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#### Confining executive accountability to external branches overlooks decades of executive prerogative.

[Osborn 8 - prof of political theory at Whitman (Timothy V](http://search.proquest.com.libproxy.usc.edu/indexinglinkhandler/sng/au/Kaufman-Osborn,+Timothy+V/$N?accountid=14749) Kaufman-Osborn, prof of Political Theory at Whitman University, Ph.D., Princeton University, Politics, "We are all torturers now": Accountability After Abu Ghraib, Theory & Event11.2 (2008)) BN

As the preceding discussion indicates, when the question of accountability for Abu Ghraib in particular and torture more generally has been posed in recent debates within the United States, the terms of that exchange have been predictable, if not hackneyed. On the one hand, there are those who, for reasons of political expediency, seek to sever the chain of mutual political implication and so confine accountability to those most immediately involved. On the other hand, there are those who seek to re-connect the links of this chain, whether in an effort to hold accountable officials in Washington, D.C. or, sometimes, all citizens of the United States. None, however, step beyond the terrain defined by a social contractarian conception of liberal political order, and none ask about the adequacy of this characterization to the regime in which we now find ourselves. If the question of specifically collective accountability for wrong-doing, like that committed at Abu Ghraib, is to be more adequately formulated, transformation of the United States into what Iris Young labeled a "security state"12 must be appreciated. To understand that transformation requires an excursus into the history of liberalism's efforts to ensure the accountability of political power, especially as exercised by executive agencies. In large measure, whatever success this effort has enjoyed has turned on its capacity to erect and then effectively patrol specific borders between this and that. Although others might be cited, in this section, I am particularly concerned, first, with the spatial boundary between domestic and foreign, and, second, with the temporal boundary between routine and emergency. Working in tandem, these distinctions have helped sustain the claim that when executive agencies find it necessary to act at odds with liberalism's commitment to the rule of law, and so beyond the structure of accountability inherent in law's articulation of popular will, the harm done to democracy can be minimized by confining such damage to the realm of the external and episodic. If these walls have now been breached, perhaps irreparably, then neither affirmations of collective accountability for torture and other misdeeds committed by those who are said to act in "our" name, nor calls to employ conventional liberal mechanisms (e.g., lawsuits and elections) to rein in executive power, retain much plausibility. The historical tale I relate here has been told by others with far more nuance and detail. Even in barebones fashion, though, this is a tale that bears repeating in a post 9/11 context, if only because its specific content will invariably be informed by the present's distinct imperatives. In saying this, I do not mean to endorse the claim, advanced by persons whose political views are as different as those of George W. Bush and Anthony Lewis,13 that 9/11 and its aftermath ushered in a fundamentally new order. Although I will indicate what I believe is in fact distinctive about the political present in the next section, I also want to claim that the constitution of the security state has deep and tangled roots in American history. And I want to claim that reflection on the question of accountability will remain compromised as long as we accept the foreshortened historical perspective implicit in the claim that everything changed after 9/11, especially since that claim echoes and reinforces the pinched temporal perspective inherent in liberal legal efforts to assign blame for evils like those perpetrated at Abu Ghraib. Erosion of the border between domestic and foreign can be introduced by recalling the implications of the aggrandizement of executive power for the traditional doctrine of separation of powers. Among other things, the separation of powers is intended to constrain power by creating a system of checks and balances among the principal branches of government: "Ambition must be made to counteract ambition," as James Madison wrote in Federalist 51. In principle, this system enables the national legislature, acting in the name of the people, to check executive unilateralism and so safeguard the rule of law from arbitrary power; and, in principle, this system enables the federal courts, acting in the name of the people's will, as that will is expressed in the higher law that is the constitution, to rein in an unbalanced executive. On the domestic front, one can find reason to doubt the efficacy of this structure of countervailing powers even in the earliest years of the republic; think, for example, of Alexander Hamilton's aggressive promotion of a national bank as well as the federal government's assumption of debts incurred by the several states. That said, the expansion of executive power was relatively constrained until at least the Progressive era when it gained momentum, first, as a result of efforts to regulate the U.S. domestic economy (e.g., through establishment of regulatory agencies such as the Interstate Commerce Commission); and, second, as a result of efforts to mobilize the economy in support of the American military campaign in World War I. Far more rapid acceleration occurred in conjunction with the New Deal's creation, following passage of sweeping Congressional authorizations, of various social welfare programs, including, for example, the National Labor Relations Act, the Agricultural Adjustment Act, and the National Industrial Recovery Act. Each of these programs dramatically expanded the scope of executive power in the form of administrative agencies whose officials are formally subject to legislative oversight, but, for the most part, operate in its absence. The cumulative effect of the New Deal's programmatic and institutional innovations, to quote Sheldon Wolin, was to tie a vast number of Americans "into the system of state power, a system based on bureaucratic, military, and corporate institutions and operated by elites equally at home in any one of the components."14 These ties were twisted still more tightly, argues Wolin, during the Reagan (and, I would add, the second Bush) administration not simply through enormous increases in military expenditures and adoption of more comprehensive efforts to rationalize the national economy, but also, to cite a very small sample of possible examples, through "the strengthening of agencies of law enforcement; the relative indifference to the rights of the accused; the steady development of surveillance techniques, especially those relying on centralized data collections; federal drug-testing programs; and tightened security procedures for federal employees."15 Significant expansion of executive power in the realm of foreign affairs can also be traced to the late nineteenth and early twentieth centuries, especially in conjunction with the early forays of the United States into colonialism (e.g., in the Philippines). That said, the high water mark of this expansion is most plausibly located in the aftermath of World War II as the United States sought to secure its global supremacy during the Cold War. Institutionalization of this expansion was effectively marked in 1947 when Congress adopted the National Security Act, which, among other things, resulted in unification of the command structure of the military under the Joint Chiefs of Staff and creation of two new entities, the National Security Council and the Central Intelligence Agency, each of which report directly to the president. Since passage of the National Security Act, augmentation of executive power in the realm of foreign affairs has continued apace, as illustrated by the conduct of the Vietnam War during the Johnson and Nixon administrations, the Iran-Contra scandal during the Reagan administration, and, last but certainly not least, the Bush administration's undeclared war in Iraq. Granted, especially following the Vietnam debacle, Congress sought to rein in the executive's near monopolization of this domain, for example, via the War Powers Resolution (1973) and the Foreign Intelligence Surveillance Act (1978). But, to quote Kim Scheppele, these efforts have proven "quite ineffectual. Not only has the president asked permission of the Congress before committing the country to military engagements or foreign policy obligations only as a matter of courtesy rather than as a matter of law (and then only sometimes), but Congress has typically not attempted to enforce any of its powers under the 1970s-era legislation...The balance of powers struck during the Cold War, with a bulked-up executive, a wizened Congress, their disputes only partly subject to refereeing by courts, remains largely intact."16 The aggrandizement of executive power at home and abroad has over time corroded the very distinction between domestic and foreign, and that in turn has vitiated a key premise undergirding liberalism's affirmation of power's accountability. Vitiation of the border between domestic and foreign is signified by familiarization of the phrase "national security," which, Scheppele notes, had not been part of common parlance before World War II. Its employment postulates the interrelatedness of so many different political, economic, and military factors that developments halfway around the globe are seen to have automatic and direct impact on America's core interests. Virtually every development in the world is perceived to be potentially crucial. An adverse turn of events anywhere endangers the United States. Problems in foreign relations are viewed as urgent and immediate threats. Thus, desirable foreign policy goals are translated into issues of national survival, and the range of threats becomes limitless. The doctrine is characterized by expansiveness, a tendency to push the subjective boundaries of security outward to more and more areas, to encompass more and more geography and more and more problems. It demands that the country assume a posture of military preparedness; the nation must be on permanent alert.17 Among other consequences, chronic invocation of the imperatives of "national security" has encouraged the cult of secrecy that shields large swaths of executive conduct from scrutiny. Consider, for example, the Truman Administration's announcement in 1951 of its authority to classify information bearing on national security, which made it more difficult for Congress, let alone ordinary citizens, to know what actions were being taken by the executive branch and hence to hold it accountable for those deeds. Still more important, appeals to national security have had the effect of turning inward exercises of power once more typically confined to foreign affairs. In this regard, consider executive initiation of various programs of internal surveillance during the Cold War, which effectively confused the domestic law enforcement responsibilities of the FBI and the foreign intelligence responsibilities assigned to the CIA. (In this sense, the Bush administration's decision to authorize the National Security Agency to eavesdrop on citizen and non-citizen alike in order to search for evidence of terrorist-related activity without the court-approved warrants ordinarily required for domestic spying is a continuation by more sophisticated technological means of accomplishing executive ambitions long in the making.) What we see here is not simply the aggrandizement of executive power in the name of national security, but, to turn to the second concern of this section, the executive's growing reliance on the doctrine of emergency to justify such expansion. As already noted, liberal political theory has always been haunted by the specter of unaccountable power, especially when exercised by an executive in response to situations that appear to demand action absent or even violative of legal authorization. A key response to this anxiety, argues Jules Lobel, has been to divide executive action into two distinct spheres: "normal constitutional conduct, inhabited by law, universal rules, and reasoned discourse; and a realm where universal rules are inadequate to meet the particular emergency situation and where law must be replaced by discretion and politics."18 Here, once again, the building of a wall, and the subsequent policing of the boundary it marks, is central to sustaining the tenability of the distinction said to demarcate liberal political orders from those in which power, because unbounded, cannot be held to account.19 This distinction was elaborated by John Locke in his account of prerogative power, and that account was well-known to the framers of the U.S. Constitution. It suggests that under non-exceptional circumstances executive power will respect the separation of powers, civil liberties, and the rule of law. However, under conditions of political emergency, which are most likely to arise in the context of international relations (which Locke distinguishes as the domain of the "federative power," although he effectively folds this domain into the executive branch), such respect will be supplanted by forms of extra-constitutional executive discretion, even, as Locke states, "without the prescription of law, and sometimes even against it."20 As a rule, Locke believed that a desire for collective security will induce people to acquiesce in the executive's possession and exercise of prerogative power, and that acquiescence, understood as a form of tacit consent, suffices to render this power legitimate. At the same time, though, Locke insisted that a people is forever authorized to initiate a revolution aimed at restoring violated or purloined rights. Admittedly, given his contention that persons are more disposed to endure than to remedy governmental abuse,21 this insistence may ring hollow. That Locke himself did not in fact find it empty is largely a measure of his confidence in the meaningfulness of the distinction between ordinary and extraordinary. The extraordinary form of power labeled prerogative, on Locke's account, does not fundamentally compromise or imperil the rule of law, and the commitment to popular sovereignty it expresses, because its exercise can be distinguished from everyday political life and confined to truly exceptional circumstances. In the context of U.S. history, it was Thomas Jefferson who offered the most vigorous expression of Locke's insistence on the ultimate accountability of executive rule, when exercised in the mode of prerogative power. In 1803, for example, Jefferson acknowledged that the Louisiana Purchase was extra-constitutional and, strictly speaking, illegal insofar as it was completed absent a "previous and special sanction by law."22 However, and going beyond Locke's contention that popular acquiescence in the legitimacy of prerogative power should be presupposed unless it meets with express rejection, Jefferson insisted that each specific exercise of such power must secure express ex post facto legislative ratification. In the absence of such ratification, executive agents are subject to legal sanctions for violating the dictates of the law, no matter how noble their motivations might have been. Arguably, the most significant challenge to the Jeffersonian understanding can be found in Abraham Lincoln's suspension of habeas corpus in 1861 (although how one understands that act depends in large measure on whether or not one thinks that in doing so Lincoln affirmed a doctrine of inherent constitutional powers, including emergency powers, which would then imply that actions taken in the name of necessity are constitutional and so do not require ex post facto ratification).23 Less ambiguous harbingers of the growing irrelevance of liberalism's distinction between the everyday and the emergency can be located in the late nineteenth and early twentieth centuries. Consider, for example, Theodore Roosevelt's statement that, in responding to national crises, the president has the "legal right to do whatever the needs of the people demand, unless the Constitution or the laws explicitly forbid him to do it."24 Still more pointedly, consider Franklin Roosevelt's claim that the economic crisis of the Great Depression created an emergency akin to that posed by an invading foreign power, and that the powers granted by the Constitution may expand in order to deal with such a crisis. This view was effectively granted the imprimatur of the Supreme Court, first, in 1934 when it applied the emergency powers doctrine to a situation outside the context of war;25 and, second, in 1936 when the Court stated that, in matters relating to national security, the president enjoys exclusive powers that extend beyond the specific affirmative grants found in the Constitution but are nonetheless inherent within it.26 These precedents notwithstanding, Scheppele is surely correct when she suggests that it was the Cold War that witnessed "an indefinite future of crises and a perpetual alteration of both separation of powers and individual rights. In short, the Cold War ushered in an era of 'permanent emergency' in which the constitutional sacrifices to be made were not clearly temporary or reversible."27 Indeed, from the Great Depression through the Cold War, Congress passed no fewer than 470 statutes granting the executive discretionary authority to wield one power or another, ordinarily exercised by the legislature, in response to specific states of "national emergency." Many of these statutes, remaining in effect long after dissipation of the circumstances that initially prompted their passage, were subsequently trotted out by the executive for very different purposes (as when the Feed and Forage Act of 1861 was invoked as authorization for the allocation of funds to invade Cambodia in 1971). A nominal measure of restraint was imposed by Congress in 1976 when, in response to abuses of executive power, including the Watergate scandal, it passed the National Emergencies Act, terminating all existing states of emergency and requiring, among other restrictions, that the president report to Congress on emergency orders and expenditures. An additional layer of largely symbolic restraint was imposed the following year when Congress passed the International Emergency Economic Powers Act of 1977, which included an affirmation of the authority of Congress to suspend any declared emergency by concurrent resolution, but, at the same time, formally authorized the president to declare such emergencies in response to "any unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States."28 Reviewing presidential invocation of these statutes to impose trade, travel, and technology restrictions, to adopt wage and salary controls, to detain immigrants and refugees, to deploy military personnel alongside civilian law enforcement officials engaged in the so-called "war on drugs," and so forth, Lobel concludes that the success of Congressional efforts to restrain executive emergency authority has proven "dismal. These statutes lie in shambles, wrecked by presidential defiance, congressional acquiescence and judicial undermining."29 To summarize, since the New Deal and, still more emphatically, since the Cold War (but well before 9/11), the principal borders erected by liberalism in order to protect against unaccountable power, especially unchecked power exercised by the national executive, have eroded, if not collapsed outright. Also, and perhaps best illustrated by official establishment of the National Security Agency in 1954, disintegration of the spatial distinction between domestic and foreign as well as the temporal distinction between the ordinary and the emergency has generated not a political vacuum, but a complex of recalcitrant bureaucratic institutions, whether as a result of broad delegations of power from Congress and/or as a result of sweeping executive reorganizations. The net result is constitution of a security state that bears only passing resemblance to the liberal political order imagined by social contract theory.

