impossible guarantees. It is a story of differences taking on the otherness of death, and identities calcifying into a fearful sameness.

#### The quest for survival destroys all human values-this outweights and turns extinction

Callahan 73, (Daniel Callahan, Co-founder and former director of The Hastings Institute, PhD in philosophy from Harvard University, “The Tyranny of Survival” 1973, p 91-93)

There seems to be no imaginable evil which some group is not willing to inflict on another for the sake of survival, no rights, liberties or dignities which it is not ready to suppress. It is easy, of course, to recognize the danger when survival is falsely and manipulatively invoked. Dictators never talk about their aggressions, but only about the need to defend the fatherland, to save it from destruction at the hands of its enemies. But my point goes deeper than that. It is directed even at a legitimate concern for survival, when that concern is allowed to reach an intensity which would ignore, suppress, or destroy other fundamental human rights and values. The potential tyranny of survival as a value is that it is capable, if not treated sanely, of wiping out all other values, Survival can become an obsession and a disease, provoking a destructive singlemindedness that will stop at nothing. We come here to the fundamental moral dilemma. If, both biologically and psychologically, the need for survival is basic to man, and if survival is the precondition for any and all human achievements, and if no other rights make much sense without the premise of a right to life- then how will it be possible to honor and act upon the need for survival, without in the process, destroying everything in human beings which makes them worthy of survival? To put it more strongly,if the price of survival is human degradation, then there is no moral reason why an effort should be made to ensure that survival. It would be the Pyrrhic victory to end all Pyrrhic victories Yet it would be the defeat of all defeats if, because human beings could not properly manage their need to survive, they succeeded in not doing so.

#### Reject the Aff’s security discourse – abandoning the attempt to eradicate insecurity is a prerequisite to meaningful political engagement.

Neocleous 8 [Mark, Professor of the Critique of Political Economy at Brunel University, Critique of Security, p. 185-186]

The only way out of such a dilemma, to escape the fetish, is perhaps to eschew the logic of security altogether – to reject it as so ideologically loaded in favour of the state that any real political thought other than the authoritarian and reactionary should be pressed to give it up. That is clearly something that can not be achieved within the limits of bourgeois thought and thus could never even begin to be imagined by the security intellectual. It is also something that the constant iteration of the refrain ‘this is an insecure world’ and reiteration of one fear, anxiety and insecurity after another will also make it hard to do. But it is something that the critique of security suggests we may have to consider if we want a political way out of the impasse of security.¶ This impasse exists because security has now become so all-encompassing that it marginalises all else, most notably the constructive conflicts, debates and discussions that animate political life. The constant prioritising of a mythical security as a political end – as the political end – constitutes a rejection of politics in any meaningful sense of the term. That is, as a mode of action in which differences can be articulated, in which the conflicts and struggles that arise from such differences can be fought for and negotiated, in which people might come to believe that another world is possible – that they might transform the world and in turn be transformed. Security politics simply removes this; worse, it removes it while purportedly addressing it. In so doing it suppresses all issues of power and turns political questions into debates about the most efficient way to achieve ‘security’, despite the fact that we are never quite told – never could be told – what might count as having achieved it. Security politics is, in this sense, an anti-politics,141 dominating political discourse in much the same manner as the security state tries to dominate human beings, reinforcing security fetishism and the monopolistic character of security on the political imagination. We therefore need to get beyond security politics, not add yet more ‘sectors’ to it in a way that simply expands the scope of the state and legitimises state intervention in yet more and more areas of our lives.¶ Simon Dalby reports a personal communication with Michael Williams, co-editor of the important text Critical Security Studies, in which the latter asks: if you take away security, what do you put in the hole that’s left behind? But I’m inclined to agree with Dalby: maybe there is no hole.142 The mistake has been to think that there is a hole and that this hole needs to be filled with a new vision or revision of security in which it is re-mapped or civilised or gendered or humanised or expanded or whatever. All of these ultimately remain within the statist political imaginary, and consequently end up re-affirming the state as the terrain of modern politics, the grounds of security. The real task is not to fill the supposed hole with yet another vision of security, but to fight for an alternative political language which takes us beyond the narrow horizon of bourgeois security and which therefore does not constantly throw us into the arms of the state. That’s the point of critical politics: to develop a new political language more adequate to the kind of society we want. Thus while much of what I have said here has been of a negative order, part of the tradition of critical theory is that the negative may be as significant as the positive in setting thought on new paths.¶ For if security really is the supreme concept of bourgeois society and the fundamental thematic of liberalism, then to keep harping on about insecurity and to keep demanding ‘more security’ (while meekly hoping that this increased security doesn’t damage our liberty) is to blind ourselves to the possibility of building real alternatives to the authoritarian tendencies in contemporary politics. To situate ourselves against security politics would allow us to circumvent the debilitating effect achieved through the constant securitising of social and political issues, debilitating in the sense that ‘security’ helps consolidate the power of the existing forms of social domination and justifies the short-circuiting of even the most democratic forms. It would also allow us to forge another kind of politics centred on a different conception of the good. We need a new way of thinking and talking about social being and politics that moves us beyond security. This would perhaps be emancipatory in the true sense of the word. What this might mean, precisely, must be open to debate. But it certainly requires recognising that security is an illusion that has forgotten it is an illusion; it requires recognising that security is not the same as solidarity; it requires accepting that insecurity is part of the human condition, and thus giving up the search for the certainty of security and instead learning to tolerate the uncertainties, ambiguities and ‘insecurities’ that come with being human; it requires accepting that ‘securitizing’ an issue does not mean dealing with it politically, but bracketing it out and handing it to the state; it requires us to be brave enough to return the gift.143

### Civilian Courts Fail—Laundry List

#### Congressional bans prevent detainee travel and jurisdictions refuse to accept detainees to be tried—also undermines the legal system

Mataconis 2011(Doug, Attorney, JD from George Mason University School of Law, April 4, "Obama Administration To Abandon Plans For Civilian Trials For 9/11 Plotters", http://www.outsidethebeltway.com/obama-administration-to-abandon-plans-for-civilian-trials-for-911-plotters/)

After a quixotic two year search for a proper venue and process for a civilian trial Khalid Sheikh Mohammed and the other 9/11 defendants being held in the military prison at Guantanamo Bay, [the Obama Administration has apparently abandoned those plans completely:](http://www.nytimes.com/2011/04/05/us/05gitmo.html)¶ In a major reversal, the Obama administration has decided to try Khalid Sheikh Mohammed for his role in the attacks of Sept. 11 before a military commission at Guantánamo Bay, Cuba, and not in a civilian courtroom.¶ Attorney General Eric H. Holder Jr. is expected to announce on Monday afternoon that Mr. Mohammed, the self-described mastermind of the attacks, and four other accused conspirators will face charges before a panel of military officers, a law enforcement official said. The Justice Department has scheduled a press conference for 2 p.m. Eastern time.¶ Mr. Holder, who had wanted to prosecute Mr. Mohammed before a regular civilian court in New York City, changed his mind after Congress imposed a series of restrictions barring the transfer of Guantánamo detainees into the United States, making such a trial impossible for now, the official said.¶ Mr. Mohammed and the accused conspirators were charged before a military commission at Guantánamo Bay late in the Bush administration, and had given signs that they were preparing to plead guilty. But their trial was cut short in January 2009 when President Obama, as one of his first moves after his inauguration, froze all tribunal proceedings at Guantánamo to start a review of the counterterrorism policies he inherited from former President George W. Bush.¶ The administration eventually decided to prosecute some terrorism suspects in civilian courts, but to keep using a revised form of tribunals for others. Mr. Obama placed Mr. Holder in charge of deciding where each detainee should be tried.¶ The reality of the situation is that there wasn’t a jurisdiction in the United States that wanted to be the home of what would arguably be the highest profile criminal trial in American history. That’s why Congress acted in the manner that it did, on a bipartisan basis. There had been some speculation that KSM and the others would be tried in a civilian trial held on a secure military base somewhere, but even that ran into the roadblock of local authorities who objected to being the locale for a trial that would potentially be a major target for terrorism. So, in the end, the Obama Administration really had no other choice but to reverse its previous decision.¶ In the end, though, it’s just as well that they did because it was clear from the beginning that a trial for Khalid Sheikh Mohammed and the other 9/11 suspects would have been a complete and total fraud and a perversion of justice. In a real trial, there is at least some possibility that, at the end, the Defendant could be found innocent and go free, but that was never a possibility for a civilian trial of KSM. Back in November 2009, Attorney General Holder made clear that [KSM and the others would never be set free regardless of what happened at trial.](http://campaignspot.nationalreview.com/post/?q=MDVlMjZkYmFkNDQ4ZmUxOThhZWQ3ZDBhMGY0Y2FjNTU=) Just a few months later, White House Press Secretary Robert Gibbs said that [the Administration expected that KSM would be executed after he was found guilty.](http://www.msnbc.msn.com/id/35168785/ns/us_news-security/) President Obama said much the same thing himself in [an MSNBC interview in November 2009.](http://www.msnbc.msn.com/id/34015727/ns/us_news-security/) In an ordinary criminal trial, statements like this from the nation’s chief executive and his assistants would be considered poisoning the jury pool, but they illustrate the basic fact that the Administration never intended to give KSM a real trial, [they just wanted a show trial:](http://corner.nationalreview.com/post/?q=NDgxN2IzM2E3Y2QzZDY4ODIxMjgxMTdjZjVjNThlNDA=)¶ Every day it appears more and more that the White House wants it both ways. They want to claim that this is a fair trial but also an act of venegeance. The terrorists will be treated as if they might be innocent — key to a fair trial — but at the end of the day they’ll get their comeuppance. If KSM & Co. get off on a technicality, don’t worry, they’ll still be locked up, but when they’re convicted the White House will claim it was always a fair process. They’ll get a fair trial from an impartial jury in New York, but it’s “fitting” and “poetic justice” that the jury will be drawn from the community that was viciously attacked on 9/11. Fair but vengeul, honest but foreordained, instructive to the world but really just about the law: The rhetoric from the White House and the Democrats isn’t persuasive to those who listen closely and certainly won’t be persuasive to foreigners Obama is determined to impress.¶ The point of all of this is to show that the rule of law is intact, but what the White House is doing is in fact undermining the legitimacy of the legal system by having it do something it shouldn’t. Obama, Pat Leahy, and the rest preen as if they are morally superior for preferring civilian courts, but what they are doing is undermining civilian courts, and it gets worse every time they open their mouths.¶ The military tribunal system is not without its own flaws, of course, and the same “show trial” element exists there to the extent that it is quite clear that KSM would not be found not guilty and would most definitely not be released if he was. In reality, what this demonstrates is the extent to which both Congress and the Bush Administration dropped the ball in the years after 9/11 in failing to adopt some kind of statutory framework governing the detention of these people. I don’t like the idea of indefinite detention without some judicial review. A President should not be permitted to label anyone, even a foreign national, a “terrorist” and lock them away forever without any review by a third party to determine whether or not they there is a legitimate reason to detain them. As much as I dislike indefinite detention, though, I like even less the idea of the justice system being used to “send a signal” when it’s clear that the outcome in Court will have absolutely no impact on whether or not someone continues to be detained. That’s not justice, it’s a Stalinist show trial.

### 2AC Gender K

Perm do both --- that solves

Saloom 6 (Rachel, JD Univ of Georgia School of Law and M.A. in Middle Eastern Studies from U of Chicago,  A Feminist Inquiry into International Law and International Relations, 12 Roger Williams U. L. Rev. 159, Fall 2006)

Tickner's last point that deserves further reflection is the notion that international law and international relations will not become free from gender bias as long as we live in a gendered world. This is not to say that small steps are ineffective, but rather that international law and international relations are merely a small part of the larger systemic problem of unequal gender relations. While it is desirable that more women occupy foreign and military policy making positions, this "desire" does not necessarily transform the way international law and international relations work. To allege that this is the case assumes that women have an essential character that can transform the system. This of course is contrary to the very arguments that most gender theorists forward, because it would mean that women have some unique "feminine" perspective. What is needed then is a release from the sole preoccupation on women and men. The state's masculinist nature that gender theorists critique affects everyone in society. Moving beyond the "add and stir" approach is quite difficult, but there must be a starting point from which gender theorists can work. 105 If everything is problematized, paralysis will inevitably occur. **Working within the current framework is truly the only option to bring about change.** Lofty abstract criticisms will do nothing to change the practices of international law and international relations. Pragmatic feminist criticisms of international law and international relations, however, should be further developed. Even advocates of realist thought will admit that realism is neither the most accurate nor the only way to view the world. 106 The changing dynamics of world politics make formulating new ways of understanding international relations quite pertinent. Keeping some semblance of realism in tact, while at the same time opening up space for theorizing about other possibilities, is necessary. Critics are quick to note that realism cannot be easily abandoned without some sort of alternative framework. Casting aside realism now, even given the concerns of gender scholars, is not the most promising option. Wayman and Diehl note that  [\*180]  "the abandonment of realism leaves a void, which in the short to medium term is at least as much of a dead end as would be the result of following realism." 107 **New possibilities can be envisioned while still adhering to some of the realist ideologies.** Wayman and Diehl describe realism as a detour and not a definitive road map. 108 Thus, theorists must admit that realism is not the only way or the correct way to view international law and international relations, but it cannot be totally abandoned. Even given all of the criticisms of feminist theories, there must be space, however, for feminist theorization. A pragmatic approach should not dismiss the benefits of theorizing. Discussions and debates on feminism and international law and relations are extremely important. Yet even where feminist discourses lack the social power to realize their versions of knowledge in institutional practices, they can offer the discursive space from which the individual can resist dominant subject positions... Resistance to the dominant at the level of the individual subject is the first stage in the production of alternative forms of knowledge, or, where such alternatives already exist, of winning individuals over to these discourses and gradually increasing their social power. 109 Therefore, feminist theorizing is a meaningful first step in the right direction to bring about change and sites of resistance. A pragmatic feminist approach would then take this theorizing to the next level to bring about real change.

