### 2AC XO

Circumvention:

#### No predictable lit on self-restraint in the context of war powers

Sales, 12

(Nathan Sales, Assistant Professor of Law, George Mason University School of Law. “Self-Restraint and National Security “ <http://jnslp.com/wp-content/uploads/2012/08/08__Sales_Master_6-28-12-NS.pdf>) Henge

Much of the caselaw and scholarship concerning national security rests on the assumption that the executive branch is institutionally prone to overreach – that, left to its own devices, it will inch ever closer to the line that separates illegal from legal, and sometimes enthusiastically leap across it. The obvious conclusion is that external, principally judicial, checks are needed to keep the Executive in line.2 In many cases the Executive does indeed push the envelope. But not always.3 The government often has powerful incentives to stay its own hand – to forbear from military and intelligence operations that it believes are perfectly legal. Officials may conclude that a proposed mission – a decapitation strike on al Qaeda’s leadership, say, or the use of mildly coercive interrogation techniques on a captured terrorist – is entirely permissible under domestic and international law. Yet they nevertheless might rule it out. In other words, the government sometimes adopts self-restraints that limit its ability to conduct

#### Permutation do both—XOs that support legislation are best—CP alone links to politics and wrecks legitimacy—also causes inter-branch tension

Belco and Rottinghaus, 13

(Brandon Rottinghaus, Senator Don Henderson Scholar, University of Houston, Department of Political Science. Michelle Belco, University of Houston, Department of Political Science. “In Lieu of Legislation: Executive Unilateral Preemption or Support during the Legislative Process” Sage) Henge

In exercising their executive power within the legislative arena, presidents generally pursue a “legislative presidency” (Wayne 1978). From the president’s perspective, this is a tenuous choice because the process of passing legislation is afflicted by collective action problems, an outlay of political capital, lengthy debates, and large transaction costs but provides certainty in achieving a lasting policy outcome (Moe and Howell 1999, 146). In an effort to improve their chances for success, a president may choose to enter the legislative arena using several means sanctioned by the Constitution or the strategic use of executive power: suggest an agenda item to Congress as outlined by Article II, Section 1 of the Constitution issue an executive statement of administrative procedure (Rice 2012); and issue a veto threat in advance of a veto (Deen and Arnold 2002) and the use of the veto (Cameron 2000, 28). Each of these tools provides the executive with some strategic participation in the legislative process. Beyond the conventionally proscribed techniques for the president’s legislative functions, presidents may also use direct or unilateral action as a means of improving their success in implementing their policy agenda outside the legislative arena (Cooper 2002; Mayer 2001; Warber 2006). Direct action is strategically useful for presidents when faced with a legislative arena that forces them to share political powers (Howell 2003, 2005; Mayer 2001; Moe and Howell 1999). The process of issuing unilateral orders is generally described as an alternative to pursuing legislation by bargaining with Congress (Howell 2003; Moe and Howell 1999). This approach enables the executive to “act quickly and with flexibility in responding to problems and changing political, economic and social circumstances as they arise” (Moe and Howell 1999, 138). This unilateral approach, however, is not always independent of the legislative process. As Jones (2005, 253) argues, Efforts to comprehend presidential power in lawmaking require study of congressional power even if the president acts “with the stroke of a pen” as when issuing executive orders. Those who are separated must agree or acquiesce if there is to be law. Neustadt ([1960] 1990, x) suggests that presidents are “dependent on consent from other sharers” in government, especially Congress, because “he must bargain with them, buttressing his share with his resources in their eyes of personal reputation and of public standing.” If unilateral orders can be used as a bargaining tool in the legislative process, when presidents issue a unilateral order during the legislative process, under what conditions does that order preempt or support proposed legislation? Using an original data set of unilateral orders (executive orders and proclamations) from Presidents Ford through George W. Bush (93rd to 110th Congresses), we analyze when and how presidents unilaterally preempt or support proposed legislation. Although the literature suggests that presidential strategies of bargaining or using unilateral actions are opposed to one another, our approach unites Neustadt’s “power stakes” (how presidential resources influence bargaining) with theories of direct presidential action. We argue that the president will act using a unilateral order during the legislative process to preserve a policy trajectory in Congress favorable to the executive or to shift policy closer to his ideal point. Our theory suggests flexibility in a president’s use of unilateral orders in the legislative arena: sometimes to halt the legislative process, sometimes to foster it, depending on the institutional context. We argue that unilateral orders are used while negotiating in the legislative process. This notion expands the conceptual study of the executive’s use of unilateral power to the legislative arena, a linkage yet unexplored. In doing so, we seek to develop a better understanding of shared rather than separate powers in the context of executive–legislative relations where unilateral orders can be used to augment the legislative process. Presidents and Unilateral Action in the Legislative Arena When considering whether to issue a unilateral order, presidents face an integrated cost–benefit trade-off, especially with respect to the legislative makeup of Congress and the possible intervention of the judiciary (Moe and Howell 1999). The executive must weigh the costs and benefits of legislation against the costs and benefits of unilateral action. Deering and Maltzman (1999, 770) argue that “a president’s willingness to issue an executive order depends upon both his positive power to get legislation enacted by Congress and his negative power to stop legislation overturning such an order.” Invoking unilateral powers to circumvent legislation specifically involves weighing the cost of angering a recalcitrant Congress with the benefits of acting with dispatch. As Mayer (2009, 439) suggests, presidents prefer legislation as a means to achieve policy goals but may opt for unilateral action as their “second-best” option when they face strong Congressional opposition. Such a complicated decision is not strictly combative nor is it totally cooperative— there is variation depending on the president’s authority to act, the political environment and the institutional arrangements. Presidents may use unilateral orders to set the political agenda of the nation without input from members of Congress (Fine and Warber 2012); however, this runs the risk of circumventing the negotiating process with members of Congress with whom the president must later bargain. Neustadt ([1960] 1990) warns directly of this problem when he counsels that presidents should prefer to bargain with Congress (see Mayer 2009, 428). Yet, a president’s short-term interest in pursuing successful policy outcomes may outweigh his desire to work with Congress on a mutually agreeable political outcome (Krause and Melusky 2012), especially if Congress and the president are at loggerheads over legislation. Presidents may disagree with the ideological or political direction of legislation and issue a preemptive order as an alternative to Congressional action. This too runs the risk of angering Congress who may choose to respond with additional legislation (Howell 2003) or otherwise revoke the order by statute. However, invoking a unilateral order during the legislative process may be a way of gaining participation of members by addressing topics already on the Congressional agenda. Consultation with Congress is especially likely when the president’s objective is to change the agreed-upon status quo (Moe and Howell 1999) by issuing an order supporting proposed legislation. Therefore, presidents, in their desire to work with Congress, may issue a unilateral order to achieve a mutually agreeable policy solution. There is less cost here to the president with respect to angering Congress as the president is “fast tracking” the proposed Congressional legislation into policy, especially if the president is executing the will of Congress through prearranged policy (Fisher 2007, 109; Warber 2006).