#### Security renders lawfare a tool of violent biopolitical governance - the result is endless violence

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Security, not liberty: the ‘permanent emergency’ of the security society

The US military’s evident disdain for international law, indifference to the pain of ‘Others’ and endless justifying of its actions via the language of ‘emergency’ have prompted various authors to reflect on Giorgio Agamben’s work, in particular, on bare life and the state of exception in accounting for the functioning of US sovereign power in the contemporary world.111 Claudio Minca, for example, has used Agamben to attempt to lay bare US military power in the spaces of exception of the global war on terror; for Minca, “it is precisely the absence of a theory of space able to inscribe the spatialisation of exception that allows, today, such an enormous, unthinkable range of action to sovereign decision”.112 This critique speaks especially to the excessive sovereign violence of our times, all perpetrated in the name of a global war on terror.113 Minca’s argument is that geography as a discipline has failed to geo-graph and theorise the spatialization of the ‘pure’ sovereign violence of legitimated geopolitical action overseas. He uses the notion of the camp to outline the spatial manifestation and endgame of a new global biopolitical ‘nomos’ that has unprecedented power to except bare life.114

In the ‘biopolitical nomos’ of camps and prisons in the Middle East and elsewhere, managing detainees is an important element of the US military project. As CENTCOM Commander General John Abizaid made clear to the Senate Armed Services Committee in 2006, “an essential part of our combat operations in both Iraq and Afghanistan entails the need to detain enemy combatants and terrorists”.115 However, it is a mistake to characterize as ‘exceptional’ the US military’s broader biopolitical project in the war on terror. Both Minca’s and Agamben’s emphasis on the notion of ‘exception’ is most convincing when elucidating how the US military has dealt with the ‘threat’ of enemy combatants, rather than how it has planned for, legally securitized and enacted, its ‘own’ aggression against them. It does not account for the proactive juridical warfare of the US military in its forward deployment throughout the globe, which rigorously secures classified SOFAs with host nations and protects its armed personnel from transfer to the International Criminal Court. Far from designating a ‘space of exception’, the US does this to establish normative parameters in its exercise of legally sanctioned military violence and to maximize its ‘operational capacities of securitization’.

A bigger question, of course, is what the US military practices of lawfare and juridical securitization say about our contemporary moment. Are they essentially ‘exceptional’ in character, prompted by the so-called exceptional character of global terrorism today? Are they therefore enacted in ‘spaces of exceptions’ or are they, in fact, simply contemporary examples of Foucault’s ‘spaces of security’ that are neither exceptional nor indeed a departure from, or perversion of, liberal democracy? As Mark Neocleous so aptly puts it, has the “liberal project of ‘liberty’” not always been, in fact, a “project of security”?116 This ‘project of security’ has long invoked a powerful political dispositif of ‘executive powers’, typically registered as ‘emergency powers’, but, as Neocleous makes clear, of the permanent kind.117 For Neocleous, the pursuit of ‘security’ – and more specifically ‘capitalist security’ – marked the very emergence of liberal democracies, and continues to frame our contemporary world. In the West at least, that world may be endlessly registered as a liberal democracy defined by the ‘rule of law’, but, as Neocleous reminds us, the assumption that the law, decoupled from politics, acts as the ultimate safeguard of democracy is simply false – a key point affirmed by considering the US military’s extensive waging of liberal lawfare. As David Kennedy observes, the military lawyer who “carries the briefcase of rules and restrictions” has long been replaced by the lawyer who “participate[s] in discussions of strategy and tactics”.118

The US military’s liberal lawfare reveals how the rule of law is simply another securitization tactic in liberalism’s ‘pursuit of security’; a pursuit that paradoxically eliminates fundamental rights and freedoms in the ‘name of security’.119 This is a ‘liberalism’ defined by what Michael Dillon and Julian Reid see as a commitment to waging ‘biopolitical war’ for the securitization of life – ‘killing to make live’.120 And for Mark Neocleous, (neo)liberalism’s fetishization of ‘security’ – as both a discourse and a technique of government – has resulted in a world defined by anti-democratic technologies of power.121 In the case of the US military’s forward deployment on the frontiers of the war on terror – and its juridical tactics to secure biopolitical power thereat – this has been made possible by constant reference to a neoliberal ‘project of security’ registered in a language of ‘endless emergency’ to ‘secure’ the geopolitical and geoeconomic goals of US foreign policy.122 The US military’s continuous and indeed growing military footprint in the Middle East and elsewhere can be read as a ‘permanent emergency’,123 the new ‘normal’ in which geopolitical military interventionism and its concomitant biopolitical technologies of power are necessitated by the perennial political economic ‘need’ to securitize volatility and threat.

Conclusion: enabling biopolitical power in the age of securitization

“Law and force flow into one another. We make war in the shadow of law, and law in the shadow of force” – David Kennedy, Of War and Law 124

Can a focus on lawfare and biopolitics help us to critique our contemporary moment’s proliferation of practices of securitization – practices that appear to be primarily concerned with coding, quantifying, governing and anticipating life itself? In the context of US military’s war on terror, I have argued above that it can. If, as David Kennedy points out, the “emergence of a global economic and commercial order has amplified the role of background legal regulations as the strategic terrain for transnational activities of all sorts”, this also includes, of course, ‘warfare’; and for some time, the US military has recognized the “opportunities for creative strategy” made possible by proactively waging lawfare beyond the battlefield.125 As Walter Benjamin observed nearly a century ago, at the very heart of military violence is a “lawmaking character”.126 And it is this ‘lawmaking character’ that is integral to the biopolitical technologies of power that secure US geopolitics in our contemporary moment. US lawfare focuses “the attention of the world on this or that excess” whilst simultaneously arming “the most heinous human suffering in legal privilege”, redefining horrific violence as “collateral damage, self-defense, proportionality, or necessity”.127 It involves a mobilization of the law that is precisely channelled towards “evasion”, securing 23 classified Status of Forces Agreements and “offering at once the experience of safe ethical distance and careful pragmatic assessment, while parcelling out responsibility, attributing it, denying it – even sometimes embracing it – as a tactic of statecraft and war”.128

Since the inception of the war on terror, the US military has waged incessant lawfare to legally securitize, regulate and empower its ‘operational capacities’ in its multiples ‘spaces of security’ across the globe – whether that be at a US base in the Kyrgyz Republic or in combat in Iraq. I have sought to highlight here these tactics by demonstrating how the execution of US geopolitics relies upon a proactive legal-biopolitical securitization of US troops at the frontiers of the American ‘leasehold empire’. For the US military, legal-biopolitical apparatuses of security enable its geopolitical and geoeconomic projects of security on the ground; they plan for and legally condition the ‘milieux’ of military commanders; and in so doing they render operational the pivotal spaces of overseas intervention of contemporary US national security conceived in terms of ‘global governmentality’.129 In the US global war on terror, it is lawfare that facilitates what Foucault calls the “biopolitics of security” – when life itself becomes the “object of security”.130 For the US military, this involves the eliminating of threats to ‘life’, the creating of operational capabilities to ‘make live’ and the anticipating and management of life’s uncertain ‘future’.

Some of the most key contributions across the social sciences and humanities in recent years have divulged how discourses of ‘security’, ‘precarity’ and ‘risk’ function centrally in the governing dispositifs of our contemporary world.131 In a society of (in)security, such discourses have a profound power to invoke danger as “requiring extraordinary action”.132 In the ongoing war on terror, registers of emergency play pivotal roles in the justification of military securitization strategies, where ‘risk’, it seems, has become permanently binded to ‘securitization’. As Claudia Aradau and Rens Van Munster point out, the “perspective of risk management” seductively effects practices of military securitization to be seen as necessary, legitimate and indeed therapeutic.133 US tactics of liberal lawfare in the long war – the conditioning of the battlefield, the sanctioning of the privilege of violence, the regulating of the conduct of troops, the interpreting, negating and utilizing 24 of international law, and the securing of SOFAs – are vital security dispositifs of a broader ‘risk- securitization’ strategy involving the deployment of liberal technologies of biopower to “manage dangerous irruptions in the future”.134 It may well be fought beyond the battlefield in “a war of the pentagon rather than a war of the spear”,135 but it is lawfare that ultimately enables the ‘toxic combination’ of US geopolitics and biopolitics defining the current age of securitization.

#### Liberal institutionalism is an imperial ideology disguised by the language of science. Liberal institutionalism requires the elimination of non-liberal forms of life to achieve national security

Smith 12 - prof of Poli Sci at Tufts (Tony, *Conceptual Politics of Democracy Promotion* eds. Hobson and Kurki p. 206-210)

Writing in 1952, Reinhold Niebuhr expressed this point in what remains arguably the single best book on the United States in world affairs, The Irony of American History. 'There is a deep layer of Messianic consciousness in the mind of America,' the theologian wrote. Still, 'We were, as a matter of fact, always vague, as the whole liberal culture is fortunately vague, about how power is to be related to the allegedly universal values which we hold in trust for mankind' (Niebuhr 2008: 69). 'Fortunate vagueness', he explained, arose from the fact that 'in the liberal version of the dream of managing history, the problem of power is never fully elaborated' (Niebuhr 2008: 73). Here was a happy fact that distinguished us from the communists, who assumed, thanks to their ideology, that they could master history, and so were assured that the end would justify the means, such that world revolution under their auspices would bring about universal justice, freedom , and that most precious of promises, peace. In contrast, Niebuhr could write: On the whole, we have as a nation learned the lesson of history tolerably well. We have heeded the warning 'let not the wise man glory in his wisdom, let not the mighty man glory in his strength.' Though we are not without vainglorious delusions in regard to our power, we are saved by a certain grace inherent in common sense rather than in abstract theories from attempting to cut through the vast ambiguities of our historic situation and thereby bringing our destiny to a tragic conclusion by seeking to bring it to a neat and logical one ... This American experience is a refutation in parable of the whole effort to bring the vast forces of history under the control of any particular will, informed by a particular ideal ... [speaking of the communists] All such efforts are rooted in what seems at first glance to be a contradictory combination of voluntarism and determinism. These efforts are on the one hand excessively voluntaristic, assigning a power to the human will and the purity to the mind of some men which no mortal or group of mortals possesses. On the other, they are excessively deterministic since they regard most men as merely the creatures of an historical process. (Niebuhr 2008: 75, 79) The Irony of American History came out in January 1952, only months after the publication of Hannah Arendt's The Origins of Totalitarianism, a book that reached a conclusion similar to his. Fundamentalist political systems of thought, Arendt (1966: 467-9) wrote, are known for their scientific character; they combine the scientific approach with results of philosophical relevance and pretend to be scientific philosophy . .. Ideologies pretend to know the mysteries of the whole historical process—the secrets of the past, the intricacies of the present, the uncertainties of the future—because of the logic inherent in their respective ideas ... they pretend to have found a way to establish the rule of justice on earth ... All laws have become laws of movement. And she warned: Ideologies are always oriented toward history .... The claim to total explanation promises to explain all historical happenings ... hence ideological thinking becomes emancipated from the reality that we perceive with our five senses, and insists on a ' truer' reality concealed behind all perceptible things, dominating them from this place of concealment and requiring a sixth sense that enables us to become aware of it. ... Once it has established its premise, its point of departure, experiences no longer interfere with ideological thinking, nor can it be taught by reality. (Arendt 1966: 470) For Arendt as for Niebuhr, then, a virtue of liberal democracy was its relative lack of certitude in terms of faith in an iron ideology that rested on a pseudoscientific authority that its worldwide propagation would fulfill some mandate of history, or to put it more concretely, that the United States had been selected by the logic of historical development to expand the perimeter of democratic government and free market capitalism to the ends of the earth, and that in doing so it would serve not only its own basic national security needs but the peace of the world as well. True, in his address to the Congress asking for a declaration of war against Germany in 1917, Wilson had asserted, 'the world must be made safe for democracy. Its peace must be planted upon the tested foundations of political liberty.' (Link 1982: 533). Yet just what this meant and how it might be achieved were issues that were not resolved intellectually—at least not before the 1990s. Reinhold Niebuhr died in 1971, Hannah Arendt in 1975, some two decades short of seeing the 'fortunate vagueness' Niebuhr had saluted during their prime be abandoned by the emergence of what can only be called a ' hard liberal internationalist ideology', one virtually the equal of Marxism- Leninism in its ability to read the logic of History and prescribe how human events might be changed by messianic intervention into a world order where finally justice, freedom , and peace might prevail. The authors of this neo-liberal, neo-Wilsonianism: left and liberal academics. Their place of residence: the United States, in leading universities such as Harvard, Yale, Princeton, and Stanford. Their purpose: the instruction of those who made foreign policy in Washington in the aftermath of the Cold War. Their ambition: to help America translate its 'unipolar moment' into a 'unipolar epoch' by providing American leaders with a conceptual blueprint for making the world safe for democracy by democratising the world, thereby realizing through 'democratic globalism' the century-old Wilsonian dream—the creation of a structure of world peace. Their method: the construction of the missing set of liberal internationalist concepts whose ideological complexity, coherence, and promise would be the essential equivalence of MarxismLeninism, something most liberal internationalists had always wanted to achieve but only now seemed possible. Democratic globalism as imperialism in the 1990s The tragedy of American foreign policy was now at hand. Rather than obeying the strictures of a ' fortunate vagueness' which might check its ' messianic consciousness', as Niebuhr had enjoined, liberal internationalism became possessed of just what Arendt had hoped it might never develop, 'a scientific character ... of philosophic relevance' that 'pretend[s] to know the mysteries of the whole historical process,' that 'pretend[s] to have found a way to establish the rule of justice on earth ' (Niebuhr 2008: 74; Arendt 1966: 470). Only in the aftermath of the Cold War, with the United States triumphant and democracy expanding seemingly of its own accord to many comers of the world—from Central Europe to different countries in Asia (South Korea and Taiwan), Africa (South Africa), and Latin America (Chile and Argentina)—had the moment arrived for democracy promotion to move into a distinctively new mode, one that was self-confidently imperialist. Wilsonians could now maintain that the study of history revealed that it was not so much that American power had won the epic contest with the Soviet Union as that the appeal of liberal internationalism had defeated proletarian internationalism. The victory was best understood, then, as one of ideas, values, and institutions—rather than of states and leaders. In this sense, America had been a vehicle of forces far greater than itself, the sponsor of an international convergence of disparate class, ethnic, and nationalist forces converging into a single movement that had created an historical watershed of extraordinary importance. For a new world, new ways of thinking were mandatory. As Hegel has instructed us, 'Minerva's owl flies out at dusk' , and liberal scholars of the 1990s applied themselves to the task of understanding the great victories of democratic government and open market economies over their adversaries between 1939 and 1989. What, rather exactly, were the virtues of democracy that made these amazing successes possible? How, rather explicitly, might the free world now protect, indeed expand, its perimeter of action? A new concept of power and purpose was called for. Primed by the growth of think-tanks and prestigious official appointments to be 'policy relevant' , shocked by murderous outbreaks witnessed in the Balkans and Central Africa, believing as the liberal left did that progress was possible, Wilsonians set out to formulate their thinking at a level of conceptual sophistication that was to be of fundamental importance to the making of American foreign policy after the year 2000.6 The jewel in the crown of neo-liberal internationalism as it emerged from the seminar rooms of the greatest American universities was known as ' democratic peace theory'. Encapsulated simply as ' democracies do not go to war with one another', the theory contended that liberal democratic governments breed peace among themselves based on their domestic practices of the rule of law, the increased integration of their economies through measures of market openness, and their participation in multilateral organisations to adjudicate conflicts among each other so as to keep the peace. The extraordinary success of the European Union since the announcement of the Marshall Plan in 1947, combined with the close relations between the United States and the world's other liberal democracies, was taken as conclusive evidence that global peace could be expanded should other countries join ' the pacific union ', ' the zone of democratic peace'. A thumb-nail sketch cannot do justice to the richness of the argument. Political scientists of an empirical bent demonstrated conclusively to their satisfaction that 'regime type matters ', that it is in the nature of liberal democracies to keep the peace with one another, especially when they are integrated together economically. Theoretically inclined political scientists then argued that liberal internationalism could be thought of as ' non-utopian and non-ideological ', a scientifically validated set of concepts that should be recognized not only as a new but also a dominant form of conceptual ising the behaviour of states (Moravcsik 1997). And liberal political philosophers could maintain on the basis of democratic peace theory that a Kantian (or Wilsonian) liberal world order was a morally just goal for progressives worldwide to seek so that the anarchy of states, the Hobbesian state of nature, could be superseded and a Golden Age of what some dared call 'post-history' could be inaugurated (Rawls 1999). Yet if it were desirable that the world's leading states be democratised, was it actually possible to achieve such a goal? Here a second group of liberal internationalists emerged, intellectuals who maintained that the transition from authoritarian to democratic government had become far easier to manage than at earlier historical moments. The blueprint of liberal democracy was now tried and proven in terms of values, interests, and institutions in a wide variety of countries. The seeds of democracy could be planted by courageous Great Men virtually anywhere in the world. Where an extra push was needed, then the liberal world could help with a wide variety of agencies from the governmental (such as the Agency for International Development or the National Endowment for Democracy in the United States) to the non-governmental (be it the Open Society Institute, Human Rights Watch, Amnesty International, or Freedom House). With the development of new concepts of democratic transition, the older ideas in democratization studies of 'sequences' and ' preconditions' could be jettisoned. No longer was it necessary to count on a long historical process during which the middle class came to see its interests represented in the creation of a democratic state, no longer did a people have to painfully work out a social contract of tolerance for diversity and the institutions of limited government under the rule of law for democracy to take root. Examples as distinct as those of Spain, South Korea, Poland, and South Africa demonstrated that a liberal transformation could be made with astonishing speed and success. When combined, democratic peace theory and democratic transition theory achieved a volatile synergy that neither alone possessed. Peace theory argued that the world would benefit incalculably from the spread of democratic institutions, but it could not say that such a development was likely. Transition theory argued that rapid democratisation was possible, but it could not establish that such changes would much matter for world politics. Combined, however, the two concepts came to be the equivalent of a Kantian moral imperative to push what early in the Clinton years was called ' democratic enlargement' as far as Washington could while it possessed the status of the globe's sole superpower. The result would be nothing less than to change the character of world affairs that gave rise to war—international anarchy system and the character of authoritarian states—into an order of peace premised on the character of democratic governments and their association in multilateral communities basing their conduct on the rule of law that would increasingly have a global constitutional character. The arrogant presumption was, in short, that an aggressively liberal America suddenly had the possibility to change the character of History itself toward the reign of perpetual peace through democracy promotion. Enter the liberal jurists. In their hands a 'right to intervene' against states or in situations where gross and systematic human rights were being violated or weapons of mass destruction accumulated became a 'duty to intervene' in the name of what eventually became called a state 's 'responsibility to protect.' (lCISS 200 I). The meaning of 'sovereignty' was now transformed. Like pirate ships of old, authoritarian states could be attacked by what Secretary of State Madeleine Albright first dubbed a 'Community of Democracies', practicing ' muscular multilateralism' in order to reconstruct them around democratic values and institutions for the sake of world peace. What the jurists thus accomplished was the redefinition not only of the meaning of sovereignty but also that of 'Just War'. Imperialism to enforce the norms a state needed to honor under the terms of its 'responsibility to protect' (or 'R2P' as its partisans liked to phrase it) was now deemed legitimate. And by moving the locus of decision-making on the question of war outside the United Nations (whose Security Council could not be counted on to act to enforce the democratic code) to a League, or Community, or Concert of Democracies (the term varied according to the theorist), a call to arms for the sake of a democratising crusade was much more likely to succeed.