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

Carrie Crenshaw PhD, Former President of CEDA Perspectives In Controversy: Selected Articles from Contemporary Argumentation and Debate 2002 p. 119-126

Feminism is not dead. It is alive and well in intercollegiate debate. Increasingly, students rely on feminist authors to inform their analysis of resolutions. While I applaud these initial efforts to explore feminist thought, I am concerned that such arguments only exemplify the general absence of sound causal reasoning in debate rounds. Poor causal reasoning results from a debate practice that privileges empirical proof over rhetorical proof, fostering ignorance of the subject matter being debated. To illustrate my point, I claim that debate arguments about feminists suffer from a reductionism that tends to marginalize the voices of significant feminist authors. David Zarefsky made a persuasive case for the value of causal reasoning in intercollegiate debate as far back as 1979. He argued that causal arguments are desirable for four reasons. First, causal analysis increases the control of the arguer over events by promoting understanding of them. Second, the use of causal reasoning increases rigor of analysis and fairness in the decision-making process. Third, causal arguments promote understanding of the philosophical paradox that presumably good people tolerate the existence of evil. Finally, causal reasoning supplies good reasons for “commitments to policy choices or to systems of belief which transcend whim, caprice, or the non-reflexive “claims of immediacy” (117-9). Rhetorical proof plays an important role in the analysis of causal relationships. This is true despite the common assumption that the identification of cause and effect relies solely upon empirical investigation. For Zarefsky, there are three types of causal reasoning. The first type of causal reasoning describes the application of a covering law to account for physical or material conditions that cause a resulting event This type of causal reasoning requires empirical proof prominent in scientific investigation. A second type of causal reasoning requires the assignment of responsibility. Responsible human beings as agents cause certain events to happen; that is, causation resides in human beings (107-08). A third type of causal claim explains the existence of a causal relationship. It functions “to provide reasons to justify a belief that a causal connection exists” (108). The second and third types of causal arguments rely on rhetorical proof, the provision of “good reasons” to substantiate arguments about human responsibility or explanations for the existence of a causal relationship (108). I contend that the practice of intercollegiate debate privileges the first type of causal analysis. It reduces questions of human motivation and explanation to a level of empiricism appropriate only for causal questions concerning physical or material conditions. Arguments about feminism clearly illustrate this phenomenon. Substantive debates about feminism usually take one of two forms. First, on the affirmative, debaters argue that some aspect of the resolution is a manifestation of patriarchy. For example, given the spring 1992 resolution, “[rjesolved: That advertising degrades the quality of life," many affirmatives argued that the portrayal of women as beautiful objects for men's consumption is a manifestation of patriarchy that results in tangible harms to women such as rising rates of eating disorders. The fall 1992 topic, "(resolved: That the welfare system exacerbates the problems of the urban poor in the United States," also had its share of patri- archy cases. Affirmatives typically argued that women's dependence upon a patriarchal welfare system results in increasing rates of women's poverty. In addition to these concrete harms to individual women, most affirmatives on both topics, desiring "big impacts," argued that the effects of patriarchy include nightmarish totalitarianism and/or nuclear annihilation. On the negative, many debaters countered with arguments that the some aspect of the resolution in some way sustains or energizes the feminist movement in resistance to patriarchal harms. For example, some negatives argued that sexist advertising provides an impetus for the reinvigoration of the feminist movement and/or feminist consciousness, ultimately solving the threat of patriarchal nuclear annihilation. likewise, debaters negating the welfare topic argued that the state of the welfare system is the key issue around which the feminist movement is mobilizing or that the consequence of the welfare system - breakup of the patriarchal nuclear family -undermines patriarchy as a whole. Such arguments seem to have two assumptions in common. First, there is a single feminism. As a result, feminists are transformed into feminism. Debaters speak of feminism as a single, monolithic, theoretical and pragmatic entity and feminists as women with identical motivations, methods, and goals. Second, these arguments assume that patriarchy is the single or root cause of all forms of oppression. Patriarchy not only is responsible for sexism and the consequent oppression of women, it also is the cause of totalitarianism, environmental degradation, nuclear war, racism, and capitalist exploitation. These reductionist arguments reflect an unwillingness to debate about the complexities of human motivation and explanation. They betray a reliance upon a framework of proof that can explain only material conditions and physical realities through empirical quantification. The transformation of feminists 'Mo feminism and the identification of patriarchy as the sole cause of all oppression is related in part to the current form of intercollegiate debate practice. By "form," I refer to Kenneth Burke's notion of form, defined as the "creation of appetite in the mind of the auditor, and the adequate satisfying of that appetite" (Counter-Statement 31). Though the framework for this understanding of form is found in literary and artistic criticism, it is appropriate in this context; as Burke notes, literature can be "equipment for living" (Biilosophy 293). He also suggests that form "is an arousing and fulfillment of desires. A work has form in so far as one part of it leads a reader to anticipate another part, to be gratified by the sequence" (Counter-Statement 124). Burke observes that there are several aspects to the concept of form. One of these aspects, conventional form, involves to some degree the appeal of form as form. Progressive, repetitive, and minor forms, may be effective even though the reader has no awareness of their formality. But when a form appeals as form, we designate it as conventional form. Any form can become conventional, and be sought for itself - whether it be as complex as the Greek tragedy or as compact as the sonnet (Counter-Statement 126). These concepts help to explain debaters' continuing reluctance to employ rhetorical proof in arguments about causality. Debaters practice the convention of poor causal reasoning as a result of judges' unexamined reliance upon conventional form. Convention is the practice of arguing single-cause links to monolithic impacts that arises out of custom or usage. Conventional form is the expectation of judges that an argument will take this form. Common practice or convention dictates that a case or disadvantage with nefarious impacts causally related to a single link will "outweigh" opposing claims in the mind of the judge. In this sense, debate arguments themselves are conventional. Debaters practice the convention of establishing single-cause relationships to large monolithic impacts in order to conform to audience expectation. Debaters practice poor causal reasoning because they are rewarded for it by judges. The convention of arguing single-cause links leads the judge to anticipate the certainty of the impact and to be gratified by the sequence. I suspect that the sequence is gratifying for judges because it relieves us from the responsibility and difficulties of evaluating rhetorical proofs. We are caught between our responsibility to evaluate rhetorical proofs and our reluctance to succumb to complete relativism and subjectivity. To take responsibility for evaluating rhetorical proof is to admit that not every question has an empirical answer. However, when we abandon our responsibility to rhetorical proofs, we sacrifice our students' understanding of causal reasoning. The sacrifice has consequences for our students' knowledge of the subject matter they are debating. For example, when feminism is defined as a single entity, not as a pluralized movement or theory, that single entity results in the identification of patriarchy as the sole cause of oppression. The result is ignorance of the subject position of the particular feminist author, for highlighting his or her subject position might draw attention to the incompleteness of the causal relationship between link and impact Consequently, debaters do not challenge the basic assumptions of such argumentation and ignorance of feminists is perpetuated. Feminists are not feminism. The topics of feminist inquiry are many and varied, as are the philosophical approaches to the study of these topics. Different authors have attempted categorization of various feminists in distinctive ways. For example, Alison Jaggar argues that feminists can be divided into four categories: liberal feminism, marxist feminism, radical feminism, and socialist feminism. While each of these feminists may share a common commitment to the improvement of women's situations, they differ from each other in very important ways and reflect divergent philosophical assumptions that make them each unique. Linda Alcoff presents an entirely different categorization of feminist theory based upon distinct understandings of the concept "woman," including cultural feminism and post-structural feminism. Karen Offen utilizes a comparative historical approach to examine two distinct modes of historical argumentation or discourse that have been used by women and their male allies on behalf of women's emancipation from male control in Western societies. These include relational feminism and individualist feminism. Elaine Marks and Isabelle de Courtivron describe a whole category of French feminists that contain many distinct versions of the feminist project by French authors. Women of color and third-world feminists have argued that even these broad categorizations of the various feminism have neglected the contributions of non-white, non-Western feminists (see, for example, hooks; Hull; Joseph and Lewis; Lorde; Moraga; Omolade; and Smith). In this literature, the very definition of feminism is contested. Some feminists argue that "all feminists are united by a commitment to improving the situation of women" (Jaggar and Rothenberg xii), while others have resisted the notion of a single definition of feminism, bell hooks observes, "a central problem within feminist discourse has been our inability to either arrive at a consensus of opinion about what feminism is (or accept definitions) that could serve as points of unification" (Feminist Theory 17). The controversy over the very definition of feminism has political implications. The power to define is the power both to include and exclude people and ideas in and from that feminism. As a result, [bjourgeois white women interested in women's rights issues have been satisfied with simple definitions for obvious reasons. Rhetorically placing themselves in the same social category as oppressed women, they were not anxious to call attention to race and class privilege (hooks. Feminist Wieory 18). Debate arguments that assume a singular conception of feminism include and empower the voices of race- and class-privileged women while excluding and silencing the voices of feminists marginalized by race and class status. This position becomes clearer when we examine the second assumption of arguments about feminism in intercollegiate debate - patriarchy is the sole cause of oppression. Important feminist thought has resisted this assumption for good reason. Designating patriarchy as the sole cause of oppression allows the subjugation of resistance to other forms of oppression like racism and classism to the struggle against sexism. Such subjugation has the effect of denigrating the legitimacy of resistance to racism and classism as struggles of equal importance. "Within feminist movement in the West, this led to the assumption that resisting patriarchal domination is a more legitimate feminist action than resisting racism and other forms of domination" (hooks. Talking Back 19). The relegation of struggles against racism and class exploitation to offspring status is not the only implication of the "sole cause" argument In addition, identifying patriarchy as the single source of oppression obscures women's perpetration of other forms of subjugation and domination, bell hooks argues that we should not obscure the reality that women can and do partici- pate in politics of domination, as perpetrators as well as victims - that we dominate, that we are dominated. If focus on patriarchal domination masks this reality or becomes the means by which women deflect attention from the real conditions and circumstances of our lives, then women cooperate in suppressing and promoting false consciousness, inhibiting our capacity to assume responsibility for transforming ourselves and society (hooks. Talking Back 20). Characterizing patriarchy as the sole cause of oppression allows mainstream feminists to abdicate responsibility for the exercise of class and race privilege. It casts the struggle against class exploitation and racism as secondary concerns. Current debate practice promotes ignorance of these issues because debaters appeal to conventional form, the expectation of judges that they will isolate a single link to a large impact Feminists become feminism and patriarchy becomes the sole cause of all evil. Poor causal arguments arouse and fulfill the expectation of judges by allowing us to surrender our responsibility to evaluate rhetorical proof for complex causal relationships. The result is either the mar-ginalization or colonization of certain feminist voices. Arguing feminism in debate rounds risks trivializing feminists. Privileging the act of speaking about feminism over the content of speech "often turns the voices and beings of non-white women into commodity, spectacle" (hooks, Talking Back 14). Teaching sophisticated causal reasoning enables our students to learn more concerning the subject matter about which they argue. In this case, students would learn more about the multiplicity of feminists instead of reproducing the marginalization of many feminist voices in the debate itself. The content of the speech of feminists must be investigated to subvert the colonization of exploited women. To do so, we must explore alternatives to the formal expectation of single-cause links to enormous impacts for appropriation of the marginal voice threatens the very core of self-determination and free self-expression for exploited and oppressed peoples. If the identified audience, those spoken to, is determined solely by ruling groups who control production and distribution, then it is easy for the marginal voice striving for a hearing to allow what is said to be overdetermined by the needs of that majority group who appears to be listening, to be tuned in (hooks, Talking Back 14). At this point, arguments about feminism in intercollegiate debate seem to be overdetermined by the expectation of common practice, the "game" that we play in assuming there is such a thing as a direct and sole causal link to a monolithic impact To play that game, we have gone along with the idea that there is a single feminism and the idea that patriarchal impacts can account for all oppression. In making this critique, I am by no means discounting the importance of arguments about feminism in intercollegiate debate. In fact, feminists contain the possibility of a transformational politic for two reasons. First, feminist concerns affect each individual intimately. We are most likely to encounter patriarchal domination "in an ongoing way in everyday life. Unlike other forms of domination, sexism directly shapes and determines relations of power in our private lives, in familiar social spaces..." (hooks. Talking Back 21). Second, the methodology of feminism, consciousness-raising, contains within it the possibility of real societal transformation. "lE]ducation for critical consciousness can be extended to include politicization of the self that focuses on creating understanding the ways sex, race, and class together determine our individual lot and our collective experience” (hooks, Talking Back 24). Observing the incongruity between advocacy of single-cause relationships and feminism does not discount the importance of feminists to individual or societal consciousness raising.