#### Our alternative - challenge to *conceptual* framework of national security. Only our alternative displaces the source of executive overreach. Legal restraint without conceptual change is futile.

Rana 11 - Law at Cornell (Aziz Rana, “Who Decides on Security?” Cornell Law Faculty Working Papers, Paper 87, http://scholarship.law.cornell.edu/clsops\_papers/87\_

The prevalence of these continuities between Frankfurter’s vision and contemporary judicial arguments raise serious concerns with today’s conceptual framework. Certainly, Frankfurter’s role during World War II in defending and promoting a number of infamous judicial decisions highlights the potential abuses embedded in a legal discourse premised on the specially-situated knowledge of executive officials and military personnel. As the example of Japanese internment dramatizes, too strong an assumption of expert understanding can easily allow elite prejudices—and with it state violence—to run rampant and unconstrained. For the present, it hints at an obvious question: How skeptical should we be of current assertions of expertise and, indeed, of the dominant security framework itself? One claim, repeated especially in the wake of September 11, has been that regardless of normative legitimacy, the prevailing security concept—with its account of unique knowledge, insulation, and hierarchy—is simply an unavoidable consequence of existing global dangers. Even if Herring and Frankfurter may have been wrong in principle about their answer to the question “who decides in matters of security?” they nevertheless were right to believe that complexity and endemic threat make it impossible to defend the old Lockean sensibility. In the final pages of the article, I explore this basic question of the degree to which objective conditions justify the conceptual shifts and offer some initial reflections on what might be required to limit the government’s expansive security powers. VI. CONCLUSION: THE OPENNESS OF THREATS The ideological transformation in the meaning of security has helped to generate a massive and largely secret infrastructure of overlapping executive agencies, all tasked with gathering information and keeping the country safe from perceived threats. In 2010, The Washington Post produced a series of articles outlining the buildings, personnel, and companies that make up this hidden national security apparatus. According to journalists Dana Priest and William Arkin, there exist “some 1271 government organizations and 1931 private companies” across 10,000 locations in the United States, all working on “counterterrorism, homeland security, and intelligence.”180 This apparatus is especially concentrated in the Washington, D.C. area, which amounts to “the capital of an alternative geography of the United States.”181 Employed by these hidden agencies and bureaucratic entities are some 854,000 people (approximately 1.5 times as many people as live in Washington itself) who hold topsecret clearances.182 As Priest and Arkin make clear, the most elite of those with such clearance are highly trained experts, ranging from scientists and economists to regional specialists. “To do what it does, the NSA relies on the largest number of mathematicians in the world. It needs linguists and technology experts, as well as cryptologists, known as ‘crippies.’”183 These professionals cluster together in neighborhoods that are among the wealthiest in the country—six of the ten richest counties in the United States according to Census Bureau data.184 As the executive of Howard County, Virginia, one such community, declared, “These are some of the most brilliant people in the world. . . . They demand good schools and a high quality of life.”185 School excellence is particularly important, as education holds the key to sustaining elevated professional and financial status across generations. In fact, some schools are even “adopting a curriculum . . . that will teach students as young as 10 what kind of lifestyle it takes to get a security clearance and what kind of behavior would disqualify them.”186 The implicit aim of this curriculum is to ensure that the children of NSA mathematicians and Defense Department linguists can one day succeed their parents on the job. In effect, what Priest and Arkin detail is a striking illustration of how security has transformed from a matter of ordinary judgment into one of elite skill. They also underscore how this transformation is bound to a related set of developments regarding social privilege and status—developments that would have been welcome to Frankfurter but deeply disillusioning to Brownson, Lincoln, and Taney. Such changes highlight how one’s professional standing increasingly drives who has a right to make key institutional choices. Lost in the process, however, is the longstanding belief that issues of war and peace are fundamentally a domain of common care, marked by democratic intelligence and shared responsibility. Despite such democratic concerns, a large part of what makes today’s dominant security concept so compelling are two purportedly objective sociological claims about the nature of modern threat. As these claims undergird the current security concept, by way of a conclusion I would like to assess them more directly and, in the process, indicate what they suggest about the prospects for any future reform. The first claim is that global interdependence means that the U.S. faces near continuous threats from abroad. Just as Pearl Harbor presented a physical attack on the homeland justifying a revised framework, the American position in the world since has been one of permanent insecurity in the face of new, equally objective dangers. Although today these threats no longer come from menacing totalitarian regimes like Nazi Germany or the Soviet Union, they nonetheless create of world of chaos and instability in which American domestic peace is imperiled by decentralized terrorists and aggressive rogue states.187 Second, and relatedly, the objective complexity of modern threats makes it impossible for ordinary citizens to comprehend fully the causes and likely consequences of existing dangers. Thus, the best response is the further entrenchment of Herring’s national security state, with the U.S. permanently mobilized militarily to gather intelligence and to combat enemies wherever they strike—at home or abroad. Accordingly, modern legal and political institutions that privilege executive authority and insulated decisionmaking are simply the necessary consequence of these externally generated crises. Regardless of these trade-offs, the security benefits of an empowered presidency (one armed with countless secret and public agencies as well as with a truly global military footprint)188 greatly outweigh the costs. Yet, although these sociological views have become commonplace, the conclusions that Americans should draw about security requirements are not nearly as clear cut as the conventional wisdom assumes. In particular, a closer examination of contemporary arguments about endemic danger suggests that such claims are not objective empirical judgments but rather are socially complex and politically infused interpretations. Indeed, the openness of existing circumstances to multiple interpretations of threat implies that the presumptive need for secrecy and centralization is not self-evident. And as underscored by high profile failures in expert assessment, claims to security expertise are themselves riddled with ideological presuppositions and subjective biases. All this indicates that the gulf between elite knowledge and lay incomprehension in matters of security may be far less extensive than is ordinarily thought. It also means that the question of who decides—and with it the issue of how democratic or insular our institutions should be—remains open as well. Clearly technological changes, from airpower to biological and chemical weapons, have shifted the nature of America’s position in the world and its potential vulnerability. As has been widely remarked for nearly a century, the oceans alone cannot guarantee our permanent safety. Yet, in truth they never fully ensured domestic tranquility. The nineteenth century was one of near continuous violence, especially with indigenous communities fighting to protect their territory from expansionist settlers.189 But even if technological shifts make doomsday scenarios more chilling than those faced by Hamilton, Jefferson, or Taney, the mere existence of these scenarios tells us little about their likelihood or how best to address them. Indeed, these latter security judgments are inevitably permeated with subjective political assessments, assessments that carry with them preexisting ideological points of view—such as regarding how much risk constitutional societies should accept or how interventionist states should be in foreign policy. In fact, from its emergence in the 1930s and 1940s, supporters of the modern security concept have—at times unwittingly—reaffirmed the political rather than purely objective nature of interpreting external threats. In particular, commentators have repeatedly noted the link between the idea of insecurity and America’s post-World War II position of global primacy, one which today has only expanded following the Cold War. In 1961, none other than Senator James William Fulbright declared, in terms reminiscent of Herring and Frankfurter, that security imperatives meant that “our basic constitutional machinery, admirably suited to the needs of a remote agrarian republic in the 18th century,” was no longer “adequate” for the “20th- century nation.”190 For Fulbright, the driving impetus behind the need to jettison antiquated constitutional practices was the importance of sustaining the country’s “preeminen[ce] in political and military power.”191 Fulbright held that greater executive action and war-making capacities were essential precisely because the United States found itself “burdened with all the enormous responsibilities that accompany such power.”192 According to Fulbright, the United States had both a right and a duty to suppress those forms of chaos and disorder that existed at the edges of American authority. Thus, rather than being purely objective, the American condition of permanent danger was itself deeply tied to political calculations about the importance of global primacy. What generated the condition of continual crisis was not only technological change, but also the belief that the United States’ own ‘national security’ rested on the successful projection of power into the internal affairs of foreign states. The key point is that regardless of whether one agrees with such an underlying project, the value of this project is ultimately an open political question. This suggests that whether distant crises should be viewed as generating insecurity at home is similarly as much an interpretative judgment as an empirically verifiable conclusion.193 To appreciate the open nature of security determinations, one need only look at the presentation of terrorism as a principal and overriding danger facing the country. According to the State Department’s Annual Country Reports on Terrorism, in 2009 “[t]here were just 25 U.S. noncombatant fatalities from terrorism worldwide” (sixteen abroad and nine at home).194 While the fear of a terrorist attack is a legitimate concern, these numbers—which have been consistent in recent years—place the gravity of the threat in perspective. Rather than a condition of endemic danger—requiring everincreasing secrecy and centralization—such facts are perfectly consistent with a reading that Americans do not face an existential crisis (one presumably comparable to Pearl Harbor) and actually enjoy relative security. Indeed, the disconnect between numbers and resources expended, especially in a time of profound economic insecurity, highlights the political choice of policymakers and citizens to persist in interpreting foreign events through a World War II and early Cold War lens of permanent threat. In fact, the continuous alteration of basic constitutional values to fit ‘national security’ aims highlights just how entrenched Herring’s old vision of security as pre-political and foundational has become, regardless of whether other interpretations of the present moment may be equally compelling. It also underscores a telling and often ignored point about the nature of modern security expertise, particularly as reproduced by the United States’ massive intelligence infrastructure. To the extent that political assumptions—like the centrality of global primacy or the view that instability abroad necessarily implicates security at home—shape the interpretative approach of executive officials, what passes as objective security expertise is itself intertwined with contested claims about how to view external actors and their motivations. This means that while modern conditions may well be complex, the conclusions of the presumed experts may not be systematically less liable to subjective bias than judgments made by ordinary citizens based on publicly available information. It further underscores that the question of who decides cannot be foreclosed in advance by simply asserting deference to elite knowledge. If anything, one can argue that the presumptive gulf between elite awareness and suspect mass opinion has generated its own very dramatic political and legal pathologies. In recent years, the country has witnessed a variety of security crises built on the basic failure of ‘expertise.’195 At present, part of what obscures this fact is the very culture of secret information sustained by the modern security concept. Today, it is commonplace for government officials to leak security material about terrorism or external threat to newspapers as a method of shaping the public debate.196 These ‘open’ secrets allow greater public access to elite information and embody a central and routine instrument for incorporating mass voice into state decision-making. But this mode of popular involvement comes at a key cost. Secret information is generally treated as worthy of a higher status than information already present in the public realm—the shared collective information through which ordinary citizens reach conclusions about emergency and defense. Yet, oftentimes, as with the lead up to the Iraq War in 2003, although the actual content of this secret information is flawed,197 its status as secret masks these problems and allows policymakers to cloak their positions in added authority. This reality highlights the importance of approaching security information with far greater collective skepticism; it also means that security judgments may be more ‘Hobbesian’—marked fundamentally by epistemological uncertainty as opposed to verifiable fact—than policymakers admit. If both objective sociological claims at the center of the modern security concept are themselves profoundly contested, what does this mean for reform efforts that seek to recalibrate the relationship between liberty and security? Above all, it indicates that the central problem with the procedural solutions offered by constitutional scholars—emphasizing new statutory frameworks or greater judicial assertiveness—is that they mistake a question of politics for one of law. In other words, such scholars ignore the extent to which governing practices are the product of background political judgments about threat, democratic knowledge, professional expertise, and the necessity for insulated decision-making. To the extent that Americans are convinced that they face continuous danger from hidden and potentially limitless assailants—danger too complex for the average citizen to comprehend independently—it is inevitable that institutions (regardless of legal reform initiatives) will operate to centralize power in those hands presumed to enjoy military and security expertise. Thus, any systematic effort to challenge the current framing of the relationship between security and liberty must begin by challenging the underlying assumptions about knowledge and security upon which legal and political arrangements rest. Without a sustained and public debate about the validity of security expertise, its supporting institutions, and the broader legitimacy of secret information, there can be no substantive shift in our constitutional politics. The problem at present, however, is that no popular base exists to raise these questions. Unless such a base emerges, we can expect our prevailing security arrangements to become ever more entrenched.