#### Not the root cause of war and violence – their single issue focus create epistemological blind spots that prevent solving the worst forms of violence

Brian Martin, Professor of Science, Technology and Society at the University of Wollongong, 1990 (http://www.uow.edu.au/arts/sts/bmartin/pubs/90uw/uw13.html)

In this chapter and in the six preceding chapters I have examined a number of structures and factors which have some connection with the war system. There is much more that could be said about any one of these structures, and other factors which could be examined. Here I wish to note one important point: attention should not be focussed on one single factor to the exclusion of others. This is often done for example by some Marxists who look only at capitalism as a root of war and other social problems, and by some feminists who attribute most problems to patriarchy. The danger of monocausal explanations is that they may lead to an inadequate political practice. The 'revolution' may be followed by the persistence or even expansion of many problems which were not addressed by the single-factor perspective. The one connecting feature which I perceive in the structures underlying war is an unequal distribution of power. This unequal distribution is socially organised in many different ways, such as in the large-scale structures for state administration, in capitalist ownership, in male domination within families and elsewhere, in control over knowledge by experts, and in the use of force by the military. Furthermore, these different systems of power are interconnected. They often support each other, and sometimes conflict. This means that the struggle against war can and must be undertaken at many different levels. It ranges from struggles to undermine state power to struggles to undermine racism, sexism and other forms of domination at the level of the individual and the local community. Furthermore, the different struggles need to be linked together. That is the motivation for analysing the roots of war and developing strategies for grassroots movements to uproot them.

#### Its also inevitable-Biology

Stephen Goldberg (former president of the sociology department at City College of New York) No Date “The Inevitability of Patriarchy” http://lilt.ilstu.edu/gmklass/foi/readings/patriarchygoldberg.htm

The thesis put forth here is that the hormonal renders the social inevitable. Because of hormonal differences between males and females, it is inevitable that males will be socialized to aspire to the roles that have highest status in a society. Our biology makes the social arrangement known as patriarchy --the rule of males --inevitable. It is true (as the feminists never tire of pointing out) that what are considered masculine roles in one society may be considered feminine roles in another society. Of far greater importance, however, is the fact that in every known society the masculine roles are rewarded with higher status than the feminine roles. The role of healer might be a masculine role in a society such as ours, and a feminine role in some other culture; but in any society that accords this role high status, the expectation will be that it will be filled principally be men. The reason for this is simply that men are by nature more aggressive than women, and social arrangements have been designed to accommodate this fact. It is known that the male fetus is exposed to higher levels of testosterone during brain development than is the female fetus. This likely results in a male brain that is more sensitive to this hormone. This would explain why preadolescent boys are more aggressive than girls, even though before puberty their androgen levels are roughly equivalent. At puberty, of course, male testosterone levels rise sharply, so that the average male is exposed to more of the hormone than is the average female. The result is that adult males are on average more aggressive than females. Aggressiveness is always advantageous to those competing against others for scarce resources. In competition for high-status roles, the more aggressive individual is more likely to win out over his equally talented but less aggressive competitors. Thus whatever roles a given society deems especially valuable, as long as there are more qualified applicants for those roles than are necessary to fill that society's needs, those who hold the roles will be among the more aggressive members of the society. And since males are more aggressive than females, the high-status roles in any society will inevitably be filled primarily by men.

## A2 Giroux

### Giroux’s solution is a non sequitur – institutional realities prevent application of their framework.

Linda M. McNeil, On the Possibility of Teachers as the Source of an Emancipatory Pedagogy: A Response to Henry Giroux, 1981

In "Critical Theory and Rationality in Citizenship Education," Henry Giroux (1980) undermines his arguments for an emancipatory citizenship education by begging several fundamental questions. The first is the notion of a "better society." He asserts that a citizenship education is needed which will give students "civic courage" to learn about social inequalities of wealth and power and to act collectively to resist and overturn these inequalities. He interchanges the terms "better society" and "democratic society," elaborating neither. The obvious danger is that such slogans, while affiliative across a broad sector of the population, do not imply the same social processes, nor the same resulting society, for all individuals and groups. Even the presumption of a greater sharing of power is not specific enough to avoid the danger of trying to build emancipatory possibilities upon a false consensus. This vagueness is compounded by the second begged question, the source of teachers' awareness of and willingness to challenge social inequalities in their classroom relationships and in the realities students need to confront in the larger society. The first question (what constitutes a better, more demo- graphic society?) could perhaps await grass roots consensus-that is, whatever "the people" decide-except that the processes needed to arrive at this better society are seen by Giroux as beginning with teachers. The first half of his article convincingly portrays teachers as a part of the overall institution of schooling, which appropriates the rationale of positivism and thereby embod- ies and reproduces basic societal inequalities. Then, in his model of emancipatory citizenship education, he posits a model which begins with teachers: ". . .conflicts and contradictions must be studied and analyzed by teachers as issues to be problematized and used as points for classroom discussion and vehicles for connecting classroom practices to larger political issues" [p. 357]; "teachers must attempt to understand the meaning of the contradictions, dysfunctions, and tensions that exist in both schools and the larger social order.. ." [p. 355]; "a critical pedagogy must draw upon the cultural capital that students bring to the classroom" [p. 359]; and so on. Several points are unclear: by what means does he envision "emancipating" teachers from their present participation in technocratic schooling (i.e., content based on false conservative consensus; procedures which treat groups of students differentially; measurement which atomizes content into positivis- tic, behavioral, depoliticized modes; among other attributes he has elaborated in earlier sections of the paper)? Are present teachers to come to new aware- nesses on their own? If so, would this be individually or collectively? If not, are they to gain new insights from outside experts like Professor Giroux? Or from political action arising quite apart from schooling in the larger community? Are emancipatory colleges of education to train a new generation of more politically sophisticated teachers to replace the current technocratic ones? (If so, with declining enrollments, where will they find teaching jobs?) The error of assuming teachers can unilaterally become enlightened and filled with the will to resist is repeated here from an earlier Giroux piece (1979), so there is no mistaking his meaning nor his fallacy of seeing teachers as simultaneously embodying technocratic praxis and emancipatory reflectiveness. These questions are central. They are not offered in sarcasm, but in skepticism and out of years of experience with high schools. My own data, drawn from two case studies on students' access to economics information in high school social studies classes (McNeil 1977 and forthcoming), indicate several critical vulnerabilities in present consensus social studies teaching: utter skepticism on the part of the majority of students toward all school- supplied information, and teachers' personal distance from "official knowledge" they present in their classes. The same studies, however, reveal that this "official knowledge" derives less from packaged materials or required curriculum guides than from teachers' attempts to negotiate survival within their institutions. Teachers are called on to make tradeoffs between order and learning, between goals of schooling and education. Schooling involves keeping the institution functioning, keeping order. Order, for both internal discipline and orderly standardization of credentials to market externally, overwhelms the educative function in most public high schools I have observed. Since most teachers maintain at least some allegiance to the educative function of schools [despite Meyer and Rowan's (1978) analysis to the con- trary], the accommodations teachers make to goals of order within their administrative context shape classroom interaction. These accommodations also shape teachers' willingness to make information resources accessible or inaccessible to students. Within technocratic school systems, the decision to open student access to ideas and resources most often seems to rest on the extent of the teachers' willingness to assume risks. These risks include a loss of consensus of content, which can lead to a questioning of the teacher's author- ity as a source of information and a threat to classroom efficiency. Both authority and efficiency are, in the words of many teachers interviewed, keys to their own institutional survival in the absence of administrative support for the educative purposes of schools. So to put at risk their authority or efficiencies in the absence of accompanying "emancipatory" changes at the administrative level is not a decision to be made lightly. It depends greatly on teacher energies and internal resources as well as on personal or collective political ideology. To explicate a model of technocratic rationality pervasive in schools, then isolate teachers as being able to step out of this rationality and challenge it, as Henry Giroux has done, is to take far too great a leap. It implies that persuasion or reasonableness is all that is needed to make teachers change. It ignores the extent to which much teacher practice is an accommodation to institutional realities, including those realities which embody the very socie- tal inequalities teachers are supposed to enable their students to question. It does not deal with teachers' expressed lowered expectations of themselves, of their students, and of their ability to affect students' learning, feelings which I encounter in every teacher interview. Perhaps Henry Giroux has a mental picture of the way in which teachers are to come to their new analytical perspective on school and societal hegemonies. But this link is not articulated in his article and as a result reduces it to the kind of simplistic relativism he is criticizing. The central weakness, then, in Giroux's argument, is that it is built on a nonsequitur. The early sections of the

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#### Civilian trials require disclosure of information to defendants- that tips off terrorist networks

Mukasy 2009 [Michael B. Mukasy attorney general of the United States from 2007 to 2009, October 19, 2009 Wall Street Journal “Civilian Courts Are No Place to Try Terrorists” http://online.wsj.com/article/SB10001424052748704107204574475300052267212.html]

Moreover, the rules for conducting criminal trials in federal courts have been fashioned to prosecute conventional crimes by conventional criminals. Defendants are granted access to information relating to their case that might be useful in meeting the charges and shaping a defense, without regard to the wider impact such information might have. That can provide a cornucopia of valuable information to terrorists, both those in custody and those at large.¶ Thus, in the multidefendant terrorism prosecution of Sheik Omar Abdel Rahman and others that I presided over in 1995 in federal district court in Manhattan, the government was required to disclose, as it is routinely in conspiracy cases, the identity of all known co-conspirators, regardless of whether they are charged as defendants. One of those co-conspirators, relatively obscure in 1995, was Osama bin Laden. It was later learned that soon after the government's disclosure the list of unindicted co-conspirators had made its way to bin Laden in Khartoum, Sudan, where he then resided. He was able to learn not only that the government was aware of him, but also who else the government was aware of.

#### Causes disclosure of sources of intel

Mukasy 2009 [Michael B. Mukasy attorney general of the United States from 2007 to 2009, October 19, 2009 Wall Street Journal “Civilian Courts Are No Place to Try Terrorists” http://online.wsj.com/article/SB10001424052748704107204574475300052267212.html]

Moreover, it appears likely that certain charges could not be presented in a civilian court because the proof that would have to be offered could, if publicly disclosed, compromise sources and methods of intelligence gathering. The military commissions regimen established for use at Guantanamo was designed with such considerations in mind. It provided a way of handling classified information so as to make it available to a defendant's counsel while preserving confidentiality. The courtroom facility at Guantanamo was constructed, at a cost of millions of dollars, specifically to accommodate the handling of classified information and the heightened security needs of a trial of such defendants.

### Yes Terrorism – AT: Delivery

#### Delivery

Graham Allison, Professor of Government and Former Director of the Belfer Center, Harvard University, and Andrei Kokoshin, Member of the Russian Academy of Natural Sciences and Member of the Board of Directors, NTI, Fall 2002 (“The New Containment” – the National Interest) p. lexis

As Robert Walpole, a National Intelligence Officer, told a Senate subcommittee in March, "**Nonmissile delivery means are less costly, easier to acquire, and more reliable and accurate**." Despite this assessment, the U.S. government continues to invest much more heavily in developing and deploying missile defenses than in addressing more likely trajectories by which weapons could arrive. Terrorists would not find it very difficult to sneak a nuclear device or nuclear fissile material into the United States via shipping containers, trucks, ships or aircraft. Recall that the nuclear material required is smaller than a football. Even an assembled device, like a suitcase nuclear weapon, could be shipped in a container, in the hull of a ship or in a trunk carried by an aircraft. After this past September 11, the number of containers that are x-rayed has increased, to about 500 of the 5,000 containers currently arriving daily at the port of New York/New Jersey-approximately 10 percent. But as the chief executive of CSX Lines, one of the foremost container-shipping companies, put it: "If you can **smuggle heroin** in containers, you may be able to smuggle in a nuclear bomb."

### Yes Terrorism – AT: No Means

#### Expanding resources and safe havens

Cartwright 2013 [General (ret) James E. Cartwright¶ my testimony will be based on my 40 years of military experience and work I am currently supporting with various universities, think tanks and studies Testimony to the Senate Judiciary Subcommittee on the ¶ Constitution, Civil Rights, and Human Rights¶ 24 March 2013 “CONSTITUTIONAL AND COUNTER TERRORISM IMPLICATIONS OF TARGETED KILLING” http://www.judiciary.senate.gov/pdf/04-23-13CartwrightTestimony.pdf]

In today’s world we are dealing with individuals and groups that have the potential to ¶ exercise lethal operations, which in the past were only available to nation states. These ¶ terrorist groups have access through our networked environment to intellectual capital, ¶ resources and communication venues enabling them to cause great harm. They find ¶ sanctuary in sympathetic populations, ungoverned spaces, and have the potential to move ¶ quietly, often undetected, across the globe. Our ability to discover, disrupt, and deny ¶ their operations has improved as nations cooperate, exchange information and develop ¶ technologies to deny them of the resources, mobility and target access. Yet they adapt ¶ and persist with no current predictions, I am aware of, that see this threat diminishing any ¶ time soon. Today’s hearing focuses on one of our counter terrorism tactics and the ¶ technology that supports it, targeted killing and the use of armed drones.

#### Financial resources

Hashmi 2012 (Muhammad Jawad Hashmi, defense analyst, M.Phil in Defence and Strategic Studies, January 29, 2012, “Al Qaeda In Pursuit Of Nuclear Weapons/Radiological Material – Analysis,” Eurasia Review, http://www.eurasiareview.com/29012012-al-qaeda-in-pursuit-of-nuclear-weaponsradiological-material-analysis/)

The pursuit of nuclear weapons and material by sub national groups has been an alarming challenge to deal with. This article will examine groups like al Qaeda that are said to have the ability and motivation to pursue nuclear capabilities. This study simultaneously provides an insight into the issues related to the demand for these weapons capabilities and their supply.¶ According to Daniel Metraux, on the demand side of the nuclear market there are small national groups working with political or religious belief structures that may be stirred to pursue massive devastation. Some of these groups have large financial and organizational resources, together with the physical assets. Some of these groups also enjoy sanctuary either in a lawless grey zone or as guests of the local rulers where they can pursue their plans. On the other hand, in Japan, extensive legal protections for religious organizations operate in a very permissive environment without much state interference.

#### Means

Matthew Bunn, Associate Professor of Public Policy at the Belfer Center for Science and International Affairs at the John F. Kennedy School of Government, November 2008, Securing the Bomb 2008, p. v

Terrorists are still seeking nuclear weapons— and al-Qaeda is reconstituting its ability to plan and conduct complex operations in the mountains of Pakistan. If a technically sophisticated terrorist group could get the needed nuclear materials, it might well be able to make at least a crude nuclear bomb—capable of turning the heart of a modern city into smoldering ruins. The horror of a terrorist nuclear attack, should it ever occur, would transform America and the world—and not for the better. But **despite substantial progress** in improving nuclear security, some stockpiles of potential bomb material remain **dangerously insecure**. In Russia, there have been major improvements in nuclear security—the difference between the security in place at many nuclear sites today and the security in place in 1994 is like night and day. But Russia has the **world’s largest stockpiles** of nuclear weapons and materials, located in the world’s largest number of buildings and bunkers; some serious security weaknesses still remain, ranging from poorly trained, sometimes suicidal guards to **serious under-funding** of nuclear security; and the upgraded security systems must face huge threats, from insider theft conspiracies to terrorist groups who have shown an ability to strike in force, without warning or mercy. In Pakistan, a relatively small nuclear stockpile, believed to be heavily guarded, faces **even more severe threats**, both from nuclear insiders with violent Islamic extremist sympathies and from outsider attack, potentially by scores or hundreds of al-Qaeda fighters. Some 130 nuclear research reactors around the world still use highly enriched uranium (HEU) as their fuel, and many of these have only the **most modest security measures** in place—in some cases, no more than a night watchman and a chain-link fence. The break-in by armed attackers at the Pelindaba site in South Africa in November 2007—a site with hundreds of kilograms of weapon-grade uranium—is a reminder that nuclear security is a **global problem**, not just a problem in the former Soviet Union. And incidents such as the inadvertent flight of six nuclear warheads to Barksdale Air Force Base make it clear that nuclear security requires **constant vigilance**, and that every country where these stockpiles exist, including the United States, has more to do to ensure that they are effectively secured.

### Yes Terrorism – AT: No Motive

#### Motivation still exists

Lawlor 2011 (Major General Bruce Lawlor, served on the White House’s Homeland Security Council and was the first chief of staff for the Department of Homeland Security and currently director with Virginia Tech's Simulation and Decision Informatics Laboratory, December 15, 2011, “The Black Sea: Center of the nuclear black market,” Bulletin of the Atomic Scientists, http://thebulletin.org/web-edition/features/the-black-sea-center-of-the-nuclear-black-market)

Harvard's Project on Managing the Atom has published a comprehensive report on this threat, combining several well-known facts to create an unsettling picture. First, several terrorist groups, particularly Al Qaeda, have been trying to get their hands on a nuclear weapon for years. Osama bin Laden referred to it as a "religious duty" and embraced the idea of an American Hiroshima. Al Qaeda operatives have consulted with nuclear experts, tested conventional explosives for use in nuclear bombs, and attempted to purchase working nuclear devices. There is nothing to suggest that bin Laden's death has ended this quest. Second, the Harvard study notes that if a sophisticated terrorist group acquired sufficient weapon-grade material, it would be able to build at least a crude, gun-type atomic bomb (WMD Commission, 2005). A nuclear device of this type wouldn't be transported to the target by a sophisticated delivery system; its more likely delivery mode would be a rental truck. Third, although terrorist groups may not be able to manufacture the plutonium or weapon-grade uranium to make a crude bomb, it is not beyond their ability to buy or steal it. And fourth, nuclear smuggling is very difficult to combat. Globalization, huge profit margins, and organized crime have created a multibillion-dollar illicit-trafficking market that is producing ever more sophisticated methods of keeping contraband from being discovered. Nuclear contraband has become a part of that illicit market.

#### Terrorists will go nuclear- religious motivations

Matthew Bunn, Belfer Center for Science and International Affairs, Harvard University, October 2003, Controlling Nuclear Warheads and Materials: A Report Card and Action Plan, www.nti.org/e\_research/cnwm/cnwm\_chapter2.pdf

By word and deed, Osama bin Laden and his al Qaeda terrorist network have made it clear that they are seeking nuclear weapons to use against the United States and its allies.2 Bin Laden has called the acquisition of weapons of mass destruction (WMD) a “religious duty.”3 Intercepted al Qaeda communications reportedly have referred to inflicting a “Hiroshima” on the United States.4 Al Qaeda operatives have made repeated attempts to buy stolen nuclear material from which to make a nuclear bomb. They have tried to recruit nuclear weapon scientists to help them. The extensive downloaded materials on nuclear weapons (and crude bomb design drawings) found in al Qaeda camps in Afghanistan make clear the group’s continuing desire for a nuclear capability. 5 Detailed analysis of al Qaeda’s efforts suggests that, had they not been deprived of their Afghanistan sanctuary, their quest f

# K:

1. No net benefit to the permutation – The affirmatives case is just another link – all of our links are only reasons why the perm fails
2. No solvency – the permutation does not change the ontology of the affirmative – if we win our ontology args, we win the debate.
3. Links to the K – all of our specific links are reasons why the permutation is unable to overcome its ontology and representations.
4. Can’t solve the K –Cheeseman explains the necessity of rejection – the plans foot prints the alternative in its quest at securitization – only a prior and complete rejection can avoid co-option and solve.
5. The permutation is severance –severs the ontology and its reps – voter for fairness and education because it lack in depth debate.
6. The permutation is more of a FW argument – if we win the framework debate then we win the permutation – it is not in your decision calc

### A2 Perm do Both

#### The permutation fails—the affirmative’s 1AC poisons the possibility of an alternative imaginary

Burke 2007 (Senior lecturer in Intl Politics @ University of Wales, p. 13-14 Anthony, “What Security Makes Possible: Some Thoughts on Critical Security Studies)

Waever's claim here sets up a strange tension with his argument that security is a 'speech act' that 'does not refer to something more real; the utterance is the act. '41 In turn he argues, after Jeff Huysmans, that successful securitisation only occurs when an audience accepts it as such.42 In this formulation, security's meaning is contingent, contested and subject to the play of power: 'something is a security problem when elites declare it to be SO'.43 And, in a somewhat Foucauldian vein, he argues that 'the way to study securitisation is to study discourse and political constellations. The relevant question is: When does an argument with this pat1iclliar rhetorical and semiotic structure achieve a sufficient effect'744 This contradiction may explain Booth's characterisation of the Copenhagen School as 'a curious combination of liberal, post-structural and neorealist approaches' which 'pile(s] up ... a bundle of conceptual problems and political issues' .45 My own hunch is that Wrever and his colleagues baulk at the implications of their de-ontologising move: rather than pursuing its implications and h)'ing to direct that into the service of a normatively better (if still discursively situated) understanding of security, they offer a choice of whether to securitise some issues, but, once that occurs, anchor the process in a deeply essentialist and problematic Schmittian matrix where security is about existential threat, abnormal politics, elite decision, and legal and nonnative rule-breaking. The nation-state remains the ultimate referent and ontological ground for security, even if there is a caution about the dangers involved in securitising some issues.46

#### Alt is mutually exclusive – any advocacy that endorses security logic undermines the alt

Mark Neocleous 2008 (Professor of the Critique of Political Economy; Head of Department of Politics & History Brunel Univ Critique of Security, 185-6]

The only way out of such a dilemma, to escape the fetish, is perhaps to eschew the logic of security altogether - to reject it as so ideologically loaded in favour of the state that any real political thought other than the authoritarian and reactionary should be pressed to give it up. That is clearly something that can not be achieved within the limits of bourgeois thought and thus could never even begin to be imagined by the security intellectual. It is also something that the constant iteration of the refrain 'this is an insecure world' and reiteration of one fear, anxiety and insecurity after another will also make it hard to do. But it is something that the critique of security suggests we may have to consider if we want a political way out of the impasse of security. This impasse exists because security has now become so all-encompassing that it marginalises all else, most notably the constructive conflicts, debates and discussions that animate political life. The constant prioritising of a mythical security as a political end - as the political end constitutes a rejection of politics in any meaningful sense of the term. That is, as a mode of action in which differences can be articulated, in which the conflicts and struggles that arise from such differences can be fought for and negotiated, in which people might come to believe that another world is possible - that they might transform the world and in turn be transformed. Security politics simply removes this; worse, it remoeves it while purportedly addressing it. In so doing it suppresses all issues of power and turns political questions into debates about the most efficient way to achieve 'security', despite the fact that we are never quite told - never could be told - what might count as having achieved it. Security politics is, in this sense, an anti-politics,"' dominating political discourse in much the same manner as the security state tries to dominate human beings, reinforcing security fetishism and the monopolistic character of security on the political imagination. We therefore need to get beyond security politics, not add yet more 'sectors' to it in a way that simply expands the scope of the state and legitimises state intervention in yet more and more areas of our lives. Simon Dalby reports a personal communication with Michael Williams, co-editor of the important text Critical Security Studies, in which the latter asks: if you take away security, what do you put in the hole that's left behind? But I'm inclined to agree with Dalby: maybe there is no hole."' The mistake has been to think that there is a hole and that this hole needs to be filled with a new vision or revision of security in which it is re-mapped or civilised or gendered or humanised or expanded or whatever. All of these ultimately remain within the statist political imaginary, and consequently end up reaffirming the state as the terrain of modern politics, the grounds of security. The real task is not to fill the supposed hole with yet another vision of security, but to fight for an alternative political language which takes us beyond the narrow horizon of bourgeois security and which therefore does not constantly throw us into the arms of the state. That's the point of critical politics: to develop a new political language more adequate to the kind of society we want. Thus while much of what I have said here has been of a negative order, part of the tradition of critical theory is that the negative may be as significant as the positive in setting thought on new paths. For if security really is the supreme concept of bourgeois society and the fundamental thematic of liberalism, then to keep harping on about insecurity and to keep demanding 'more security' (while meekly hoping that this increased security doesn't damage our liberty) is to blind ourselves to the possibility of building real alternatives to the authoritarian tendencies in contemporary politics. To situate ourselves against security politics would allow us to circumvent the debilitating effect achieved through the constant securitising of social and political issues, debilitating in the sense that 'security' helps consolidate the power of the existing forms of social domination and justifies the short-circuiting of even the most democratic forms. It would also allow us to forge another kind of politics centred on a different conception of the good. We need a new way of thinking and talking about social being and politics that moves us beyond security. This would perhaps be emancipatory in the true sense of the word. What this might mean, precisely, must be open to debate. But it certainly requires recognising that security is an illusion that has forgotten it is an illusion; it requires recognising that security is not the same as solidarity; it requires accepting that insecurity is part of the human condition, and thus giving up the search for the certainty of security and instead learning to tolerate the uncertainties, ambiguities and 'insecurities' that come with being human; it requires accepting that 'securitizing' an issue does not mean dealing with it politically, but bracketing it out and handing it to the state; it requires us to be brave enough to return the gift."