### TPA

#### TPA will pass – Reid opposition is just posturing

CNN, 2-1-’14 (Jason Seher, “Kerry, Hagel rebuke Reid on fast-track trade bill” http://politicalticker.blogs.cnn.com/2014/02/01/kerry-hagel-rebuke-reid-on-fast-track-track-bill/)

In a rare joint appearance at the Munich Security Conference, Secretary of State John Kerry and Defense Secretary Chuck Hagel dismissed Senate Majority Leader Harry Reid's opposition to renewing fast-track trade authority and predicted that the bill will ultimately pass in spite of Reid's opposition. "I've heard plenty of statements in the Senate on one day that are categorical, and we've wound up finding accommodations and a way to find our way forward," Kerry told the audience of European allies. "I respect Harry Reid, worked with him for a long time," Kerry said. "I think all of us have learned to interpret a comment on one day in the United States Senate as not necessarily what might be the situation in a matter of months." Reid said Wednesday he is unlikely to consider a bill on the issue anytime soon. "I’m against fast track," said Reid, who controls which bills get to the Senate floor. "I think everyone would be well-advised not to push this right now." With several outstanding trade pacts - including a major deal with the European Union - securing President Barack Obama's "trade promotion authority" remains a priority for the administration. The power would limit Congress' ability to influence American trade policy, only allowing them up or down votes on massive trade deals while leaving negotiations with other nations entirely under the purvey of the President. Proponents of the measure say the TPA prevents crucial trade agreements from getting bogged down in the bureaucratic slog and would help open new markets for U.S. goods. Democrats oppose the measure, arguing past trade deals led companies to ship jobs overseas. Heralding the ability as something that could "have a profound impact" on the American economy, Kerry said the extension of President Obama's authority could pay dividends and help further drive down the unemployment rate. "It's worth millions of jobs," he said. Kerry also was emphatic that Reid's opposition would not stall progress. "I wouldn't let it deter us one iota, not one iota," he said. Hagel echoed his counterpart's tone on the issue, saying that Reid's decision to put the bill on hold was imprudent. "Let's be smart and let's be wise and let's be collaborative and use all of the opportunities and mechanisms that we have to enhance each other - culturally, trade, commerce, exchanges," Hagel said.

#### Plan tanks capital and derails the agenda – empirics prove

Kriner ’10 Douglas L. Kriner, assistant professor of political science at Boston University, “After the Rubicon: Congress, Presidents, and the Politics of Waging War”, University of Chicago Press, Dec 1, 2010, page 68-69

While congressional support leaves the president’s reserve of political capital intact, congressional criticism saps energy from other initiatives on the home front by forcing the president to expend energy and effort defending his international agenda. Political capital spent shoring up support for a president’s foreign policies is capital that is unavailable for his future policy initiatives. Moreover, any weakening in the president’s political clout may have immediate ramifications for his reelection prospects, as well as indirect consequences for congressional races.59 Indeed, Democratic efforts to tie congressional Republican incumbents to President George W. Bush and his war policies paid immediate political dividends in the 2006 midterms, particularly in states, districts, and counties that had suffered the highest casualty rates in the Iraq War. 60 In addition to boding ill for the president’s perceived political capital and reputation, such partisan losses in Congress only further imperil his programmatic agenda, both international and domestic. Scholars have long noted that President Lyndon Johnson’s dream of a Great Society also perished in the rice paddies of Vietnam. Lacking the requisite funds in a war-depleted treasury and the political capital needed to sustain his legislative vision, Johnson gradually let his domestic goals slip away as he hunkered down in an effort first to win and then to end the Vietnam War. In the same way, many of President Bush’s highest second-term domestic proprieties, such as Social Security and immigration reform, failed perhaps in large part because the administration had to expend so much energy and effort waging a rear-guard action against congressional critics of the war in Iraq.61 When making their cost-benefit calculations, presidents surely consider these wider political costs of congressional opposition to their military policies. If congressional opposition in the military arena stands to derail other elements of his agenda, all else being equal, the president will be more likely to judge the benefits of military action insufficient to its costs than if Congress stood behind him in the international arena.

#### PC key to momentum

Parnes 1/21

Amie Parnes The Hill “Obama: Give me fast track trade” 01/21 http://thehill.com/homenews/administration/195858-white-house-works-to-convince-dems-to-give-obama-fast-track-on-trade

The White House is making a major push to convince Congress to give the president trade promotion authority, which would make it easier for President Obama to negotiate pacts with other countries. ¶ A flurry of meetings has taken place in recent days since legislation was introduced to give the president the authority, with U.S. Trade Representative Mike Froman meeting with approximately 70 lawmakers on both sides of the aisle in the House and Senate.¶ White House Chief of Staff Denis McDonough has also been placing calls and meeting with key Democratic lawmakers in recent days to discuss trade and other issues.¶ Republicans have noticed a change in the administration’s interest in the issue, which is expected to be a part of Obama’s State of the Union address in one week.¶ While there was “a lack of engagement,” as one senior Republican aide put it, there is now a new energy from the White House since the bill dropped. ¶ The effort to get Congress to grant Obama trade promotion authority comes as the White House seeks to complete trade deals with the European Union and a group of Asian and Latin American countries as part of the Trans-Pacific Partnership or TPP.¶ The authority would put time limits on congressional consideration of those deals, and prevent the deals from being amended by Congress. That would give the administration more leverage with trading partners in its negotiations.¶ The trade push dovetails with the administration’s efforts to raise the issue of income inequality ahead of the 2014 midterm elections. The White House is pressing Republicans to raise the minimum wage and to extend federal unemployment benefits.¶ The difference is that on the minimum wage hike and unemployment issue, Obama has willing partners in congressional Democrats and unions, who are more skeptical of free trade. Republicans are more the willing partner on backing trade promotion authority.¶ Legislation introduced last week to give Obama trade promotion authority was sponsored by Ways and Means Committee Chairman Dave Camp (R-Mich.) and Senate Finance Committee Chairman Max Baucus (D-Mont.), as well as Sen. Orrin Hatch (R-Utah), the ranking member on Finance.¶ No House Democrats are co-sponsoring the bill, however, and Rep. Sander Levin (D-Mich.), the Ways and Means ranking member, and Rep. Charles Rangel (D-N.Y.), the panel’s former chairman, have both criticized it. They said the legislation doesn’t give enough leverage and power to Congress during trade negotiations.¶ Getting TPA passed would be a major victory for the administration and one that would please business groups, but the White House will first have to convince Democrats to go along with it.¶ One senior administration official said the White House has been in dialogue with lawmakers on both sides of the aisle “with a real focus on Democrats” to explain TPA and take into account their concerns. ¶ “Any trade matter presents challenges,” the senior administration official said, adding that the White House officials are “devoted” to working with members on the issue.

#### TPA is critical to US economic growth and restoring America’s free trade credibility

Riley and Kim 4/16

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www.heritage.org/research/reports/2013/04/advancing-trade-freedom-key-objective-of-trade-promotion-authority-renewal

Trade Promotion Authority (TPA) has been a critical tool for advancing free trade and spreading its benefits to a greater number of Americans. TPA, also known as “fast track” authority, is the legislative power Congress grants to the President to negotiate reciprocal trade agreements. Provided the President observes certain statutory obligations under TPA, Congress agrees to consider implementing those trade pacts without amending them.¶ More than a decade has passed since TPA was last renewed in 2002, and its authority expired in 2007. Reinstituting TPA may well be the most important legislative action on trade for both Congress and the President in 2013 given the urgency of restoring America’s credibility in advancing open markets and securing greater benefits of two-way trade for Americans. As the case for timely reinstallation of an effective and practical TPA is stronger than ever, the quest for renewing TPA should be guided by principles that enhance trade freedom, a vital component of America’s economic freedom.¶ Emerging TPA Renewal Debates¶ Both House Ways and Means Committee chairman David Camp (R–MI) and Senate Finance Committee chairman Max Baucus (D–MT) have announced plans to pursue TPA legislation. However, many lawmakers have correctly pointed out that a proactive push from President Obama is critical, given that trade bills have been a thorny issue for many Democrats in recent years.¶ Historically, it has been common practice, although not formally required, to have the President request that Congress provide renewed TPA. In fact, except for President Obama, every President since Franklin Roosevelt has either requested or received trade negotiating authority.[1]¶ After four years of informing Congress it would seek TPA at “the appropriate time,” early this year the Obama Administration finally indicated its interest in working with Congress to get TPA done. The President’s 2013 trade agenda offered the Administration’s most forward-leaning language yet, specifying that “to facilitate the conclusion, approval, and implementation of market-opening negotiating efforts, we will also work with Congress on Trade Promotion Authority.”[2]¶ In the 2002 Bipartisan Trade Promotion Authority Act, Congress—whose role in formulating U.S. trade policy includes defining trade negotiation objectives—made it clear that¶ [t]he expansion of international trade is vital to the national security of the United States. Trade is critical to the economic growth and strength of the United States and to its leadership in the world. Stable trading relationships promote security and prosperity.… Leadership by the United States in international trade fosters open markets, democracy, and peace throughout the world.[3]

**Nuclear war**

Burrows and Harris 9 Mathew J. Burrows counselor in the National Intelligence Council and Jennifer Harris a member of the NIC’s Long Range Analysis Unit “Revisiting the Future: Geopolitical Effects of the Financial Crisis” The Washington Quarterly 32:2 https://csis.org/files/publication/twq09aprilburrowsharris.pdf

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

### CP

#### Text: The Executive Branch of the United States should require authorization from Congress prior to initiating military use of force unless to repel attacks on the United States.

#### The CP solves the case by providing a credible signal

**Vermule and Posner, 7 –** (Eric, The University of Chicago Law School Professor, Adrian, Harvard Law School Professor of Law, 200, The Credible Executive, 74 U. Chi. L. Rev. 865)

We suggest that the executive's credibility problem can be solved by second-order mechanisms of executive signaling. In the general case, well-motivated executives send credible signals by taking actions that are more costly for ill-motivated actors than for well-motivated ones, thus distinguishing themselves from their ill-motivated mimics. Among the specific mechanisms we discuss, an important subset involves executive self-binding, whereby executives commit themselves to a course of action that would impose higher costs on ill-motivated actors. Commitments themselves have value as signals of benign motivations.¶ This departs from the usual approach in legal scholarship. Legal theory has often discussed self-binding by "government" or government officials. In constitutional theory, it is often suggested that constitutions represent an attempt by "the people" to bind "themselves" against their own future decisionmaking pathologies, or relatedly, that constitutional prohibitions represent mechanisms by which governments commit themselves not to expropriate investments or to exploit their populations. n72 Whether or not this picture is coherent, n73 it is not the question we examine here, although some of the relevant considerations are similar. n74 We are not concerned with binding the president so that he cannot abuse his powers, but with how he might bind himself or take other actions that enhance his credibility, so that he can generate support from the public and other members of the government. [\*895] ¶ Furthermore, our question is subconstitutional: it is whether a well-motivated executive, acting within an established set of constitutional and statutory rules, can use signaling mechanisms to generate public trust. Accordingly, we proceed by assuming that no constitutional amendments or new statutes will be enacted. Within these constraints, what can a well-motivated executive do to bootstrap himself to credibility? The problem for the well-motivated executive is to credibly signal his benign motivations. In general, the solution is to engage in actions that are less costly for good types than for bad types.¶ We begin with some relevant law, then examine a set of possible mechanisms -emphasizing both the conditions under which they might succeed and the conditions under which they might not -and conclude by examining the costs of credibility.¶ A. A Preliminary Note on Law and Self-Binding¶ Many of our mechanisms are unproblematic from a legal perspective, as they involve presidential actions that are clearly lawful. But a few raise legal questions; in particular, those that involve self-binding. n75 Can a president bind himself to respect particular first-order policies? With qualifications, the answer is yes, at least to the same extent that a legislature can. Formally, a duly promulgated executive rule or order binds even the executive unless and until it is validly abrogated, thereby establishing a new legal status quo. n76 The legal authority to establish a new status quo allows a president to create inertia or political constraints that will affect his own future choices. In a practical sense, presidents, like legislatures, have great de facto power to adopt policies that shape the legal landscape for the future. A president might commit himself to a long-term project of defense procurement or infrastructure or foreign policy, narrowing his own future choices and generating new political coalitions that will act to defend the new rules or policies.¶ More schematically, we may speak of formal and informal means of self-binding:¶ 1. The president might use formal means to bind himself. This is possible in the sense that an executive order, if otherwise valid, legally binds the president while it is in effect and may be enforced by the courts. It is not possible in the sense that the president can always repeal the executive order if he can bear the political and reputational costs of doing so.¶ 2. The president might use informal means to bind himself. This is not only possible but frequent and important. Issuing an executive rule providing for the appointment of special prosecutors, as Nixon did, is not a formal self-binding. n77 However, there may be large political costs to repealing the order. This effect does not depend on the courts' willingness to enforce the order, even against Nixon himself. Court enforcement makes the order legally binding while it is in place, but only political and reputational enforcement can protect it from repeal. Just as a dessert addict might announce to his friends that he is going on a no-dessert diet in order to raise the reputational costs of backsliding and thus commit himself, so, too, the executive's issuance of a self-binding order can trigger reputational costs. In such cases, repeal of an executive order may be seen as a breach of faith even if no other institution ever enforces it.

### Solvency

#### the executive circumvents

Shane 12 \*Peter M. Jacob E. Davis and Jacob E. Davis II Chair in Law, The Ohio State University Moritz School of Law. From 1978 to 1981, served in the Office of Legal Counsel, U.S. Department of Justice. Journal of National Security Law & Policy, 5 J. Nat'l Security L. & Pol'y 507

Yet, the ideological prism of presidentialism can bend the light of the law so that nothing is seen other than the claimed prerogatives of the sitting chief executive. Champions of executive power - even skilled lawyers who should know better - wind up asserting that, to an extraordinary extent, the President as a matter of constitutional entitlement is simply not subject to legal regulation by either of the other two branches of government. [\*511] Government attorneys must understand their unique roles as both advisers and advocates. In adversarial proceedings before courts of law, it may be fine for each of two contesting sides, including the government, to have a zealous, and not wholly impartial, presentation, with the judge acting as a neutral decisionmaker. But in their advisory function, government lawyers must play a more objective, even quasi-adjudicative, role. They must give the law their most conscientious interpretation. If they fail in that task, frequently there will be no one else effectively situated to do the job of assuring diligence in legal compliance. Government lawyers imbued with the ideology of presidentialism too easily abandon their professional obligations as advisers and too readily become ethically blinkered advocates for unchecked executive power. Jack Goldsmith headed the Office of Legal Counsel (OLC) for a little less than ten months in 2003-2004. Of the work done by some government attorneys and top officials after 9/11, he said they dealt with FISA limitations on warrantless surveillance by the National Security Agency (NSA) "the way they dealt with other laws they didn't like: they blew through them in secret based on flimsy legal opinions that they guarded closely so no one could question the legal basis for the operations." 7 He describes a 2003 meeting with David Addington, who was Counsel and later Chief of Staff to Vice President Dick Cheney, in which Addington denied the NSA Inspector General's request to see a copy of OLC's legal analysis in support of the NSA surveillance program. Before Goldsmith arrived at OLC, "not even NSA lawyers were allowed to see the Justice Department's legal analysis of what NSA was doing." 8

#### Congressional limitations cause a shift to PMCs---turns case

**Michaels, 4 –** (\*Jon D. Assistant Professor of Law at the UCLA School of Law. Law Clerk to the Honorable Guido Calabresi, U.S. Court of Appeals for the Second Circuit; *Washington University Law Quarterly*, BEYOND ACCOUNTABILITY: THE CONSTITUTIONAL, DEMOCRATIC, AND STRATEGIC PROBLEMS WITH PRIVATIZING WAR, Fall, 82 Wash. U. L. Q. 1001)

But since the War Powers Resolution applies only to the deployment of U.S. Armed Forces 259 and, moreover, since anti-covert operations legislation requiring congressional notification and consultation [\*1077] applies only to members of the U.S. intelligence community, 260 there is room to maneuver unilaterally if the president were to use privateers. The drug war in Colombia provides an apt example. 261 Due to frustrations associated with Congress's stringent limitations on the number and responsibilities of American soldiers in Colombia in the 1990s, private military firms were utilized probably in no small part to circumvent these legislative restrictions. 262 According to P.W. Singer, the intent of privatized military assistance is to bypass Congressional oversight and provide political cover to the White House if something goes wrong... . [So,] the United States quietly arranged the hire of a slew of PMFs, whose operations in Colombia range far beyond the narrow restrictions placed on U.S. soldiers fighting the drug war. Rather, the firms' operations are intended to help the Colombian military finally end the decades-old [rebel] insurgency. 263 Again, the structural damage is clear: through bypassing Congress - and the American people - the Executive can initiate more conflict than the public might otherwise have been willing to support.