#### Politics is constituted around signs which attempt to provide coherence and the security of certainty to a naturally chaotic world---the 1AC’s attempt to check the president fails because of inherent limits to language and serves as an ideological smokescreen to conceal imperial advances in presidential power

George 98 Larry N. George, Professor of Political Science at California State University-Long Beach “Seguidvuestro Jefe: The Polemic Supplement and the Pharmacotic Presidency” Theory & Event, Volume 2, Issue 3, 1998

¶ Fantasy, Political Identity, and the Pharmacotic Presidency¶ The broad and generally positive public embracing of this single executive image is an effect of the play of metonymy, or more precisely synechdoche . In Ragsdale's words,¶ ...the single executive image rests on symbolism -- the president symbolizes the nation, its people, and its government. There is a symbolic equivalence between the president and the public, with the two blurring together as one in presidents' speeches and in media coverage of the office. 34¶ This synechdoche operates like the ordered structure that articulates what Jacques Lacan calls the object petit a to what he calls fantasy. 35 Much of the power that twentieth century presidents have accumulated derives from the gradual disclosure of this functional position as fantasy.¶ For Lacan, human experience (including the realm of **politics**) **is constituted around signs**, **which are linked together** **through** metaphoric, metonymic and other semiotic **relations of resemblance and meaning into** **interlocking chains of signification**. Experience is given **coherence**, order, and ontological depth by an always assumed but unrepresentable link between these signs and desire. Because the network of chains of signifiers and signifieds is never hermeneutically closed or fully coherent in itself, the final, ultimate meaning or significance of any signifier or any experience **can never be absolutely guaranteed**. Yet for modern subjects, meaningful experience (including the sense of groundedness that Western metaphysics has historically viewed as necessary to political life) rests on the presumption that some master signifier, some ideological anchor ultimately exists, holding the chain of signification and meaning in a coherent, meaningful whole.¶ **The desire for** foundation -- for **an anchor to hold in check the play of signification**, and to arrest the politically disorienting process of the endless and contradictory substitution of meanings -- **is** both **built into the structure of political meaning** itself, and at the same impossible to represent or experience directly. Because of this impossibility, there always remains in any ideological system a place for some aspect, part, or element which is necessary in order to make sense of that experience, but which must lie outside the chain of signification, and which must therefore remain unrepresented. One example of this necessary void, this necessary-but-unrepresentable element (the object petit a ) is conventional political identity. When modern (and in a different way postmodern) subjects think of themselves as political agents or actors, the catalogue of identities that they use, or which are used by others, to identify them politically (e.g. "Hispanic", "Republican", "American", "progressive", "soccer mom", etc.) can never fully account for or exhaust their own understanding of their own political identity, because the supplementarity of political identity always exceeds the capacity of its signifier to represent it. (It is impossible, for example, to list fully and without contradiction all the defining characteristics that constitute "Hispanic" or "soccer mom"). Another example, more directly relevant to the present study, is the role of the king in a monarchical political order: the State under absolutism can only exist as a coherent totality so long as the king's body embodies it.¶ For Lacan, fantasy is the effort to incarnate, represent, or give other coherent, sensible content to the object petit a . For Lacan, fantasy "provides the coordinates of our desire -- which constructs the frame enabling us to desire something.... [T]hrough fantasy we learn how to desire." 36 Zizek gives as an example of political fantasy the Hobbesian, corporatist image of an organic political society: "... a social Body in which the different classes are like extremities, members each contributing to the Whole according to its function -- we may say that 'society as a corporate Body' is the fundamental ideological fantasy." 37 In this case, the corporatist fantasy (and by analogy, all political identities) by means of substitution, displacement, condensation, and metonymy allows the political subject to come to terms with the traumatic possibility that no real political-legal order can guarantee her rights, property, or security other than the network of rhetorical signifying chains that bond subjects in postmodernizing societies together into a simulacrum of political life.¶ Most writers who use Lacan to analyze political phenomena tend to concentrate on the play of fantasy in its erotic expression - as in the function of the phallus and desire in gendered structures of power. But to understand the relation between the polemic supplement and the pharmacotic presidency, it is necessary to focus on the largely unexplored thanatotic dimension of fantasy, examples of which include the "Jew" in Nazi ideology, "Communism" in US Cold War political mythology, "the Establishment" in 1960s New Left discourse, the men in black helicopters in militia conspiracy theories, or the demonized constructs "Bill and Hillary Clinton" in the pages of the American Spectator . These fantasies give a name and an incarnation to the desire for a demonizable other, a sacrificial object onto which those **qualities which are feared and hated in one's own polity** **can be projected** and symbolically combated. 38 They fill out the ultimately unrepresentable object petit a with a fantasy object (whose features, characteristics, and intentions seem identifiable and comprehensible, but upon closer inspection never actually are), and thereby supplement that which would otherwise remain an **unsustainable void** at the heart of these political ideologies. 39¶ Over the course of the evolution of the **US nationalist imaginary,** the country's Lockean and Montesquieuean constitutional framework has allowed Americans **to conduct their political affairs** **as though the** increasingly evidently Hobbesian nature of twentieth century American political life **were not** more and more **evident** all the time. The role of the president in the transition from the nineteenth to the twentieth century constitutional and political orders **was to serve as a fantasy screening the emergence of the twentieth century Hobbesian presidency**, a presidency whose position in the political order **increasingly came to resemble the functions of the Hobbesian monarch**. 40 While recent writers on the presidency have stressed the increasing constraints and limitations on the exercise of presidential power, the focus of the present article is on the dangerous ways that the **polemic supplement continues to provide the pharmacotic presidency with tremendous** potential political **resources** that have to date been only partially exploited.¶ The **pharmacotic structure** of the polemic supplement **is illustrated well by** the **Constitutional quandaries surrounding the president's war powers.** Because the condition of war so radically alters the state of the political order, from the time of the country's founding the authority to call the nation to war and to symbolically **represent the nation's unity** during the prosecution of wars has remained among the most jealously contested powers of government. Because it breaches in the most potentially dangerous way the political boundary that secures constitutional order from the state of nature, the war prerogative and the polemic supplement that flows from it **can** **never be completely delimited**, **defined, confined, or inscribed within any written constitution**. It is, rather, **precisely that impossible element** in the constitutional framework which must **lie outside the constitutional order itself** but which is necessary to it -- the object petit a -- and much of the power of the postmodernizing presidency derives from the impersonation of it as fantasy. The country's wars since the Spanish-American War have thus been increasingly inscribed in the polemic supplement. The political authority and ontologically reconstitutive power of postmodern presidents may be defined by it, in ways we can only now begin to glimpse.

#### Reject the Aff’s security discourse – abandoning the attempt to eradicate insecurity is a prerequisite to meaningful political engagement.

Neocleous 8

turns political questions into debates about the most efficient way to achieve ‘security’

to fight for an alternative political language which takes us beyond the narrow horizon of bourgeois security

) is to blind ourselves to the possibility of building real alternatives

CASE:

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

Carrie Crenshaw PhD, Former President of CEDA Perspectives In Controversy: Selected Articles from Contemporary Argumentation and Debate 2002 p. 119-126