### Intervention

#### no impact to group think and congress fails

**Fleischman 10** – Matthew Fleischman, J.D. Candidate at New York University School of Law, "A Functional Distribution of War Powers", New York University Journal of Legislation and Public Policy, 13 N.Y.U. J. Legis. 26 Pub. Pol’y 137, Lexis

A natural place to begin this analysis is with traditional warfare involving two nation-states. This is the most basic and, historically, the most common form of military engagement. Professors Nzelibe and Yoo, two leading President-First scholars, argue that the Executive is best equipped to deal with military actions with nation-states and that there is “little or no empirical data” supporting the opposing view They argue that defining the ideal separation of powers model requires a determination as to which branch is more effective at limiting the principal-agent problem. The principle-agent problem exists because the President (the agent) has a different objective—reelection—than the public (the principal)—effective policy. This problem can be mitigated through strong oversight by the principal, but when the decisions are complicated or classified oversight becomes increas- ingly difficult. Nzelibe and Yoo propose three evaluative criteria through which to accomplish this analysis: domestic political account- ability, domestic expertise, and effective international signaling. Nzelibe and Yoo begin with the premise that the President is held more accountable than Congress in matters of foreign affairs and national security. The Executive will take “the lion’s share of the electoral consequences of victory or defeat in war.” 73 However, there is also the possibility that the benefits of delegating the power to initiate war to the Executive will be outweighed by a myriad of other agency costs,74 such as the President’s catering only to the majority that elected him, lame duck status, thinking only about reelection, or seeking to expand executive power. 75 But Yoo and Nzelibe question whether the principal-agent problem would be any less strong with Congress acting as the agent. 76 Furthermore, even if stripped of the power to do anything more than to officially declare war, Congress would retain the power of the purse to constrain the President expost. 77 Thus, in a functionalist approach the only justification for ex ante participation by Congress would be if “Presidents systematically misread the national interests,” and Nzelibe and Yoo think that there is no reason to believe that Congress is any better than the President at making this determinationcongress will not check the president, but just follow suit

Nzelibe 6—Jide Nzelibe, Professor of Law @ Northwestern University [“A positive theory of the war-powers constitution,” *Iowa Law Review*, 2006; 91(3) pg. 993-1062]

The theoretical framework laid out in this Article suggests that as long as the President has control over the crisis-escalation agenda, it is unlikely that either more sophisticated institutional tools or greater judicial intervention will significantly alter Congress's war-powers role. Once the President has escalated an international crisis and mobilized the domestic audience in favor of war, there is a strong tendency that Congress will follow suit and accede to the President's agenda. In other words, electoral factors are more likely to influence the congressional role in war-powers issues than empire-building concerns." Moreover, even if the courts force Congress to play a more active role by requiring that it authorize ex-ante all uses of force, the President's unique ability to shape public opinion even before a war is initiated will make it very likely that members of Congress will simply rubberstamp the President's use-of-force initiatives. Thus, although the courts can plausibly force Congress to play a more formal role in initiating wars, this does not mean that Congress will have any incentive to take such a task seriously. Pg. 1000

### China

1. No impact- they won’t go to war over the islands

The Economist 12 “Could Asia really go to war over these?” Sept 22 http://www.economist.com/node/21563316

THE countries of Asia do not exactly see the world in a grain of sand, but they have identified grave threats to the national interest in the tiny outcrops and shoals scattered off their coasts. The summer has seen a succession of maritime disputes involving China, Japan, South Korea, Vietnam, Taiwan and the Philippines. This week there were more anti-Japanese riots in cities across China because of a dispute over a group of uninhabited islands known to the Japanese as the Senkakus and to the Chinese as the Diaoyus. Toyota and Honda closed down their factories. Amid heated rhetoric on both sides, one Chinese newspaper has helpfully suggested skipping the pointless diplomacy and moving straight to the main course by serving up Japan with an atom bomb. That, thank goodness, is grotesque hyperbole: the government in Beijing is belatedly trying to play down the dispute, aware of the economic interests in keeping the peace. Which all sounds very rational, until you consider history—especially the parallel between China’s rise and that of imperial Germany over a century ago. Back then nobody in Europe had an economic interest in conflict; but Germany felt that the world was too slow to accommodate its growing power, and crude, irrational passions like nationalism took hold. China is re-emerging after what it sees as 150 years of humiliation, surrounded by anxious neighbours, many of them allied to America. In that context, disputes about clumps of rock could become as significant as the assassination of an archduke. One mountain, two tigers Optimists point out that the latest scuffle is mainly a piece of political theatre—the product of elections in Japan and a leadership transition in China. The Senkakus row has boiled over now because the Japanese government is buying some of the islands from a private Japanese owner. The aim was to keep them out of the mischievous hands of Tokyo’s China-bashing governor, who wanted to buy them himself. China, though, was affronted. It strengthened its own claim and repeatedly sent patrol boats to encroach on Japanese waters. That bolstered the leadership’s image, just before Xi Jinping takes over. More generally, argue the optimists, Asia is too busy making money to have time for making war. China is now Japan’s biggest trading partner. Chinese tourists flock to Tokyo to snap up bags and designer dresses on display in the shop windows on Omotesando. China is not interested in territorial expansion. Anyway, the Chinese government has enough problems at home: why would it look for trouble abroad? Asia does indeed have reasons to keep relations good, and this latest squabble will probably die down, just as others have in the past. But each time an island row flares up, attitudes harden and trust erodes. Two years ago, when Japan arrested the skipper of a Chinese fishing boat for ramming a vessel just off the islands, it detected retaliation when China blocked the sale of rare earths essential to Japanese industry.

Congress has injected itself, to an ever greater extent, into the day-to-day operations of foreign policy – inevitable

Doesn’t change WPR fn

#### China-US relations are strong and sustainable – both know they need each other in the long term

Sieff, 1-5-‘12 [Martin Sieff, Three Time Pulitzer Prize Winner for International Reporting, Chief Global Analyst at The Globalist, MA History @ Oxford, “United States determined to maintain partnership with China,” January 5th 2012, http://apdforum.com/en\_GB/article/rmiap/articles/online/features/2012/01/05/china-us-partnership]

The rhetoric of domestic politics in China and the United States has obscured a fundamental truth the two nations understand well: The prosperity and well-being of China and the United States remain bound to each other. United States President Barrack Obama and U.S. Secretary of State Hillary Clinton are committed to a constructive partnership with China. They are not seeking to increase tensions or create a potentially destabilizing new confrontational posture against Beijing. Their goal is to stabilize Sino-American relations and the general balance of power in the East Asia and the western Pacific. The United States has advocated comprehensive negotiations in the South China Sea. “We both have much more to gain from cooperation than from conflict,” Clinton said. Clinton laid out the United States strategy to peacefully build a new era of peaceful cooperation with China in a major address published on the Foreign Policy magazine website in October. “We both have much more to gain from cooperation than from conflict,” she wrote. “We make the case to our Chinese colleagues that a deep respect for international law and a more open political system would provide China with a foundation for far greater stability and growth—and increase the confidence of China’s partners,” Clinton continued. “Without them, China is placing unnecessary limitations on its own development.” Obama recognizes that the United States and China are deeply dependent on each other. Obama has taken no actions to try to curtail Chinese exports into the United States and he does not intend to do so. The United States remains by far the largest and most lucrative market for Chinese exports. China ran a $273 billion trade surplus with the United States in 2010. It is projected to be even higher this year. If the United States curtailed the volume of its imports from China, Beijing’s leaders know that could set off a devastating economic crisis for them at home. China also holds more than $1 trillion in U.S. Treasury securities. It could cause a disastrous fall of the dollar and trigger a devastating economic double-dip back into recession on the U.S. economy if it sold too many of them too quickly on world markets. China’s greatest concern about the U.S. financial and economic policy is not a desire to see America grow weaker. On the contrary, Chinese Prime Minister Wen Jiabao repeatedly warned senior figures in the George W. Bush and Obama administrations to reduce the government’s ballooning annual federal budget deficit to restore investor confidence. Chinese leaders openly expressed their skepticism that boosting government spending too rapidly will not create jobs, but will threaten fiscal stability and undermine business confidence. These arguments reflect the clear recognition by China’s leaders that the United States and China remain deeply dependent upon each other for the continued prosperity and success of both nations. Also, Obama has made it clear that the United States remains committed to maintaining international security and stability in East Asia and the Western Pacific. The United States has rejected arguments to try to contain China or make it the enemy for a new generation of so-called neo-Cold War containment policies. China’s rise in economic and diplomatic influence across South-East Asia and through sub-Saharan Africa has been a stabilizing force. Chinese diplomats and companies are happy to work with secure governments throughout these regions as long as they can deliver stability and good conditions for economic development and investment. It enjoys mature relations with democratic Malaysia and Indonesia, as well as with authoritarian governments in Africa. China also has a vested interest, as does the United States, in global as well as in U.S. financial and economic stability and security. China has used its massive financial resources and global business clout to support the threatened euro currency and signal its support for European governments mired in massive national debts such as Italy and France. Like the United States, China remains a status quo power in is economic policies. U.S. interests also require a continuing stable, strong and friendly China. The U.S. government needs China to remain confident that its vast investment in U.S. Treasuries remains secure. Washington wants China also to go on attracting major Foreign Direct Investment, especially from the United States in the rapidly growing information technology and related high-tech sectors. China and the United States also share a concern in maintaining the security and stability of Indonesia and the Malacca Strait, through which so much of the oil imports from the Middle East for China, South Korea and Japan all have to pass. Many reported areas of apparent conflict or disagreement between the United States and China are either far less than generally realized, or have naturally subsided. China’s massive investment in solar and other forms of renewable and sustainable power has blunted previous criticism by American environmentalists of China’s energy policies. In reality, the United States and China both want to move to sustainable power sources as rapidly as possible while both countries recognize their need to remain dependent on traditional fossil fuel sources for the foreseeable future. Both countries are investing on a massive scale in clean natural gas which has a far smaller carbon footprint than oil or coal. China’s massive investment in hundreds of next-generation safe nuclear civilian power reactors has also been widely welcomed by American environmentalists. And both countries want to keep the Middle East stable, global oil prices down and global energy supplies secure. Disagreements over specific statements on individual issues have to be seen in this broader context. The United States, China and the entire Asia-Pacific region have benefitted tremendously from the decades of partnership and mutually beneficial growth between the world’s two largest economies. Obama’s administration is determined that it will continue.

China-US Relations in 2012: Caution Ahead

### NK

No evidence policy change is going to occur in the s’quo

#### All military systems are protected from EMP

John Keller 10, PennWell Military & Aerospace Experts, “Nuclear proliferation raises the specter of EMP attack”, no date listed - accessed Jan 2010, http://mae.pennnet.com/display\_article/350981/32/ARTCL/none/EXCON/1/Nuclear-proliferation-raises-the-specter-of-EMP-attack/

The influence of EMP on critical military systems has been a consideration since the 1950s shortly after the atomic age began. These kinds of systems, such as warships and submarines, main battle tanks and other armored vehicles, jet fighters and military transport aircraft, as well as strategic weapons and communications systems, must meet the requirements of a variety of military and industry standards for EMP shielding and protection. These standards include MIL-STD-285, MIL-STD-188-125, MIL-STD-461E, MIL-STD-464, ANSI C95.3-1979, IEEE C63.14, and IEEE 299-1991. In general, military and aerospace systems -- especially those designed to go into combat or take part in strategic nuclear operations -- are protected by shielding, surge protectors, hardened cabling, and other measures that systems designers can take to cancel or mitigate the effects of EMP.

#### North Korea poses zero nuclear threat – the US and South Korea can quickly respond to any provocation

Bandow Sr. Fellow Cato ‘9

(Doug-, June 4, “North Korea: Paper Tiger”, <http://www.campaignforliberty.com/article.php?view=100>; Jacob)

Another day, it must be another weapons test for North Korea. And that means wailing and gnashing of teeth from Seoul to Washington. And presidential statements denouncing the grave threat posed to world peace. Yet the so-called Democratic People's Republic of Korea is an impoverished wreck. One American carrier group has more firepower than the entire North Korean military. It is the U.S. which threatens Pyongyang, not the other way around. U.S. entanglement with Korea began with the Japanese surrender in 1945. Washington and Moscow divided the peninsula at the 49th parallel and occupied the southern and northern sections, respectively. As the Cold War enveloped U.S.-Soviet relations, the Republic of Korea and the Democratic People's Republic of Korea emerged as hostile independent states. In the early years the DPRK was the more fearsome player. The U.S. refused to arm the ROK with heavy weapons to discourage authoritarian President Syngman Rhee from fulfilling his threat to march north. The Soviets were not so scrupulous in dealing with the North's Kim Il-sung, who almost conquered the entire peninsula after invading in June 1950 before U.S. forces turned the tide. After three years of see-saw warfare, an armistice was agreed near the initial boundary. But no permanent peace was arranged, so American troops remained. Over the last half century, however, Chinese forces went home, South Korea raced past the North in economic development, Moscow and Beijing recognized Seoul, and the DPRK suffered economic collapse and famine. The balance of power of 1950 long ago disappeared. Pyongyang retains a quantitative military edge, but its equipment is antiquated; North Korean troops are malnourished and get little training. The North is effectively bankrupt and without allies. With about 40 times the GDP and twice the population of the North, Seoul could outmatch the Kim regime in any way it chose. With large military reserves, a strong industrial base, abundant allies, and generous access to international credit markets, South Korea is well-positioned to triumph in any conflict. It is obvious, then, that the DPRK doesn't pose much of a conventional threat to the South. The Kim regime could invade the ROK, but doing so would be far more likely to end in the destruction of the North than the South. And nothing suggests that Kim Jong-il is seeking martyrdom: he wants his virgins in this life, not the next. Japan worries about threats from Pyongyang, but the former is more than capable of defending itself. Japan possesses the world's second largest economy, noted for its technological sophistication. There is little that Tokyo could not build or buy. More than 60 years after the end of World War II, it is time for Japan to take over responsibility for its own defense. The DPRK has neither the interest nor the ability to challenge other nations in the region -- Indonesia, Australia, Philippines, et al. The North possesses an antiquated army and little else, not a globe-spanning military like that of the U.S. It is even more obvious that Pyongyang poses no meaningful danger to America. The North has no ability to project military power. If it attempted to do so, U.S. air and naval power would make quick work of North Korea's forces. The only Americans currently within range of the DPRK are the 28,000 troops stationed in the South. Their deployment, while unnecessary to protect the ROK, actually endangers the U.S. Disengagement would be the most effective means of reducing the threat to America. What of the DPRK's nuclear and missile programs? They are primarily a problem for the North's neighbors and thus give other countries a good reason to consider augmenting both defensive and deterrence capabilities. However, North Korea apparently has neither weaponized nor miniaturized actual nuclear warheads. Pyongyang possesses no long-range missiles capable of accurately hitting American territory. The North's capabilities do not match its bluster. That could eventually change, of course, but the DPRK obviously poses no present danger. There is no cause for precipitous action. In fact, Pyongyang is never likely to pose a genuine threat to America. The U.S. has the world's most sophisticated nuclear arsenal: any North Korean attack would be suicidal. Just one American missile with multiple warheads could destroy everything worth destroying in the North. If Washington could deter Joseph Stalin and Mao Zedong, two of the greatest mass murderers in human history, it can deter Kim Jong-il.