Feminism is not dead. It is alive and well in intercollegiate debate. Increasingly, students rely on feminist authors to inform their analysis of resolutions. While I applaud these initial efforts to explore feminist thought, I am concerned that such arguments only exemplify the general absence of sound causal reasoning in debate rounds. Poor causal reasoning results from a debate practice that privileges empirical proof over rhetorical proof, fostering ignorance of the subject matter being debated. To illustrate my point, I claim that debate arguments about feminists suffer from a reductionism that tends to marginalize the voices of significant feminist authors. David Zarefsky made a persuasive case for the value of causal reasoning in intercollegiate debate as far back as 1979. He argued that causal arguments are desirable for four reasons. First, causal analysis increases the control of the arguer over events by promoting understanding of them. Second, the use of causal reasoning increases rigor of analysis and fairness in the decision-making process. Third, causal arguments promote understanding of the philosophical paradox that presumably good people tolerate the existence of evil. Finally, causal reasoning supplies good reasons for “commitments to policy choices or to systems of belief which transcend whim, caprice, or the non-reflexive “claims of immediacy” (117-9). Rhetorical proof plays an important role in the analysis of causal relationships. This is true despite the common assumption that the identification of cause and effect relies solely upon empirical investigation. For Zarefsky, there are three types of causal reasoning. The first type of causal reasoning describes the application of a covering law to account for physical or material conditions that cause a resulting event This type of causal reasoning requires empirical proof prominent in scientific investigation. A second type of causal reasoning requires the assignment of responsibility. Responsible human beings as agents cause certain events to happen; that is, causation resides in human beings (107-08). A third type of causal claim explains the existence of a causal relationship. It functions “to provide reasons to justify a belief that a causal connection exists” (108). The second and third types of causal arguments rely on rhetorical proof, the provision of “good reasons” to substantiate arguments about human responsibility or explanations for the existence of a causal relationship (108). I contend that the practice of intercollegiate debate privileges the first type of causal analysis. It reduces questions of human motivation and explanation to a level of empiricism appropriate only for causal questions concerning physical or material conditions. Arguments about feminism clearly illustrate this phenomenon. Substantive debates about feminism usually take one of two forms. First, on the affirmative, debaters argue that some aspect of the resolution is a manifestation of patriarchy. For example, given the spring 1992 resolution, “[rjesolved: That advertising degrades the quality of life," many affirmatives argued that the portrayal of women as beautiful objects for men's consumption is a manifestation of patriarchy that results in tangible harms to women such as rising rates of eating disorders. The fall 1992 topic, "(resolved: That the welfare system exacerbates the problems of the urban poor in the United States," also had its share of patri- archy cases. Affirmatives typically argued that women's dependence upon a patriarchal welfare system results in increasing rates of women's poverty. In addition to these concrete harms to individual women, most affirmatives on both topics, desiring "big impacts," argued that the effects of patriarchy include nightmarish totalitarianism and/or nuclear annihilation. On the negative, many debaters countered with arguments that the some aspect of the resolution in some way sustains or energizes the feminist movement in resistance to patriarchal harms. For example, some negatives argued that sexist advertising provides an impetus for the reinvigoration of the feminist movement and/or feminist consciousness, ultimately solving the threat of patriarchal nuclear annihilation. likewise, debaters negating the welfare topic argued that the state of the welfare system is the key issue around which the feminist movement is mobilizing or that the consequence of the welfare system - breakup of the patriarchal nuclear family -undermines patriarchy as a whole. Such arguments seem to have two assumptions in common. First, there is a single feminism. As a result, feminists are transformed into feminism. Debaters speak of feminism as a single, monolithic, theoretical and pragmatic entity and feminists as women with identical motivations, methods, and goals. Second, these arguments assume that patriarchy is the single or root cause of all forms of oppression. Patriarchy not only is responsible for sexism and the consequent oppression of women, it also is the cause of totalitarianism, environmental degradation, nuclear war, racism, and capitalist exploitation. These reductionist arguments reflect an unwillingness to debate about the complexities of human motivation and explanation. They betray a reliance upon a framework of proof that can explain only material conditions and physical realities through empirical quantification. The transformation of feminists 'Mo feminism and the identification of patriarchy as the sole cause of all oppression is related in part to the current form of intercollegiate debate practice. By "form," I refer to Kenneth Burke's notion of form, defined as the "creation of appetite in the mind of the auditor, and the adequate satisfying of that appetite" (Counter-Statement 31). Though the framework for this understanding of form is found in literary and artistic criticism, it is appropriate in this context; as Burke notes, literature can be "equipment for living" (Biilosophy 293). He also suggests that form "is an arousing and fulfillment of desires. A work has form in so far as one part of it leads a reader to anticipate another part, to be gratified by the sequence" (Counter-Statement 124). Burke observes that there are several aspects to the concept of form. One of these aspects, conventional form, involves to some degree the appeal of form as form. Progressive, repetitive, and minor forms, may be effective even though the reader has no awareness of their formality. But when a form appeals as form, we designate it as conventional form. Any form can become conventional, and be sought for itself - whether it be as complex as the Greek tragedy or as compact as the sonnet (Counter-Statement 126). These concepts help to explain debaters' continuing reluctance to employ rhetorical proof in arguments about causality. Debaters practice the convention of poor causal reasoning as a result of judges' unexamined reliance upon conventional form. Convention is the practice of arguing single-cause links to monolithic impacts that arises out of custom or usage. Conventional form is the expectation of judges that an argument will take this form. Common practice or convention dictates that a case or disadvantage with nefarious impacts causally related to a single link will "outweigh" opposing claims in the mind of the judge. In this sense, debate arguments themselves are conventional. Debaters practice the convention of establishing single-cause relationships to large monolithic impacts in order to conform to audience expectation. Debaters practice poor causal reasoning because they are rewarded for it by judges. The convention of arguing single-cause links leads the judge to anticipate the certainty of the impact and to be gratified by the sequence. I suspect that the sequence is gratifying for judges because it relieves us from the responsibility and difficulties of evaluating rhetorical proofs. We are caught between our responsibility to evaluate rhetorical proofs and our reluctance to succumb to complete relativism and subjectivity. To take responsibility for evaluating rhetorical proof is to admit that not every question has an empirical answer. However, when we abandon our responsibility to rhetorical proofs, we sacrifice our students' understanding of causal reasoning. The sacrifice has consequences for our students' knowledge of the subject matter they are debating. For example, when feminism is defined as a single entity, not as a pluralized movement or theory, that single entity results in the identification of patriarchy as the sole cause of oppression. The result is ignorance of the subject position of the particular feminist author, for highlighting his or her subject position might draw attention to the incompleteness of the causal relationship between link and impact Consequently, debaters do not challenge the basic assumptions of such argumentation and ignorance of feminists is perpetuated. Feminists are not feminism. The topics of feminist inquiry are many and varied, as are the philosophical approaches to the study of these topics. Different authors have attempted categorization of various feminists in distinctive ways. For example, Alison Jaggar argues that feminists can be divided into four categories: liberal feminism, marxist feminism, radical feminism, and socialist feminism. While each of these feminists may share a common commitment to the improvement of women's situations, they differ from each other in very important ways and reflect divergent philosophical assumptions that make them each unique. Linda Alcoff presents an entirely different categorization of feminist theory based upon distinct understandings of the concept "woman," including cultural feminism and post-structural feminism. Karen Offen utilizes a comparative historical approach to examine two distinct modes of historical argumentation or discourse that have been used by women and their male allies on behalf of women's emancipation from male control in Western societies. These include relational feminism and individualist feminism. Elaine Marks and Isabelle de Courtivron describe a whole category of French feminists that contain many distinct versions of the feminist project by French authors. Women of color and third-world feminists have argued that even these broad categorizations of the various feminism have neglected the contributions of non-white, non-Western feminists (see, for example, hooks; Hull; Joseph and Lewis; Lorde; Moraga; Omolade; and Smith). In this literature, the very definition of feminism is contested. Some feminists argue that "all feminists are united by a commitment to improving the situation of women" (Jaggar and Rothenberg xii), while others have resisted the notion of a single definition of feminism, bell hooks observes, "a central problem within feminist discourse has been our inability to either arrive at a consensus of opinion about what feminism is (or accept definitions) that could serve as points of unification" (Feminist Theory 17). The controversy over the very definition of feminism has political implications. The power to define is the power both to include and exclude people and ideas in and from that feminism. As a result, [bjourgeois white women interested in women's rights issues have been satisfied with simple definitions for obvious reasons. Rhetorically placing themselves in the same social category as oppressed women, they were not anxious to call attention to race and class privilege (hooks. Feminist Wieory 18). Debate arguments that assume a singular conception of feminism include and empower the voices of race- and class-privileged women while excluding and silencing the voices of feminists marginalized by race and class status. This position becomes clearer when we examine the second assumption of arguments about feminism in intercollegiate debate - patriarchy is the sole cause of oppression. Important feminist thought has resisted this assumption for good reason. Designating patriarchy as the sole cause of oppression allows the subjugation of resistance to other forms of oppression like racism and classism to the struggle against sexism. Such subjugation has the effect of denigrating the legitimacy of resistance to racism and classism as struggles of equal importance. "Within feminist movement in the West, this led to the assumption that resisting patriarchal domination is a more legitimate feminist action than resisting racism and other forms of domination" (hooks. Talking Back 19). The relegation of struggles against racism and class exploitation to offspring status is not the only implication of the "sole cause" argument In addition, identifying patriarchy as the single source of oppression obscures women's perpetration of other forms of subjugation and domination, bell hooks argues that we should not obscure the reality that women can and do partici- pate in politics of domination, as perpetrators as well as victims - that we dominate, that we are dominated. If focus on patriarchal domination masks this reality or becomes the means by which women deflect attention from the real conditions and circumstances of our lives, then women cooperate in suppressing and promoting false consciousness, inhibiting our capacity to assume responsibility for transforming ourselves and society (hooks. Talking Back 20). Characterizing patriarchy as the sole cause of oppression allows mainstream feminists to abdicate responsibility for the exercise of class and race privilege. It casts the struggle against class exploitation and racism as secondary concerns. Current debate practice promotes ignorance of these issues because debaters appeal to conventional form, the expectation of judges that they will isolate a single link to a large impact Feminists become feminism and patriarchy becomes the sole cause of all evil. Poor causal arguments arouse and fulfill the expectation of judges by allowing us to surrender our responsibility to evaluate rhetorical proof for complex causal relationships. The result is either the mar-ginalization or colonization of certain feminist voices. Arguing feminism in debate rounds risks trivializing feminists. Privileging the act of speaking about feminism over the content of speech "often turns the voices and beings of non-white women into commodity, spectacle" (hooks, Talking Back 14). Teaching sophisticated causal reasoning enables our students to learn more concerning the subject matter about which they argue. In this case, students would learn more about the multiplicity of feminists instead of reproducing the marginalization of many feminist voices in the debate itself. The content of the speech of feminists must be investigated to subvert the colonization of exploited women. To do so, we must explore alternatives to the formal expectation of single-cause links to enormous impacts for appropriation of the marginal voice threatens the very core of self-determination and free self-expression for exploited and oppressed peoples. If the identified audience, those spoken to, is determined solely by ruling groups who control production and distribution, then it is easy for the marginal voice striving for a hearing to allow what is said to be overdetermined by the needs of that majority group who appears to be listening, to be tuned in (hooks, Talking Back 14). At this point, arguments about feminism in intercollegiate debate seem to be overdetermined by the expectation of common practice, the "game" that we play in assuming there is such a thing as a direct and sole causal link to a monolithic impact To play that game, we have gone along with the idea that there is a single feminism and the idea that patriarchal impacts can account for all oppression. In making this critique, I am by no means discounting the importance of arguments about feminism in intercollegiate debate. In fact, feminists contain the possibility of a transformational politic for two reasons. First, feminist concerns affect each individual intimately. We are most likely to encounter patriarchal domination "in an ongoing way in everyday life. Unlike other forms of domination, sexism directly shapes and determines relations of power in our private lives, in familiar social spaces..." (hooks. Talking Back 21). Second, the methodology of feminism, consciousness-raising, contains within it the possibility of real societal transformation. "lE]ducation for critical consciousness can be extended to include politicization of the self that focuses on creating understanding the ways sex, race, and class together determine our individual lot and our collective experience” (hooks, Talking Back 24). Observing the incongruity between advocacy of single-cause relationships and feminism does not discount the importance of feminists to individual or societal consciousness raising.

#### Not the root cause of war and violence – their single issue focus create epistemological blind spots that prevent solving the worst forms of violence

Brian Martin, Professor of Science, Technology and Society at the University of Wollongong, 1990 (http://www.uow.edu.au/arts/sts/bmartin/pubs/90uw/uw13.html)

In this chapter and in the six preceding chapters I have examined a number of structures and factors which have some connection with the war system. There is much more that could be said about any one of these structures, and other factors which could be examined. Here I wish to note one important point: attention should not be focussed on one single factor to the exclusion of others. This is often done for example by some Marxists who look only at capitalism as a root of war and other social problems, and by some feminists who attribute most problems to patriarchy. The danger of monocausal explanations is that they may lead to an inadequate political practice. The 'revolution' may be followed by the persistence or even expansion of many problems which were not addressed by the single-factor perspective. The one connecting feature which I perceive in the structures underlying war is an unequal distribution of power. This unequal distribution is socially organised in many different ways, such as in the large-scale structures for state administration, in capitalist ownership, in male domination within families and elsewhere, in control over knowledge by experts, and in the use of force by the military. Furthermore, these different systems of power are interconnected. They often support each other, and sometimes conflict. This means that the struggle against war can and must be undertaken at many different levels. It ranges from struggles to undermine state power to struggles to undermine racism, sexism and other forms of domination at the level of the individual and the local community. Furthermore, the different struggles need to be linked together. That is the motivation for analysing the roots of war and developing strategies for grassroots movements to uproot them.

# 1NR

### Counterplan Mechanisms Magnify Solvency

#### Presidential pledge assures compliance

Harvard Law Review 2012 (Unsigned)

Presidential Power and the Office of Legal Counsel, 125 Harv. L. Rev. 2090

As Professor Richard Pildes points out in his critique of their book, though, "willingness to follow OLC interpretations would seem to be the quintessential kind of executive self-binding constraint that Posner and Vermeule otherwise advocate as critical to presidential credibility." n61 Indeed, the President could self-interestedly announce that, because an independent OLC would provide him with a relatively unbiased view of the law, he is pledging to follow its advice in the vast majority of cases. Legally, the President would remain free to weigh OLC's opinion against the advice provided by the White House Counsel or cabinet officials, and he would retain the power to reject any OLC opinion with which he disagreed or which he believed would [\*2100] harm national security or other vital interests if followed. Informally, however, he would face political and reputational costs if he decided to go back on his pledge and substitute his own judgment for that of OLC, n62 costs made even more substantial as a result of the White House's reliance on OLC's reputation to legitimate some of its key legal positions. The stigma attached to disregarding OLC's advice n63 would thus constitute a meaningful limit on the President, particularly if public opinion plays a role in constraining the President, n64 because he would be discouraged from deviating from OLC's view unless he were willing to spend a significant amount of political capital. Thus, if OLC's internal safeguards work correctly, the President will have a strong incentive to follow a (relatively) impartial view of the law while nevertheless retaining the flexibility, in times of need, to determine the meaning of the law for himself.

#### Disclosure checks the advantages

Peter Marguiles 5-15-12 Roger Williams U Law Prof

<http://digitalcommons.pepperdine.edu/cgi/viewcontent.cgi?article=1370&context=plr> Pepperdine Law Review, Volume 39, Issue 4, Article 1, “Reforming Lawyers into Irrelevance?: Reconciling Crisis and Constraint at the Office of Legal Counsel”,)

1. Disclosure Disclosure is an important deliberative safeguard. From an ex ante perspective, disclosure protects against fringe views, since the author of an opinion knows that outside audiences will “kick the tires” and quickly discover and critique views that distort the relevant law.242 Disclosure also helps ex post, by allowing Congress, professional peers, and the public to see distortions as they emerge and campaign to correct them.243 Disclosure also works hand in hand with efforts by the President to secure ratification of an unorthodox view that responds to exigent circumstances; disclosure, at least to Congress, is a necessary incident of ratification.244 Certain opinions may contain sensitive information that makes immediate disclosure inappropriate.245 However, Congress could well require as part of its oversight that OLC engage in a deliberative process, including making express findings that become part of an opinion, when such circumstances prevail.

#### The CP includes the SG – united fronts solve

Cornelia Pillard Feb 2005 Supreme Court Inst, G-town U Law, former DOJ Deputy Asst Att Gen

<http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1190&context=facpub>

Michigan Law Review, 103.4, “The Unfulfilled Promise of the Constitution in Executive Hands”, 103 Mich. L. Rev. 676-758

One such difference is that all of the OLC deputies are politically appointed, whereas in the SG's Office, three out of the four deputies are career employees. A more politically led office seems less likely to make impartial, arms-length constitutional decisions, but the political pedigree of OLC's leadership may give it credibility with the political leadership of client entities by helping them to trust that OLC will not use constitutional objections as a back-door way to stop or limit policies with which it simply disagrees. Only when clients are willing to abide by its advice can OLC play a client-checking role. Another difference between the two offices is that, whereas only one deputy reviews each matter in the SG's office, OLC customarily follows a "two-deputy rule," permitting advice on behalf of the office only after review and approval by two deputies. Without the immediate threat of an adverse court judgment against an agency that fails to follow its advice, OLC's clout depends more on support from other sources. Presenting a "united front," rather than lone authors more readily questioned as idiosyncratic, may enhance OLC's authority with its clients.125

#### WHCO assures compliance – best actual check on the president

Maryanne Borrelli 2k - Connecticut College IR Professor (International Relations)

Also Karen Hult, Nancy Kassop, “The White House Counsel’s Office”, http://whitehousetransitionproject.org/files/counsel/Counsel-OD.PDF