# 2NC

### K

#### Structural violence comes first - it is invisible and exponential – means it's a prior ethical consideration.

Nixon 11 (Rob, Rachel Carson Professor of English, University of Wisconsin-Madison, Slow Violence and the Environmentalism of the Poor, pgs. 2-3)

Three primary concerns animate this book, chief among them my conviction that we urgently need to rethink-politically, imaginatively, and theoretically-what I call "slow violence." By slow violence I mean a violence that occurs gradually and out of sight, a violence of delayed destruction that is dispersed across time and space, an attritional violence that is typically not viewed as violence at all. Violence is customarily conceived as an event or action that is immediate in time, explosive and spectacular in space, and as erupting into instant sensational visibility. We need, I believe, to engage a different kind of violence, a violence that is neither spectacular nor instantaneous, but rather incremental and accretive, its calamitous repercussions playing out across a range of temporal scales. In so doing, we also need to engage the representational, narrative, and strategic challenges posed by the relative invisibility of slow violence. Climate change, the thawing cryosphere, toxic drift, biomagnification, deforestation, the radioactive aftermaths of wars, acidifying oceans, and a host of other slowly unfolding environmental catastrophes present formidable representational obstacles that can hinder our efforts to mobilize and act decisively. The long dyings-the staggered and staggeringly discounted casualties, both human and ecological that result from war's toxic aftermaths or climate change-are underrepresented in strategic planning as well as in human memory. Had Summers advocated invading Africa with weapons of mass destruction, his proposal would have fallen under conventional definitions of violence and been perceived as a military or even an imperial invasion. Advocating invading countries with mass forms of slow-motion toxicity, however, requires rethinking our accepted assumptions of violence to include slow violence. Such a rethinking requires that we complicate conventional assumptions about violence as a highly visible act that is newsworthy because it is event focused, time bound, and body bound. We need to account for how the temporal dispersion of slow violence affects the way we perceive and respond to a variety of social afflictions-from domestic abuse to posttraumatic stress and, in particular, environmental calamities. A major challenge is representational: how to devise arresting stories, images, and symbols adequate to the pervasive but elusive violence of delayed effects. Crucially, slow violence is often not just attritional but also exponential, operating as a major threat multiplier; it can fuel long-term, proliferating conflicts in situations where the conditions for sustaining life become increasingly but gradually degraded.

#### Pedagogy first - the state is hijacked by the MIC, alternative modes of analysis are key to creating better skills for making politics better.

Giroux 13 Henry A. is a social critic and educator, and the author of many books. He currently holds the Global Television Network Chair in English and Cultural Studies at McMaster University, Ontario, Monthly Review, Volume 65, Issue 01 (May)

In addition, as the state is hijacked by the financial-military-industrial complex, the “most crucial decisions regarding national policy are not made by representatives, but by the financial and military elites.”53 Such massive inequality and the suffering and political corruption it produces point to the need for critical analysis in which the separation of power and politics can be understood. This means developing terms that clarify how power becomes global even as politics continues to function largely at the national level, with the effect of reducing the state primarily to custodial, policing, and punishing functions—at least for those populations considered disposable. The state exercises its slavish role in the form of lowering taxes for the rich, deregulating corporations, funding wars for the benefit of the defense industries, and devising other welfare services for the ultra-rich. There is no escaping the global politics of finance capital and the global network of violence it has produced. Resistance must be mobilized globally and politics restored to a level where it can make a difference in fulfilling the promises of a global democracy. But such a challenge can only take place if the political is made more pedagogical and matters of education take center stage in the struggle for desires, subjectivities, and social relations that refuse the normalizing of violence as a source of gratification, entertainment, identity, and honor. War in its expanded incarnation works in tandem with a state organized around the production of widespread violence. Such a state is necessarily divorced from public values and the formative cultures that make a democracy possible. The result is a weakened civic culture that allows violence and punishment to circulate as part of a culture of commodification, entertainment, distraction, and exclusion. In opposing the emergence of the United States as both a warfare and a punishing state, I am not appealing to a form of left moralism meant simply to mobilize outrage and condemnation. These are not unimportant registers, but they do not constitute an adequate form of resistance .What is needed are modes of analysis that do the hard work of uncovering the effects of the merging of institutions of capital, wealth, and power, and how this merger has extended the reach of a military-industrial-carceral and academic complex, especially since the 1980s. This complex of ideological and institutional elements designed for the production of violence must be addressed by making visible its vast national and global interests and militarized networks, as indicated by the fact that the United States has over 1,000 military bases abroad.54 Equally important is the need to highlight how this military-industrial-carceral and academic complex uses punishment as a structuring force to shape national policy and everyday life. Challenging the warfare state also has an important educational component. C. Wright Mills was right in arguing that it is impossible to separate the violence of an authoritarian social order from the cultural apparatuses that nourish it. As Mills put it, the major cultural apparatuses not only “guide experience, they also expropriate the very chance to have an experience rightly called ‘our own.’”55 This narrowing of experience shorn of public values locks people into private interests and the hyper-individualized orbits in which they live. Experience itself is now privatized, instrumentalized, commodified, and increasingly militarized. Social responsibility gives way to organized infantilization and a flight from responsibility. Crucial here is the need to develop new cultural and political vocabularies that can foster an engaged mode of citizenship capable of naming the corporate and academic interests that support the warfare state and its apparatuses of violence, while simultaneously mobilizing social movements to challenge and dismantle its vast networks of power. One central pedagogical and political task in dismantling the warfare state is, therefore, the challenge of creating the cultural conditions and public spheres that would enable the U.S. public to move from being spectators of war and everyday violence to being informed and engaged citizens.Unfortunately, major cultural apparatuses like public and higher education, which have been historically responsible for educating the public, are becoming little more than market-driven and militarized knowledge factories. In this particularly insidious role, educational institutions deprive students of the capacities that would enable them not only to assume public responsibilities, but also to actively participate in the process of governing. Without the public spheres for creating a formative culture equipped to challenge the educational, military, market, and religious fundamentalisms that dominate U.S. society, it will be virtually impossible to resist the normalization of war as a matter of domestic and foreign policy. Any viable notion of resistance to the current authoritarian order must also address the issue of what it means pedagogically to imagine a more democratically oriented notion of knowledge, subjectivity, and agency and what it might mean to bring such notions into the public sphere. This is more than what Bernard Harcourt calls “a new grammar of political disobedience.”56 It is a reconfiguring of the nature and substance of the political so that matters of pedagogy become central to the very definition of what constitutes the political and the practices that make it meaningful. Critical understanding motivates transformative action, and the affective investments it demands can only be brought about by breaking into the hardwired forms of common sense that give war and state-supported violence their legitimacy. War does not have to be a permanent social relation, nor the primary organizing principle of everyday life, society, and foreign policy. The war of all-against-all and the social Darwinian imperative to respond positively only to one’s own self-interest represent the death of politics, civic responsibility, and ethics, and set the stage for a dysfunctional democracy, if not an emergent authoritarianism. The existing neoliberal social order produces individuals who have no commitment, except to profit, disdain social responsibility, and loosen all ties to any viable notion of the public good. This regime of punishment and privatization is organized around the structuring forces of violence and militarization, which produce a surplus of fear, insecurity, and a weakened culture of civic engagement—one in which there is little room for reasoned debate, critical dialogue, and informed intellectual exchange. Patricia Clough and Craig Willse are right in arguing that we live in a society “in which the production and circulation of death functions as political and economic recovery.”57 The United States understood as a warfare state prompts a new urgency for a collective politics and a social movement capable of negating the current regimes of political and economic power, while imagining a different and more democratic social order. Until the ideological and structural foundations of violence that are pushing U.S. society over the abyss are addressed, the current warfare state will be transformed into a full-blown authoritarian state that will shut down any vestige of democratic values, social relations, and public spheres. At the very least, the U.S. public owes it to its children and future generations, if not the future of democracy itself, to make visible and dismantle this machinery of violence while also reclaiming the spirit of a future that works for life rather than death—the future of the current authoritarianism, however dressed up they appear in the spectacles of consumerism and celebrity culture. It is time for educators, unions, young people, liberals, religious organizations, and other groups to connect the dots, educate themselves, and develop powerful social movements that can restructure the fundamental values and social relations of democracy while establishing the institutions and formative cultures that make it possible. Stanley Aronowitz is right in arguing that: the system survives on the eclipse of the radical imagination, the absence of a viable political opposition with roots in the general population, and the conformity of its intellectuals who, to a large extent, are subjugated by their secure berths in the academy [and though] we can take some solace in 2011, the year of the protester…it would be premature to predict that decades of retreat, defeat and silence can be reversed overnight without a commitment to what may be termed “a long march” through the institutions, the workplaces and the streets of the capitalist metropoles.58 The current protests among young people, workers, the unemployed, students, and others are making clear that this is not—indeed, cannot be—only a short-term project for reform, but must constitute a political and social movement of sustained growth, accompanied by the reclaiming of public spaces, the progressive use of digital technologies, the development of democratic public spheres, new modes of education, and the safeguarding of places where democratic expression, new identities, and collective hope can be nurtured and mobilized. Without broad political and social movements standing behind and uniting the call on the part of young people for democratic transformations, any attempt at radical change will more than likely be cosmetic.

#### They can only weigh the aff if they justify legalism as an epistemology - the aff's impact calculations are not benign, but mask the violence of law.

Dossa 99 Shiraz, Department of Political Science, St. Francis Xavier University, Antigonish, Nova Scotia, “Liberal Legalism: Law, Culture and Identity,” The European Legacy, Vol. 4, No. 3, pp. 73-87,1

Law's imperial reach, it massive authority, in liberal politics is a **brute**, recurring **fact**. In Law's Empire, Dworkin attests to its scope and power with candour: "We live in and by the law. It makes us what we are" (vii). But he fails to appreciate that law equally traduces others, it systematically unmakes them. For Dworkin, a militant liberal legalist, law is the insiders' domain: legal argument has to be understood internally from the "judge's point of view"; sociological or historical readings are irrelevant and "perverse".2 Praising the decencies of liberal law is necessary in this world: rule of law, judicial integrity, fairness, justice are integral facets of tolerable human life. Lawfulness is and ought to be part of any decent regime of politics. But **law's rhetoric on its own behalf** systematically scants law's violent, dark underside, it skillfully masks law's commerce with **destruction and death.** None of this is visible from the internalist standpoint, and Dworkin's liberal apologia serves to mystify the gross reality of law's empire. In liberal political science, law's presumed, Olympian impartiality, is thus not a contested notion. Liberals still presuppose as a matter of course the juristic community's impartiality and neutrality, **despite empirical evidence to the contrary**.3 One consequence of the assumed sanctity of the judicial torso within the body politic, has been that law's genealogy, law's chronological disposition towards political and cultural questions, have simply not been of interest or concern to most liberal scholars. A further result of this attitude is the political science community's nearly total ignorance of liberal law's complicity in western imperialism, and in shaping western attitudes to the lands and cultures of the conquered natives. Liberal jurisprudence's subterranean life, its invidious consciousness is, however, not an archaic, intermittent annoyance as sensitive liberals are inclined to think: **indeed law is as potent now as it has been in last two centuries in articulating a dismissive image of the native Other**.

#### The presumed objectiveness of law masks the injustices of liberal legalism--claims of rationality are defense mechanisms to avoid dealing with existing atrocities.

Russell 10 J Stuart Russell, legal scholar in the Quebec bar, THE CRITICAL LEGAL STUDIES CHALLENGE TO CONTENIPORARY MAINSTREAM LEGAL PHILOSOPHY, Ottawa Law Review Vol 18:1 Dec 2010

There may be some truth in the statement by Sanford Levinson that CLS is held together not so much by a common analysis, as by a profound disenchantment with "liberal legalism" .44 The ancestor of this principal antagonist of CLS is liberal political theory, which was based on the view that legal rules have objective content.45 Liberalism, the dominant con- temporary Western ideology, is seen as "viewing the world in terms of a series of contradictory dualities and values such as reason and desire; freedom and necessity; individualism and altruism; autonomy and com- munity; and subjectivity and objectivity. These contradictory values are reflected in virtually all of our common law and statutory concepts and rights. ""˜\*"˜ Liberal theorists attempt to obscure the conflict inherent in such dualities and values, in part through law. Thus, CLS analysis is directed towards the exposure of the contradictions in liberal legal philosophy. This focus is rooted in a negative critique of liberal rights. Such rights do not serve the values of self-realization and true equality; instead they serve the interests of the market and bureaucratic institutions that provide the basis for liberalism."

Liberal legalism represents the status quo and acts as a mask for exploitation and injustice because of its "neutrally benevolent technique".48 In addition to exposing the contradictions and incoherence of the underlying assumptions of liberal legalism, including the Rule of Law,49 CLS mobilizes other disciplines, such as sociology, philosophy and anthropology, to dissect the presuppositions and ideology of that mainstream philosophy.50 For CLS, the tensions manifested in particular doctrinal fields pervade the entire legal system; more particularly, the overall framework of liberal ideology is criticized for masking the tensions in liberal theory."

As one of the goals of the CLS movement is the "transformation of the world" , Kennedy writes that liberal legal scholarship is an obstacle to that transformation for two reasons. First, it makes the world look rational, necessary and just, rather than arbitrary and contingent." It also "diverts energy from the task of figuring out what the world should be like".53 Second, the impression that posited results can be easily achieved is a type of narcotic which, if used, will divert one's energy into the wrong avenues , for example, scientism. The attack on liberal legalism is, in Kennedy's view, only a small contribution to a valid strategy for CLS: (a) The belief in false theories of the evolutionist or cost-oriented kind does not cause people to be conservative , and the critique of such theories cannot all by itself have any substantial impact on anybody's politics. (b) People do not hold to theories of the kinds I have been criticizing simply because they serve conservative ends. At least some people believe in them because they think they're true, even though it seems to them too bad that they are true. (c) For a lot of people, legitimating theories, theories that show the rationality, necessity and (often) eff-iciency of things as they are, serve as a kind of defense mechanism. These theories are a way of denying, of avoiding, of closing one's eyes to the horribleness of things as they are.54

#### the perm produces psychological cooption that naturalizes dominant ideologies and depletes momentum for larger movements

Lobel 7 **–** Assistant Professor of Law, University of San Diego, (Orly, Harvard Law Review, 120 Harv. L. Rev. 937)

Psychological cooptation is produced by the law precisely because law promises more than it can and will deliver. At the same time, law is unlike other sets of rules or systems in which we feel as though we have more choice about whether to participate. As described earlier, law presents itself simultaneously as the exclusive source of authority in a society and as the only engine for social change. It further presents itself as objective, situated outside and above politics. Thus, social actors who enter into formal channels of the state **risk transformation into a particular hegemonic consciousness.** Relying upon the language of law and legal rights to bring change legitimates an ideological system that masks inequality. [95](http://www.lexis.com/research/retrieve?_m=b7d531dcca7209b987833602ed6fbb4e&docnum=23&_fmtstr=FULL&_startdoc=1&wchp=dGLbVzb-zSkAt&_md5=3f8bfd4662cb01d0d1bf9f28a63e1155&focBudTerms=lobel%20and%20harvard&focBudSel=all#n95) When social demands are fused into legal action and the outcomes are only moderate adjustments of existing social arrangements, the process in effect **naturalizes systemic injustice.** The legal process reinforces, rather than resists, the dominant ideologies, institutions, and social hierarchies of the time. For example, when a court decision declares the end of racial segregation but de facto segregation persists, individuals become blind to the root causes of injustice and begin to view continued inequalities as inevitable and irresolvable. Similarly, **rights-based discourse has a legitimation effect, since rights mythically present themselves as outside and above politics.** [96](http://www.lexis.com/research/retrieve?_m=b7d531dcca7209b987833602ed6fbb4e&docnum=23&_fmtstr=FULL&_startdoc=1&wchp=dGLbVzb-zSkAt&_md5=3f8bfd4662cb01d0d1bf9f28a63e1155&focBudTerms=lobel%20and%20harvard&focBudSel=all#n96) Meanwhile, the legal framework allows the courts to implement a color blindness ideology and grant only symbolic victories rather than promote meaningful progress. [97](http://www.lexis.com/research/retrieve?_m=b7d531dcca7209b987833602ed6fbb4e&docnum=23&_fmtstr=FULL&_startdoc=1&wchp=dGLbVzb-zSkAt&_md5=3f8bfd4662cb01d0d1bf9f28a63e1155&focBudTerms=lobel%20and%20harvard&focBudSel=all#n97) As such, the role of law is one that in fact ensures the [\*958] "continued subordination of racial and other minority interests," while **pacifying the disadvantaged who rely on it.** [98](http://www.lexis.com/research/retrieve?_m=b7d531dcca7209b987833602ed6fbb4e&docnum=23&_fmtstr=FULL&_startdoc=1&wchp=dGLbVzb-zSkAt&_md5=3f8bfd4662cb01d0d1bf9f28a63e1155&focBudTerms=lobel%20and%20harvard&focBudSel=all#n98) Social movements **seduced by the "myth of rights" assume** a false sequence, namely "that litigation can evoke a declaration of rights from courts; that it can, further, be used to assure the realization of these rights; and, finally, that realization is tantamount to meaningful change."

#### the perm creates a grey hole - legal constraints on the executive masks the absence of real restraints.

Osborn 8 Timothy Kaufman is the Baker Ferguson Professor of Politics and Leadership at Whitman College; from 2002-06 as president of the American Civil Liberties of Washington; and he recently completed a term on the Executive Council of the American Political Science Association. Theory & Event > Volume 11, Issue 2

The examples cited in this section suggest not the formation of an utterly lawless regime, but, rather, within an order that continues to understand itself in terms of the categories provided by liberal contractarianism, the more insidious creation, multiplication, and institutionalization of what David Dyzenhaus calls "grey holes." Such holes are "spaces in which there are some legal constraints on executive action...but the constraints are so insubstantial that they pretty well permit government to do as it pleases."40 As such, they are more harmful to the rule of law than are outright dictatorial usurpations, first, because the provision of limited procedural protections masks the absence of any real constraint on executive power; and, second, because location of the authority to create such spaces within the Constitution implies that, in the last analysis, they bear ex ante authorization by the people. When created, in other words, they may receive but they do not require ratification, whether by Congress or by those whom its members are said to represent. What this means in effect is that the second Bush administration has dispensed with Jefferson's stipulation that extra-constitutional executive acts (or, rather, acts that Jefferson deemed to be outside those constitutionally permitted) require ex post facto ratification; and, in addition, that it has dispensed with Locke's contention that, however unlikely, at least in principle, specific exercises of extra-legal prerogative power (or, rather, acts that Locke deemed to be outside those legally permitted) are properly subject to revolutionary rejection. What one finds in the second Bush administration, then, is a denial of both models of accountability, combined with an aggressive commitment to the constitution of a security state that is liberal only in name. As it extends its reach, perfection of that state renders the prospect of popular repudiation of prerogative power ever more chimerical, and, indeed, renders recognition of the problematic character of its exercise ever less likely.

#### sequencing is crucial - cultural shifts need to occur first for law to be effective.

Nagin 5 Tomiko Brown, Visiting Associate Professor, University of Virginia School of Law, “ELITES, SOCIAL MOVEMENTS, AND THE LAW: THE CASE OF AFFIRMATIVE ACTION,” Columbia Law Review, 105 Colum. L. Rev. 1436

Those seeking to have an impact on the political and legal orders should not root a mass movement in the courts;instead, affirmative litigation about constitutional rights should be anchored upon and preceded by a mass movement. Efforts to achieve fundamental change **should** begin with the target constituency and be waged initially outside of the confines of institutionalized politics.Law should be understood as a tactic in an ongoing political struggle, where the struggle is the main event and favorable legal outcomes are its byproducts. There is **a crucially important temporal component** to this view. Legal claims can be tactically useful in a political strategy for achieving change - **but** only after social movements lay the groundwork **for legal change**. Social movements **must first create political pressure that frames issues in a favorable manner**, creates cultural norm shifts, and affects public opinion; these norm shifts then increase the likelihood that courts will reach outcomes favored by lawyers. [437](http://www.lexis.com/research/retrieve?_m=b1b76c3bff33e7c7527182cc42568c87&docnum=11&_fmtstr=FULL&_startdoc=1&wchp=dGLbVzz-zSkAl&_md5=b4841fe459fa752b47486b13d84385b6&focBudTerms=milliken%20w/150%20hispanic%20or%20latino&focBudSel=all#n437) Again, my claims find support in the history of the mid-twentieth-century civil rights movement. This narrative posits an intimate relationship between the sociopolitical dynamics within black client communities and the success (or failure) of civil rights lawyers' litigation campaigns for rights. The postwar civil rights movement confirms that the moral suasion of participatory democratic groups of nonlawyers, and typically nonelites, was integral to law's movement from a Jim Crow regime to a [\*1523] constitutional order in which formal equality was the norm. During the past three decades, historians who have analyzed social change have discovered that small groups of inexpert individuals can be the leading edge of a social movement, especially when they work in coalition with those who traditionally wield influence in society. [438](http://www.lexis.com/research/retrieve?_m=b1b76c3bff33e7c7527182cc42568c87&docnum=11&_fmtstr=FULL&_startdoc=1&wchp=dGLbVzz-zSkAl&_md5=b4841fe459fa752b47486b13d84385b6&focBudTerms=milliken%20w/150%20hispanic%20or%20latino&focBudSel=all#n438)Through their commitment to a social cause, ordinary people with no insider knowledge of the technical aspects of the broad issue on which they are mobilizing can create circumstances in which those with actual power (political, economic, and, ultimately, legal power) are persuaded to act in their favor.

#### Empirically the informal restraints imposed by counter-hegemonic movements was a stronger and more important check on the Bush administration than formal external mechanisms.

Cole 11 David, Professor, Georgetown University Law Center. Wayne Law Review, Winter, 57 Wayne L. Rev. 1203

Yet perhaps the most important and surprising lesson of the past decade is that constitutional and human rights, which seemed so vulnerable in the attacks' aftermath, proved far more resilient than many would have predicted. President George W. Bush's administration initially chafed at the constraints of constitutional, statutory, and international law, which it treated as inconvenient obstacles on the path to security. 1 The administration acted as if no one would dare to--or could effectively--check it. But in time, the executive branch of the most powerful nation in the world was compelled to adapt its response to legal demands. Equally surprising is that these restraints for the most part were imposed not by the formal mechanisms of checks and balances, but by more informal influences, often sparked by efforts of civil society organizations that advocated, educated, organized, demonstrated, and litigated for constitutional and human rights. The American constitutional system is traditionally understood to rely on the separation of powers and judicial review to protect liberty and impose legal restrictions on government officials. After September 11, however, as in [\*1205] other periods of crisis in American history, all three branches were often compromised in their commitments to liberty, equality, dignity, fair process, and the "rule of law." 2 By contrast, civil society groups dedicated to constitutional and rule-of-law values, such as the American Civil Liberties Union, the Center for Constitutional Rights, the American Bar Association, Human Rights Watch, Human Rights First, the Bill of Rights Defense Committee, the Constitution Project, the Muslim Public Affairs Council, and the Council on American Islamic Relations, consistently defended constitutional and human rights--and in so doing reinforced the checking function of constitutional and international law. They issued reports identifying and condemning lawless ventures; 3 provided material and sources to the media to help spread the word; 4 filed lawsuits in domestic and international fora challenging allegedly illegal initiatives; 5 organized and educated the public about the importance of adhering to constitutional and human rights commitments; 6 testified in Congressional hearings on torture, illegal surveillance, and Guantanamo; 7 and coordinated with foreign governments and international nongovernmental organizations to bring diplomatic pressure to bear on the United States to conform its actions to constitutional and international law. 8 Scholars have long focused on the role constitutions and the formal structures of government that they create play in reinforcing commitments to long-term principles when ordinary political forces are [\*1206] inclined to seek shortcuts. 9 The United States' experience during the decade following September 11 suggests that this focus is incomplete; we should pay at least as much attention to the work civil society groups do to "enforce" constitutional rights. Much like a constitution itself, such groups stand for, and can shore up, commitments to principle when those commitments are most tested. And while we often speak metaphorically about a "living Constitution," civil society groups are actually living embodiments of these commitments, comprised of human beings who have joined together out of a shared, lived dedication to constitutional and human rights principles. As such, they are well positioned to influence the polity's and the government's reactions in real time, and in crisis periods may be the only institutional counterforce to the impulse to sacrifice rights for security. These organizations' interventions often call on the formal structures of government to heed their legal claims, but the post-9/11 experience suggests that their work can have traction beyond the formal confines of judicial opinions and enacted statutes. In the first decade after September 11, civil society appears to have played at least as critical a role in the restoration of constitutional and human rights values as the formal institutions of government. In this period, the constraints on executive power operated through what I will call "civil society constitutionalism," in which nongovernmental organizations advocated in multiple ways for adherence to the rule of law, in court and out, and in so doing, did much of the "work" of constitutionalism. In examining the nexus between civil society and constitutionalism, I am especially interested in those nongovernmental groups that define themselves by their collective commitment to constitutional or rule-of-law values. "Civil society" can mean many things to many people, but I will use it in this essay principally as shorthand for this particular subset of nongovernmental organizations. Ernest Gellner provisionally defined the broader civil society as "a set of diverse non-governmental institutions which is strong enough to counterbalance the stateand, while not preventing the state from fulfilling its role of keeper of the peace and arbitrator between major interests, can nevertheless prevent it from dominating and atomizing the rest of society." 10

### Intervention

#### **Congressional authorization is more costly and likely for wars to escalate than then executive**

**Fleischman 10** – Matthew Fleischman, J.D. Candidate at New York University School of Law, "A Functional Distribution of War Powers", New York University Journal of Legislation and Public Policy, 13 N.Y.U. J. Legis. 26 Pub. Pol’y 137, Lexis

Next, Nzelibe and Yoo argue that legislative authorization is a costly way for government to signal its intent to wage war. Swaying Congress in favor of war is a major undertaking that forces the Presi- dent to expend extensive political capital and reveal information on both the justification for, and the plan of, attack. 5 Signaling escala- tion is risky because “the historical norm seems to have domestic audiences punishing or criticizing leaders more for escalating a con- frontation [and] then backing down than for choosing not to escalate a all.” 86 Alternately, Congress’s voice in support sends a signal to po- tential adversaries that the President’s threats are indeed serious. Given the cost of signaling government intent, Nzelibe and Yoo argue it should only be used against regime types that are likely to be swayed by it. For example, signaling works with other democracies because they understand the political ramifications that leaders are to experience if they back down in an international confrontation.

87 Conversely, “because rogue states and terrorist organizations face lit- tle or no political accountability for their foreign policy failures, they can afford to ignore their domestic audiences and take more aggres- sive stances in initiating international conflicts.” 88 Not only does con gressional signaling fail to lead to successful bargaining with rogue states, it ignores the possibility that preemptive strikes may be the more effective method of dealing with this type of threat and may impact their effectiveness.

### China

#### Descriptions of China are not neutral or objective – Their strategies are self-fulfilling prophecies that must be critically interrogated

Pan 4 (Chengxin, Department of Political Science and International Relations, Faculty of Arts, Deakin University, Discourses Of ‘China’ In International Relations: A Study in Western Theory as (IR) Practice, p. 305-307

While U.S. China scholars argue fiercely over "what China precisely is," their debates have been underpinned by some common ground, especially in terms of a positivist epistemology. Firstly, they believe that China is ultimately a knowable object, whose reality can be, and ought to be, empirically revealed by scientific means. For example, after expressing his dissatisfaction with often conflicting Western perceptions of China, David M. Lampton, former president of the National Committee on U.S.-China Relations, suggests that "it is time to step back and look at where China is today, where it might be going, and what consequences that direction will hold for the rest of the world." (2) Like many other China scholars, Lampton views his object of study as essentially "something we can stand back from and observe with clinical detachment." (3) Secondly, associated with the first assumption, it is commonly believed that China scholars merely serve as "disinterested observers" and that their studies of China are neutral, passive descriptions of reality. And thirdly, in pondering whether China poses a threat or offers an opportunity to the United States, they rarely raise the question of "what the United States is." That is, the meaning of the United States is believed to be certain and beyond doubt. I do not dismiss altogether the conventional ways of debating China. It is not the purpose of this article to venture my own "observation" of "where China is today," nor to join the "containment" versus "engagement" debate per se. Rather, I want to contribute to a novel dimension of the China debate by questioning the seemingly unproblematic assumptions shared by most China scholars in the mainstream IR community in the United States. To perform this task, I will focus attention on a particularly significant component of the China debate; namely, the "China threat" literature. More specifically, I want to argue that U.S. conceptions of China as a threatening other are always intrinsically linked to how U.S. policymakers**/**mainstream China **specialists** see themselves (as representativesof theindispensable, security-conscious nation, for example). As such, they are not value-free, objective descriptions of an independent, preexisting Chinese reality out there, but are better understood as a kind of normative, meaning-giving practice that often legitimates power politics in U.S.-China relations and helps transform the "China threat" into social reality. In other words, it is self-fulfilling in practice, and is always part of the "China threat" problem it purports merely to describe. In doing so, I seek to bring to the fore two interconnected themes of self/other constructions and of theory as practice inherent in the "China threat" literature--themes that have been overridden and rendered largely invisible by those common positivist assumptions. These themes are of course nothing new nor peculiar to the "China threat" literature. They have been identified elsewhere by critics of some conventional fields of study such as ethnography, anthropology, oriental studies, political science, and international relations. (4) Yet, so far, the China field in the West in general and the U.S. "China threat" literature in particular have shown remarkable resistance to systematic critical reflection on both their normative status as discursive practice and their enormous practical implications for international politics. (5) It is in this context that this article seeks to make a contribution.

### Terror Addon

#### Very low probability

Ayson 10 (Robert, Professor of Strategic Studies and Director of the Centre for Strategic Studies: New Zealand at the Victoria University of Wellington, “After a Terrorist Nuclear Attack: Envisaging Catalytic Effects,” Studies in Conflict & Terrorism, Volume 33, Issue 7, July, 2010 Available Online to Subscribing Institutions via InformaWorld)

There is also the question of how other nuclear-armed states respond to the act of nuclear terrorism on another member of that special club. It could reasonably be expected that following a nuclear terrorist attack on the United States, both Russia and China would extend immediate sympathy and support to Washington and would work alongside the United States in the Security Council. But there is just a chance, albeit a slim one, where the support of Russia and/or China is less automatic in some cases than in others. For example, what would happen if the United States wished to discuss its right to retaliate against groups based in their territory? If, for some reason, Washington found the responses of Russia and China deeply underwhelming, (neither “for us or against us”) might it also suspect that they secretly were in cahoots with the group, increasing (again perhaps ever so slightly) the chances of a major exchange. If the terrorist group had some connections to groups in Russia and China, or existed in areas of the world over which Russia and China held sway, and if Washington felt that Moscow or Beijing were placing a curiously modest level of pressure on them, what conclusions might it then draw about their culpability?