The White House Counsel’s Office is at the hub of all presidential activity. Its mandate is to be watchful for and attentive to legal issues that may arise in policy and political contexts in which the president plays a role. To fulfill this responsibility, it monitors and coordinates the presidency’s interactions with other players in and out of government. Often called “the president’s lawyer,” the Counsel’s Office serves, more accurately, as the “presidency’s lawyer,” with tasks that extend well beyond exclusively legal ones. These have developed over time, depending on the needs of different presidents, on the relationship between a president and a Counsel, and on contemporary political conditions. The Office carries out many routine tasks, such as vetting all presidential appointments and advising on the application of ethics regulations to White House staff and executive branch officials, but it also operates as a “command center” when crises or scandals erupt. Thus, the more sharply polarized political atmosphere in recent years has led to greater responsibility and demands, as well as heightened political pressure and visibility, on the traditionally low-profile Counsel’s Office. The high-stakes quality of its work has led to a common sentiment among Counsels and their staff that there is “zero tolerance” for error in this office. In sum, the Counsel’s Office might be characterized as a monitor, a coordinator, a negotiator, a recommender, and a translator: it monitors ethics matters, it coordinates the president’s message and agenda with other executive branch units, it negotiates with a whole host of actors on the president’s behalf (not the least of which is Congress), it recommends myriad actions to the president, and it translates or interprets the law (whether it is the Constitution, federal rules and regulations, treaties or legislation) for all executive branch officials. Past Counsels have lamented that there is no job description for this office, while the opening quote from Peter Wallison makes clear that even if there was, it would be all-consuming and all-inclusive of everything that goes in and out of the president’s office. In simple terms, the Counsel’s Office performs five basic categories of functions: (1) advising on the exercise of presidential powers and defending the president’s constitutional prerogatives; (2) overseeing presidential nominations and appointments to the executive and judicial branches; (3) advising on presidential actions relating to the legislative process; (4) educating White House staffers about ethics rules and records management and monitoring adherence; and (5) handling department, agency and White House staff contacts with the Department of Justice (see Functions section). In undertaking these responsibilities, the Counsel’s Office interacts regularly with, among others, the president, the Chief of Staff, the White House Office of Personnel, the Press Secretary, the White House Office of Legislative Affairs, the Attorney General, the Office of Management and Budget (on the legislative process), the General Counsels of the departments and agencies, and most especially, the Office of Legal Counsel in the Department of Justice (see Relationships section). In addition to the Counsel, the Office usually consists of one or two Deputy Counsels, a varying number of Associate and Assistant Counsels, a Special Counsel when scandals arise, a Senior Counsel in some administrations, and support staff. Tasks are apportioned to these positions in various ways, depending on the Counsel’s choices, though most Counsels expect all Office members to share the ongoing vetting for presidential appointments (see Organization and Operations section). Certain responsibilities within the Office are central at the very start of an administration (e.g., vetting for initial nominations and shepherding the appointment process through the Senate), while others have a cyclical nature to them (e.g., the annual budget, the State of the Union message), and still others follow an electoral cycle (e.g., determining whether presidential travel and other activities are partisan/electoral/campaign or governmental ones) (see Organization and Operations). There is, of course, the always unpredictable (but almost inevitable) flurry of scandals and crises, in which all eyes turn to the Counsel’s Office for guidance and answers. Watergate, Iran-contra, Whitewater, the Clinton impeachment, and the FBI files and White House Travel Office matters were all managed from the Counsel’s Office, in settings that usually separated scandal management from the routine work of the Office, so as to permit ongoing operations to continue with minimal distraction. Among the more regular tasks that occur throughout an administration are such jobs as directing the judicial nomination process, reviewing legislative proposals (the president’s, those from departments and agencies, and bills Congress has passed that need the Counsel’s recommendation for presidential signature or veto), editing and clearing presidential statements and speeches, writing executive orders, and determining the application of executive privilege (see both Relationships and Organization and Operations sections). Perhaps, the most challenging task for the Counsel is being the one who has the duty to tell the president “no,” especially when it comes to defending the constitutional powers and prerogatives of the presidency. Lloyd Cutler, Counsel for both Presidents Carter and Clinton, noted that, in return for being “on the cutting edge of problems,” the Counsel needs to be someone who has his own established reputation…someone who is willing to stand up to the President, to say, “No, Mr. President, you shouldn’t do that for these reasons.” There is a great tendency among all presidential staffs to be very sycophantic, very sycophantic. It’s almost impossible to avoid, “This man is the President of the United States and you want to stay in his good graces,” even when he is about to do something dumb; you don’t tell him that. You find some way to put it in a very diplomatic manner. (Cutler interview, pp. 3-4) LAW, POLITICS AND POLICY A helpful way to understand the Counsel’s Office is to see it as sitting at the intersection of law, politics and policy. Consequently, it confronts the difficult and delicate task of trying to reconcile all three of these without sacrificing too much of any one. It is the distinctive challenge of the Counsel’s Office to advise the president to take actions that are both legally sound and politically astute. A 1994 article in Legal Times warned of the pitfalls: Because a sound legal decision can be a political disaster, the presidential counsel constantly sacrifices legal ground for political advantage. (Bendavid, 1994, p. 13) For example, A.B. Culvahouse recalled his experience upon arriving at the White House as counsel and having to implement President Reagan’s earlier decision to turn over his personal diaries to investigators during the Iran-contra scandal. Ronald Reagan’s decision to turn over his diary - that sits at the core of the presidency. …You’re setting up precedents and ceding a little power. But politically, President Reagan wanted to get it behind him. (Bendavid, 1994, p. 13) Nonetheless, Culvahouse added, the Counsel is “the last and in some cases the only protector of the President’s constitutional privileges. Almost everyone else is willing to give those away in part inch by inch and bit by bit in order to win the issue of the day, to achieve compromise on today’s thorny issue. So a lot of what I did was stand in the way of that process...” (Culvahouse interview, p. 28) Because of this blend of legal, political and policy elements, the most essential function a Counsel can perform for a president is to act as an “early warning system” for potential legal trouble spots before (and, ultimately, after) they erupt. For this role, a Counsel must keep his or her “antennae” constantly attuned. Being at the right meetings at the right time and knowing which people have information and/or the necessary technical knowledge and expertise in specific policy or legal areas are the keys to insuring the best service in this part of the position. C. Boyden Gray, Counsel for President Bush, commented: “As Culvahouse said -- I used to say that the meetings I was invited to, I shouldn’t go to. …It’s the meetings I wasn’t invited to that I’d go to.” (Gray interview, p. 26) Lloyd Cutler noted that ….the White House Counsel will learn by going to the staff meetings, et cetera, that something is about to be done that has buried within it a legal issue which the people who are advocating it either haven’t recognized or push under the rug. He says, “Wait a minute. We’ve got to check this out,” and goes to the Office of Legal Counsel and alerts them and gets their opinion. But for the existence of the White House Counsel, the Office of Legal Counsel would never have learned about the problem until it was too late. (Cutler interview, p. 4) One other crucial part of the job where the legal overlaps with the policy and the political -- and which can spell disaster for Counsels who disregard this -- is knowing when to go to the Office of Legal Counsel for guidance on prevailing legal interpretations and opinions on the scope of presidential authority. It is then up to the White House Counsel to sift through these legal opinions, and to bring into play the operative policy and political considerations in order to offer the president his or her best recommendation on a course of presidential action. Lloyd Cutler described how this process works:

### Congress Key

#### Solves better than the aff.

Dodds’112 E EXECUTIVE UNBOUND: AFTER THE MADISONIAN REPUBLIC, by Eric A. Posner and Adrian Vermeule. New York: Oxford University Press, 2011. 256pp. Cloth $29.95. ISBN 9780199765331. ¶ Reviewed by Graham G. Dodds, Department of Political Science, Concordia University, Montreal. g.dodds [ at ] concordia.ca

In Chapter Four, Posner and Vermeule foreshadow the book’s conclusion and argue that even if constitutional norms and laws cannot constrain the executive, politics can. They invoke principal-agent theory and suggest the president can effectively serve as the people’s agent. However, their main point seems to be that politics can prompt presidents to exercise self-restraint: “the system of elections, the party system, and American political culture constrain the executive far more than do legal rules created by Congress or the courts; and although politics hardly guarantees that the executive will always act in the public interest, politics at least limits the scope for executive abuses” (p.113). Thus, the presence of these de facto constraints should render the absence of de jure constraints less troubling

#### The CP garners the benefits of Congressional & Judicial involvement while avoiding the DA’s – keeping authority with the president is the key

James Baker, 2007 - Former Special Assistant to the President & Legal Advisor to NSC

Chief Judge, United States Court of Appeals for the Armed Forces IN THE COMMON DEFENSE: NATIONAL SECURITY LAW FOR PERILOUS TIMES, p. 25-27

Understanding process also entails an appreciation as to how to effectively engage the constitutional process between branches. Unilateral executive action has advantages in surprise, speed, and secrecy. In context, it is also functionally imperative. As discussed in Chapter 8, for example, military command could hardly function if it were subject to interagency, let alone, interbranch application. Unilateral decision and action have other advantages. Advantage comes in part from the absence of objection or dissent and in the avoidance of partisan political obstruction. In the view of some experts, during the past fifteen years, “party and ideology routinely trump institutional interests and responsibilities” in the Congress.6 These years coincide with the emergence of the jihadist threat. However, there are also security benefits that derive from the operation of external constitutional appraisal. These include the foreknowledge of objection and the improvements in policy or execution that dissent might influence. Chances are, if the executive cannot sell a policy to members of Congress, or persuade the courts that executive actions are lawful, the executive will not be able to convince the American public or the international community. A sustained and indefinite conflict will involve difficult public policy trade-offs that will require sustained public support; that means support from a majority of the population, not just a president’s political base or party. Such support is found in the effective operation of all the constitutional branches operating with transparency. Where members of Congress of both parties review and validate a policy, it is more likely to win public support. Likewise, where the government’s legal arguments and facts are validated through independent judicial review, they are more likely to garner sustained public support. Thus, where there is more than one legal and effective way to accomplish the mission, as a matter of legal policy, the president and his national security lawyers should espouse the inclusive argument that is more likely to persuade more people for a longer period of time. The extreme and divisive argument should be reserved for the extraordinary circumstance. In short, congressional and judicial review, not necessarily decision, offers a source of independent policy and legal validation that is not found in the executive branch alone. Further, while the president alone has the authority to wield the tools of national security and the bureaucratic efficiencies to do so effectively, that is not to say the president does not benefit from maximizing his authority through the involvement and validation of the other branches of government. Whatever can be said of the president’s independent authority to act, as the Jacksonian paradigm recognizes, when the president acts with the express or implied authorization of the Congress in addition to his own inherent authority, he acts at the zenith of his powers. Therefore, those who believe in the necessity of executive action to preempt and respond to the terrorist threat, as I do, should favor legal arguments that maximize presidential authority. In context, this means the meaningful and transparent participation of the Congress and the courts.

### Flexibility net benefit

#### Consulation solves without hurting flex

Marty Lederman 9/1/2013 Georgetown Law Prof, former Deputy Assistant Attorney General,

 http://opiniojuris.org/2013/09/01/syria-insta-symposium-marty-lederman-part-constitution-charter-intersection/ “Syria Insta-Symposium: Marty Lederman Part I–The Constitution, the Charter, and Their Intersection,”

For these reasons, I think that President Obama’s decision to ask Congress for authorization for the use of force in Syria is to be commended, and welcomed. Moreover, I agree with Jack Goldsmith that this decision will not result in any “surrender” of existing executive authority: When in the future the two “third way” criteria for unilateral action articulated in the Haiti, Bosnia and Libya OLC opinions are satisfied, and where the use of force does not violate the Charter, Presidents will certainly continue to assert the power to act unilaterally, subject to statutory and international law constraints. But if and when a President wishes to act for a reason that has not previously been the basis for unilateral action (such as to degrade another nation’s ability to use certain weapons), and/or in a manner that violates a U.S. treaty obligation, past practice will support obtaining congressional authorization, even as the question of the President’s unilateral authority in such circumstances remains untested and unresolved.

### Terrorism

#### Sole presidential control of foreign policy is essential to combating terrorism

Lansford and Pauly 3 [Tom, assistant professor of political science, University of Southern Mississippi, Gulf Coast
+ Robert J. adjunct professor of history and political Science at Norwich University, Northfield, Vermont, and Midlands Technical College “National Security Policy and the Strong Executive” Special Conference Report of American Diplomacy online May 20, http://www.unc.edu/depts/diplomat/archives\_roll/2003\_04-06/lansfordpauly\_exec/lansfordpauly\_exec.html]

Furthermore, **American foreign policy is rooted in** the notion of **the “sole organ theory**” which holds that the **president is the “sole” source of foreign and security policy**.15 This theory has served as the underpinning for the dramatic twentieth-century expansion of executive power. For instance, the Supreme Court decision United States v. Curtiss-Wright Corporation (1936) gave executive agreements the weight of law (and thereby bypassed the senatorial approval required of treaties), while Goldwater v. Carter (1979) confirmed the ability of the president to withdraw from international treaties without congressional consent.16 **The result of this concentration of power has been the repeated presidential use of the U.S. military** throughout the nation’s history **without a formal congressional declaration of war** and an increased preference by both the executive and the legislature for such actions.17 One feature of this trend was consistency in U.S. foreign policy, especially during the Cold War era. **Even during periods** when the United States experienced **divided government**, with the White House controlled by one political party and all or half of the Congress controlled by the party in opposition, **the executive was able to develop and implement foreign and security policy with only limited constraints.**18 **Given the nature of the terrorist groups** that attacked the United States on 11 September 2001, **such policy habits proved useful since a formal declaration of war was seen as problematic in terms of the specific identification of the foe and the ability of the Bush administration to expand combat operations beyond Afghanistan to countries such as Iraq**.

#### Broad presidential powers are key to adaptability to new threats including terrorism

[Caitlin Marchand](http://nationalsecuritylawbrief.com/author/caitlin-marchand/) on Apr 5, 2013¶ Expansion of the AUMF: The Only Means to an End? <http://nationalsecuritylawbrief.com/2013/04/05/expansion-of-the-aumf-the-only-means-to-an-end/>

Now, in our waning war against al Qaeda, many people believe that the AUMF must be expanded to include the ability for military action against new terrorist groups springing up in the wake of Al-Qaeda’s demise. Republican Sen. Bob Corker of Tennessee, a ranking member of the Senate Foreign Relations Committee, [announced](http://www.corker.senate.gov/public/index.cfm/news?ID=2be33f18-0fb4-4cd6-91c8-f792515aa055) his plans this week to introduce legislation to expand AUMF to address these “new generation” terrorist groups. As a justification for this action he states that, “[f]or far too long, Congress has failed to fully exercise its constitutional responsibility to authorize the use of military force… I urge the committee to consider updating current antiterrorism authorities to adapt to threats that did not exist in 2001.” Advocates for the legislation are afraid of the legislative limits that have stayed stagnant as al Qaeda’s morphing organization has turned from a strong, centrally organized group to many separate franchises spread throughout the world, introducing new threats that cannot be fought within the current powers of the AUMF. The advocates for expansion do concede that some terrorist groups with ties to al Qaeda can be [sufficiently brought into the scope](http://media.hoover.org/sites/default/files/documents/Statutory-Framework-for-Next-Generation-Terrorist-Threats.pdf) of the AUMF as it currently stands. However, as the ties to al Qaeda get blurrier, so does the government’s legal standing to use military force.

### A2 PDB

Link to terror, can’t solve the net benefit

#### CP alone supercharges OLC legitimacy – the perm’s outside influence undermines the signal

Harvard Law Review 2012 (Unsigned)

Presidential Power and the Office of Legal Counsel, 125 Harv. L. Rev. 2090

OLC's endorsement of a White House policy also increases the perceived legitimacy of that policy by coordinate branches. OLC opinions derive much of their value from the perception that OLC's legal advice is "independent of the policy and political pressures associated with a particular question." 50 The White House relies on OLC opinions to ensure that at least some of the President's views are respected by other government actors, like Congress or the courts. 51 It is therefore in the White House's long-term interest, as well as OLC's, that OLC manage to strike a balance between the short-term desire of the White House to "win" on any given legal issue and the long-term need to maintain OLC's reputation. If OLC were to become a rubber stamp for the White House, its reputation would be lost, eliminating both OLC's ability to do its job effectively and its capacity to provide executive branch actors a credible ally in interbranch disputes. 52 Finally, OLC's approval could increase the public's perception of a policy's legitimacy. Historically, the public has known little of OLC's existence or activities; 53 in the future, however, the White House could publicize OLC's role as an independent check on presidential authority. If OLC were able to establish a solid reputation among ordinary citizens for engaging in unbiased, accurate legal analysis, it would serve to further legitimize the President's claimed authority. The only way for OLC to acquire such a reputation is for it to be independent of the White House, resisting outside influence and ensuring that its legal opinions are based solely on the best view of the law.

#### The CP alone is the ONLY hope to solve the aff – executive circumvention is an internal net benefit – answers ALL solvency deficits

Harvard Law Review 2012 (Unsigned)

Presidential Power and the Office of Legal Counsel, 125 Harv. L. Rev. 2090

The President relies on OLC to issue written opinions that explain the bounds of his constitutional authority and help him to fulfill his duty to faithfully execute the laws. The threat to national security posed by the war on terror in the past decade has led to increased pressure on OLC to give the President the tools that he needs in order to protect the country. Each of the examples discussed in this Part reveals the need for OLC not only to adhere to its own internal guidelines but also to strengthen them in order to protect its independence and legitimacy. This approach would ensure that the White House receives the best possible legal advice on controversial subjects and would give the President the option to use its opinions as a form of executive self-binding. Given the apparent atrophy of external constraints from the other branches, an internal constraint of this kind may offer the best chance of meaningfully containing executive power. Such a constraint, however, requires the influence of public opinion, as in the case of signing statements, and only time will tell whether public opinion will have a similar impact in the context of OLC.

#### The perm changes the legal reasoning of the CP – only the CP alone operates from executive SELF restraint, flipping the default bias of the SG/OLC – executive constitutionalism is an internal net benefit

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<http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1190&context=facpub>

Michigan Law Review, 103.4, “The Unfulfilled Promise of the Constitution in Executive Hands”, 103 Mich. L. Rev. 676-758

V. ENABLING EXECUTIVE CONSTITUTIONALISM The courts indisputably do not and cannot fully assure our enjoyment of our constitutional rights, and it is equally clear that the federal executive has an independent constitutional duty to fulfill the Constitution's promise. Executive constitutionalism seems ripe with promise. Yet, it is striking how limited and court-centered the executive's normative and institutional approaches to constitutional questions remain. One conceivable way to avoid the pitfalls of court-centric executive lawyering on one hand and constitutional decisions warped by political expedience on the other would be to make the Solicitor General and Office of Legal Counsel - or perhaps the entire Department of Justice - as structurally independent as an independent counsel or independent agency.207 Making the SG and OLC independent in order to insulate them from politics presumably would alleviate the "majoritarian difficulty" resulting from their service to elected clients. Promoting fuller independence in that sense does not, however, appear to be clearly normatively attractive, constitutionally permissible, nor particularly feasible. In all the criticism of our current constitutionalism, there is little call for an SG or OLC that would act, in effect, as a fully insulated and jurisprudentially autonomous constitutional court within the executive branch, operating with even less transparency and accountability than the Supreme Court. Moreover, as a practical matter it would be complex and problematic to increase the independence of the SG and OLC. The federal government faces Article II obstacles to formally insulating executive lawyers from politics and institutional pressures, and the president and his administration likely would be less amenable to guidance from such unaccountable lawyers.208 The challenge, rather, is to draw forth from the executive a constitutional consciousness and practice that helps the government actively to seek to fulfill the commitments of the Constitution and its Bill of Rights, interpreted by the executive as guiding principles for government. Adjustments to executive branch constitutional process and culture should be favored if they encourage the executive to use its experience and capacities to fulfill its distinctive role in effectuating constitutional guarantees. There is transformative potential in measures that break ingrained executive branch habits of looking to the Constitution only as it is mediated through the courts, and of reflexively seeking, where there is no clear doctrinal answer, to minimize constitutional constraint. It is difficult fully to imagine what kinds of changes would best prompt executive lawyers and officials to pick up constitutional analysis where the courts leave off, and to rely on the Constitution as an affirmative, guiding mandate for government action; what follows are not worked-out proposals, but are meant to be merely suggestive. A. Correcting the Bias Against Constitutional Constraint As we have seen, the SG's and OLC's default interpretive approach to individual rights and other forms of constitutional constraints on government is to follow what clear judicial precedents there are and, where precedents are not squarely to the contrary, to favor interpretations that minimize constitutional rights or other constitutional obligations on federal actors. Those court-centered and narrowly self-serving executive traditions produce a systematic skew against individual rights. 1. Encourage Express Presidential Articulation of Commitment to Constitutional Rights To the extent that a president articulates his own rights-protective constitutional vision with any specificity, he ameliorates the tension his constitutional lawyers otherwise face between advancing individual rights and serving their boss's presumed interest in maximum governing flexibility. Case or controversy requirements and restrictions against courts issuing advisory opinions do not, of course, apply to the executive's internal constitutional decisionmaking, and presidents can better serve individual rights to the extent that they expressly stake out their constitutional commitments in general and in advance of any concrete controversy."° When the president takes a stand for advancing abortion rights, property rights, disability rights, "charitable choice," a right to bear arms, or full remediation of race and sex discrimination, he signals to his lawyers that they should, in those areas, set aside their default bias in favor of preserving executive prerogative, even if it requires extra executive effort or restraint to do so. If presented in a concrete setting with a choice between interpreting and applying the Constitution in fully rights-protective ways or sparing themselves the effort where Supreme Court precedent can be read not to require it, government officials typically default to the latter course without considering whether they might thereby be giving short shrift to a constitutional duty. A president's stated commitment to protection of particular rights, however, flips the default position with respect to those rights, acting as a spur to executive-branch lawyers and other personnel to work to give effect to constitutional rights even where, for a range of institutional reasons, the courts would not. A president is thus uniquely situated to facilitate full executive-branch constitutional compliance by precommitting himself to a rights-protective constitutional vision, and thereby making clear that respect for constitutional rights is part of the executive's interest, not counter to it.

#### Executive constitutionalism solves the aff, key to robust democracy

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\*NOTE: SG = Solicitor General; OLC = Office of Legal Counsel

The executive, in my view, has failed fully to meet the challenges of interpreting and applying the Constitution on its own. My focus here is on questions of individual rights that evade judicial review. As the Office of Legal Counsel's "torture memos" illustrate, there are substantial risks associated with executive decisionmaking on fundamental questions of executive power and individual rights.' My basic analysis is also relevant to the executive's approach to federalism and separation of powers, but the principal focus here is on how the executive understands and fulfills its constitutional obligations with respect to individuals.2 This Article builds on two bodies of literature that, thus far, have not significantly engaged one another: writings about executive-branch legal processes, and about the Department of Justice's Solicitor General ("SG") and Office of Legal Counsel ("OLC") in particular (the institutional literature), and a recent round of theoretical scholarship about extrajudicial constitutionalism (the theoretical literature). The institutional literature typically projects confidence that the SG and OLC provide the highest quality legal advice and representation to the executive, and that they scrupulously protect the Constitution against executive officials distorting the law to advance personal, partisan, or institutionally parochial agendas. These writings routinely point to the special character and traditions of those offices in representing not only the president and the executive branch, but also the United States and its people. The descriptions seem at first blush to support the enthusiasm of the extrajudicial constitutionalists, inasmuch as they highlight offices within the executive branch dedicated to high-quality constitutional analysis. Meanwhile, the theoretical literature on extrajudicial constitutionalism suggests that the political branches have the capacity to effectuate the Constitution in ways quite distinct from the familiar, judicial version, and that, in part because of that distinctiveness, extrajudicial constitutionalism provides a normatively attractive supplement to or substitute for judicial doctrines. Scholars have pinned on the political branches hopes for a more democratic, less crabbed and formalistic constitutionalism, and one that reflects the political branches' distinctive capacities. Larry Sager, for example, sees the gap between the Constitution's normative commands and their judicial enforcement as enabling "robust participation by popular political institutions in the constitutional project of identifying and implementing the elements of political justice."3 Robin West identifies congressional constitutionalism as potentially enabling the "the democratization - long overdue - of the Constitution itself," and as promising a less legalistic approach Robert Post and Reva Siegel contend that "[q]uestions of constitutional law involve profound issues of national identity that cannot be resolved merely by judicial decree," and that, therefore, "a legitimate and vibrant system of constitutional law requires institutional structures that will ground it in the constitutional culture of the nation."5 Larry Kramer unearths an American historical tradition of popular constitutionalism that embraces "the democratic pedigree and superior evaluative capacities of the political branches" and that is resistant to the notion that the Constitution is mere ordinary law, formalistic and legalized to such an extent that only courts can be trusted with it.6 Bruce Peabody believes "a deeper consensus" could result from greater engagement by nonjudicial actors in constitutional interpretation Mark Tushnet champions a "populist constitutional law," wrested from the courts' unduly formalistic reliance on text, structure and history, and interpreted instead in light of "all-things-considered, more practical judgment."' As Christopher Eisgruber has explained, "[e]xperience and responsibility are invaluable teachers in the art of governance, and there may be times when Congress or the Executive, by virtue of their connection to the people or their knowledge of what government can do, have the best insight into how the Constitution balances competing principles."9 Certain features stand out as normatively attractive to proponents of political-branch constitutionalism. As applied to the executive, the theoretical literature highlights the importance of democratic responsiveness and distinctive institutional capacities (e.g., the executive's ability to investigate facts and take positive action) in shaping a constitutionalism that differs substantially from what the courts devise. Also central for those theorists, although often implicit, is a commitment to constitutional - as distinct from merely political - guidance for decisions left to political actors. The Constitution in the executive's hands could be a counterweight both to a monopoly over constitutional meaning in the hands of judicial elites that is stunted by the courts' limited practical capacities, and to a politics of raw competition among self-promoting interests divorced from the public-regarding underpinning our fundamental law provides. Viewed in this way, executive constitutionalism holds untapped potential as a more democratically engaged and institutionally versatile way of keeping the American polity true to its best self.

#### Extinction & linear access to all impacts

G John Ikenberry 1999 U Penn Political Science Prof

“Why Export Democracy” Wilson Quarterly, Spring

We led the struggle for democracy because the larger the pool of democracies, the greater our own security and prosperity. Democracies, we know, are less likely to make war on us or on other nations. They tend not to abuse the rights of their people. They make for more reliable trading partners. And each new democracy is a potential ally in the struggle against the challenges of our time-containing ethnic and religious conflict; reducing the nuclear threat; combating terrorism and organized crime; overcoming environmental degradation.