#### US won't blame Russia or China.

Ayson 10 (Robert, Professor of Strategic Studies and Director of the Centre for Strategic Studies: New Zealand at the Victoria University of Wellington, “After a Terrorist Nuclear Attack: Envisaging Catalytic Effects,” Studies in Conflict & Terrorism, Volume 33, Issue 7, July, 2010 Available Online to Subscribing Institutions via InformaWorld)

It may require a considerable amount of imagination to depict an especially plausible situation where an act of nuclear terrorism could lead to such a massive inter-state nuclear war. For example, in the event of a terrorist nuclear attack on the United States, it might well be wondered just how Russia and/or China could plausibly be brought into the picture, not least because they seem unlikely to befingered as the most obvious state sponsors or encouragers of terrorist groups. They would seem far too responsible to be involved in supporting that sort of terrorist behavior that could just as easily threaten them as well.

# 1NR

### Solvency

#### That kills readiness and causes WMD terrorism

Singer 2 (P.W. – Director of the 21st Century Defense Initiative at the Brookings Institution, “Corporate Warriors: The Rise of the Privatized Military Industry and Its Ramifications for International Security”, International Security, Vol. 26, No. 3, Winter 2001/2002 http://www.brookings.edu/~/media/research/files/articles/2002/1/01us%20military%20singer/20020128.pdf)

INCOMPLETE INFORMATION AND MONI TORING DIFFICULTIES. Problems of incomplete information and monitoring generally accompany outsourcing. Yet these are intensified in the military realm because few clients have experience in contracting with security agents. In most cases, there is ei ther little oversight or a lack of clearly defined requirements, or both. Add in the fog of war, and proper mon itoring becomes extremely difficult. Moreover, PMFs are usually autonomous and thus require extraterritorial monitoring. And at times, the actual consumer may not be the contracting party: Some states, for example, pay PMFs to supply personnel on their behalf to international organizations. Another difficulty is the firms' focus on the bottom line: PMFs may be tempted to cut corners to increase their profits. No matter how powerful the client, this risk cannot be 23 completely eliminated. During the Balkans conflict, for example, Brown & Root is alleged to have failed to deliver or severely overcharged the U.S. Army on four out of seven of its contractual obligations. 43 A further manifestation of this monitoring difficulty is the danger that PMFs may not perform their missions to the fullest. PMFs have incentives not only to prolong their contracts but also to avoid taking undue risks that might endanger their own corporate assets. The result may be a protracted conflict, which perhaps could have been avoided if the client had built up its own military forces or more closely monitored its private agent. This was certainly true of mercenaries in the Biafra conflict in the 1970s, and many suspect that this was also the case with PMFs in the Ethiopia-Eritrea conflict in 1997ñ99. In the latter instance, the Ethiopians essentially leased a small but complete air force from the Russian aeronautics firm Sukhoió including a wing of Su-27 jet fighter planes, pilots, and ground staff. Some contend, though, that this private Russian force failed to prosecute the war fullyófor example, by rarely engaging Eritreaís air force, which itself was rumored to have hired Russian and Ukrainian pilots. 44 A CRITICAL LOSS OF CONTROL. As PMFs become increasingly popular, so too does the danger of their clients becoming overly dependent on their services. Reliance on a private firm means that an integral part of one’s strategic success is vulnerable to changes in market costs and incentives. This can result in two potential risks to the security of the client: (1) the agent (the firm) might leave its principal (the client) in the lurch, or (2) the agent might gain dominance over the principal. A PMF may have no compunction about suspending a contract if a situation becomes too risky, in either financial or physical terms. Because they are typically based elsewhere, and in the absence of applicable international laws to enforce compliance, PMFs face no real risk of 24 punishment if they or their employees defect from their contractual obligations. Industry advocates dismiss these claims by noting that firms failing to fulfill the terms of their contracts would sully their reputation, thus hurting their chances of obtaining future contracts. Nevertheless, there are a number of situations in which shorter-term c onsiderations could prevail over long-term market punishment. In game-theoretic terms, each interaction with a private actor is sui generis. Exchanges in the international security market take the form of one-shot games, rather than guaranteed repeated plays. 45 Sierra Leone faced such a situation in 1994, when the type 1 firm that it had hired (the Gurkha Security Guards, made up primarily of Nepalese soldie rs) lost its commander in a rebel ambush. Reports suggest that the commander was la ter cannibalized. The firm decided to break its contract, and its employees fled the country, leaving its client wi thout an effective military option until it was able to hire another firm. 46 The loss of direct control as a result of privatization carries risks even for strong states. For U.S. military commanders, an added worry of terrorist targeting or the potential use of weapons of mass destruction is that their forces are more reliant than ever on the surge capacity of type 3 support firms. The employees of these firms, however, cannot be forced to stay at their posts in the face of these or any other dangers. 47 Because entire functions, such as weapons maintenance and supply, have become completely privatized, the entire military machine would break down if even a modest number of PMF employees chose to leave. In addition to sometimes failing to fulfill thei r contractual obligations, type 1 firms may pose another risk. In weak or failed states, PMFs , which are often the most powerful force on the local scene, may take steps to protect their own interests. Thus early termination of a contract, dissatisfaction with the terms of payment, or di sagreements over specific orders could lead to unpleasant repercussions for a weak client. Ind eed the corporate term "hostile takeover" may 25 well take on new meaning when speaking of the privatized military industry. The precedent does existófrom the condottieri , who took over their client regime s in the Middle Ages to the 1969 Mercenary Revolt in Zaire. More recently, there is continued suspicion that in 1996 Executive Outcomes helped to oust the leader of Sierra Le one, who headed the very regime that had hired it, in favor of another local general with w hom the firmís executives had a better working relationship

### TPA

#### Obama negotiations with Reid will succeed

Washington Times, 2-3-’14 (“Obama reaches out to Democratic leaders” http://www.washingtontimes.com/news/2014/feb/3/obama-reaches-out-to-democratic-leaders/)

Despite his vow to work around Congress, President Obama huddled Monday with Senate Majority Leader Harry Reid to begin a week of meetings with congressional Democrats on legislative and political priorities where he needs their support. The Oval Office meeting came just days after Mr. Reid, Nevada Democrat, announced that he opposes granting the president “fast-track” authority to negotiate pending trade deals in Asia and Europe with minimal input from Congress. Emerging from the White House after the 75-minute meeting, Mr. Reid dismissed a reporter’s assertion that he was in the president’s “doghouse,” and said the two men didn’t talk about trade. “We’re on the same page with everything,” Mr. Reid told reporters. The president and Mr. Reid were joined in the closed-door strategy session by Sen. Michael Bennet of Colorado, chairman of the Democratic Senatorial Campaign Committee, and DSCC Executive Director Guy Cecil. Rather than free trade, they discussed how to keep Republicans from winning control of the Senate in November’s elections, Yahoo News reported. The White House is eager for passage of a trade bill written by Sen. Max Baucus, Montana Democrat, that Mr. Reid and his liberal allies are reluctant to bring to the floor for a vote. White House press secretary Jay Carney said Mr. Obama will “push hard” for trade-promotion authority (TPA) because the pacts would create high-paying jobs in the U.S. “Securing these trade agreements and increasing exports is key to promoting our economic recovery,” Mr. Carney said. But three-fourths of House Democrats oppose TPA on the grounds that the free-trade deals would drain jobs from the U.S. and wouldn’t require adequate environmental protections among the other nations joining the agreements. Republican lawmakers who favor free trade say Mr. Obama must show more leadership with his own party if he wants to achieve the deals. It’s another example of the election-year challenge Mr. Obama is facing. Frustrated by congressional stalemate, the president is promising to take executive action whenever he can toward goals such as reviving the economy and improving education. But on big-picture initiatives such as free trade, comprehensive immigration reform and universal preschool services, he still needs Congress. The president’s schedule this week in fact resembles a full-court press on Democratic lawmakers. In addition to Monday’s meeting with Mr. Reid, the president is hosting House Democrats at the White House on Tuesday night for a roundtable discussion and a reception. Vice President Joseph R. Biden Jr., who enjoys schmoozing with lawmakers more than the president does, also will attend. And on Wednesday, Mr. Obama will deliver a speech at a Senate Democrats’ issues conference in Washington. “There’s an important amount of business that can and should be done with and through Congress,” Mr. Carney said. “This is part of a process in which the president and Senate Democrats and House Democrats discuss a way to move forward on an agenda that is focused on expanding opportunity, rewarding hard work and responsibility and the ways that we can do that. During his State of the Union address last week, Mr. Obama urged lawmakers to give him the needed leverage to close the trade deals. “We need to work together on tools like bipartisan trade promotion authority to protect our workers, protect our environment, and open new markets to new goods stamped ‘Made in the USA,’” Mr. Obama said. “China and Europe aren’t standing on the sidelines. Neither should we.” The president’s push for more executive action is angering Republican lawmakers, who say it’s a potential abuse of power. Sen. Charles E. Grassley, Iowa Republican, pressed Attorney General Eric H. Holder Jr. in a letter released Monday to review the constitutionality of Mr. Obama’s executive actions and to make those reviews public.

#### Optimism increasing even post-Reid

Politi, 2-2-’14 (James, “US trade deals remain on track, says Froman” Financial Times, http://www.ft.com/intl/cms/s/0/efcd8564-8c23-11e3-9b1d-00144feab7de.html#axzz2sbxoQhto)

Michael Froman, US trade representative, told the Financial Times that the administration was convinced it could secure congressional backing for the deals even after Harry Reid, the Democratic senate majority leader, last week said he would oppose fast-track legislation for any agreements. His opposition was widely seen as a major blow to President Barack Obama’s plans to strike accords with the EU and 11 Pacific Rim countries. Mr Reid can wield control over the progress of legislation in Congress’s upper chamber. European and other officials have said that unless the Obama administration secures support for legislation known as “Trade Promotion Authority” they would be wary of making the the concessions that are likely to be needed for either deal. The legislation would prevent Congress from amending any pact and ensure that it would have to consider any accords in a timely fashion. **But Mr Froman said he was sure that the support of Congress could be achieved**. He also said both negotiations remained “very much on track” for the time being. “Moving a trade bill or a trade agreement through Congress is a marathon, not a sprint”, Mr Froman said. “It’s important that we reach [deals] of high standards, ambition and comprehensiveness. When we do, then we will be able to demonstrate to the Congress the benefits of the agreements for job creation, for promoting growth, for strengthening the middle class in the US. That will form the foundation for support,” he added. Doubts about TPA risk undermining talks that are close to being finalised. They would create a Trans-Pacific Partnership among 12 nations, including Japan, that account for 40 per cent of global trade. Mr Reid’s comments also sounded alarm bells with regard to negotiations with the EU on the Transatlantic Trade and Investment Partnership (TTIP), even if it is moving ahead on a slower timetable. “Obama [and] Froman have their work cut out,” one European official told the FT. “Without [TPA] it is very hard to see [Mr Froman’s] partners committing to a deal,” said Arturo Sarukhan, a former Mexico ambassador to the US. “There will be geopolitical implications, both with Europe and with Asia Pacific and America Pacific nations, if TPA cannot be secured.” The TPP, which would include Japan, and the European TTIP are seen by some geopolitical strategists as a way for the US to respond economically to the rise of China. Mr Froman insisted that “all of our trading partners understand our commitment to moving the negotiations forward” in parallel with building domestic support. Mr Froman travels to Chile and Peru, two TPP countries, this week, then returns to Washington where he will meet with Nick Haekkerup, Danish trade minister, and Peter Beyer, a member of the German Bundestag. The EU deal will be at the top of their agenda. “Everything is very much on track,” says Mr Froman. ”In fact, we are engaged on an ongoing basis – day in and day out . . . both with regard to TPP and with regard to TTIP, to work through outstanding issues and narrow our differences,” he said. On Saturday, John Kerry, secretary of state, also sought to minimise the significance of Mr Reid’s comments. “I’ve heard plenty of statements in the Senate on one day that are categorical, and we’ve wound up finding accommodation. . .  So this should not be a deterrent, and I hope nobody will let it stand in the way,” Mr Kerry said in Munich.

#### Support from House Republicans mutes Democratic opposition

Washington Post, 2-3-’14 (“Harry Reid, progressive hero?” http://www.washingtonpost.com/blogs/plum-line/wp/2014/02/03/harry-reid-progressive-hero/)

But liberal groups who oppose fast track authority – arguing, as some economists and labor officials have, that the trade deals will mean further job loss due to globalization and worsening inequality — are not sanguine. They argue we should be watching the House of Representative, not just the Senate, for clues to the fate awaiting fast track. The bill is supported by many Republicans and business groups, which means it would likely pass the House. And so, liberal groups want to see a clearer sign from Nancy Pelosi and House Dem leaders that they oppose fast track authority, so that anything coming out of the House does not have a lot of bipartisan support (which would increase pressure on the Senate to act). I asked Nancy Pelosi’s office for her stance on fast track. It turns out she addressed the issue at a recent blogger roundtable, telling those assembled that she had substantive problems with the fast track bill, and that she thought “plenty” of Democrats would oppose it. However, she stopped short of flatly declaring definite opposition, suggesting Dems were still trying to find unity behind a “kind of Fast Track Authority that we can support.”

#### Plan creates confrontation over congressional control over war

Turner ‘5 Robert F. Turner, Professor, University of Virginia School of Law, The War Powers Resolution: An Unnecessary, Unconstitutional Source of "Friendly Fire" in the War Against International Terrorism?, Feb 15, 2005, http://www.fed-soc.org/publications/detail/the-war-powers-resolution-an-unnecessary-unconstitutional-source-of-friendly-fire-in-the-war-against-international-terrorism

Over the years, the popularity of the War Powers Resolution has decreased, and many of its strongest original supporters have deserted the cause. Senator Frank Church was one of the leading Senate critics of the Vietnam War and a champion of the War Powers Resolution, but years later acknowledged that the statute was unnecessary and concluded: "I wonder really whether we have done very much in furthering our purpose through the War Powers Resolution." [52] Another prominent Vietnam critic who championed war powers legislation-but ultimately voted against the bill that passed on the theory that it was not tough enough in restricting the President-commented in 1988: Finally . . . I came to the conclusion that Congress really didn't want to be in on the decisionmaking process as to when, how, and where we go to war. I came to the conclusion that Congress really didn't want to have its fingerprints on sensitive matters pertaining to putting our Armed Forces into hostilities. I came to the conclusion that Congress preferred the right of retrospective criticism to the right of anticipatory, participatory judgment. . . . I harbor the notion that most Senators and House Members don't have the political stomach for decisionmaking involving war [53]. The apparent political death knell to the War Powers Resolution came coincidentally on Ho Chi Minh's ninety-eighth birthday, on May 19, 1988, when Senate Majority Leader George Mitchell, former Majority Leader Robert Byrd, Armed Services Committee Chairman Sam Nunn, and ranking Republican on that committee John Warner, took the floor of the Senate to lambaste the 1973 law. Senator Nunn noted that it "encourages confrontation rather than consultation between the President and the Congress" and "raises questions about the U.S. staying power in [the] midst of a crisis, thus making it harder for the United States to secure the cooperation of our friends abroad." [54]

**Plan costs political capital**

Berman, 10 (Emily, Counsel in the Liberty and Naitonal Security Project at the Brennan Center for Justice at NYU School of Law, "Executive Privilege Disputes Between Congress and the President: A Legislative Proposal", http://www.albanygovernmentlawreview.org/Articles/Vol03\_2/3.2.741-Berman.pdf)

But after Watergate, only a handful of executive privilege disputes have reached and been resolved by the courts. More frequently, congressional - executive fights over information have continued to be resolved much the same way they had been for more than 200 years: by political negotiations. Usually these negotiations — in which each side expends political capital and threatens to escalate the conflict to exert pressure on the other — result in a compromise of some kind. These negotiations are o f ten relatively uneventful and without rancor.