#### Inter-branch tension turns flex

Jamison 1993, Deputy of Governmental Relations at CSIS, (Linda S., Executive-Legislative Relations after the Cold War, Washington Quarterly, Spring Vol. 16, No. 2; Page 189)

Indeed, there are very few domestic issues that do not have strong international implications, and likewise there are numerous transnational issues in which all nations have a stake. Environmental degradation, the proliferation of weapons of mass destruction, population control, migration, international narcotics trafficking, the spread of AIDS, and the deterioration of the human condition in the less developed world are circumstances affecting all corners of the globe. Neither political isolation nor policy bifurcation is an option for the United States. Global circumstances have drastically changed with the end of the Cold War and the political and policy conditions that sustained bipartisan consensus are not applicable to the post-war era. The formulation of a new foreign policy must be grounded in broad-based principles that reflect domestic economic, political, and social concerns while providing practical solutions to new situations Toward a Cooperative U.S. Foreign Policy for the 1990s If the federal government is to meet the new international policy challenges of the post-cold war era, institutional dissension caused by partisan competition and executive-legislative friction must give way to a new way of business. Policy flexibility must be the watchword of the 1990s in the foreign policy domain if the United States is to have any hope of securing its interests in the uncertain years ahead. One former policymaker, noting the historical tendency of the United States to make fixed "attachments," has argued that a changing world dictates policy flexibility, where practical solutions can be developed on principles of broad-based foreign policy objectives (Fulbright 1979). Flexibility, however, will not be possible without interbranch cooperation. The end of the Cold War and the new single-party control of the White House and Congress provide a unique opportunity to reestablish foreign policy cooperation. Reconfiguring post-cold war objectives requires comprehension of the remarkable transformations in world affairs and demands an intense political dialogue that goes beyond the executive branch (Mann 1990, 28-29).

#### No link: Dycus says the aff preserves executive control of OCO’s in emergency events

#### That solves flex

Daskal 2013 (April 2013, Jennifer C., Adjunct Professor at Georgetown Law, University of Pennsylvania Law Review, “ARTICLE: THE GEOGRAPHY OF THE BATTLEFIELD: A FRAMEWORK FOR DETENTION AND TARGETING OUTSIDE THE "HOT" CONFLICT ZONE,” 161 U. Pa. L. Rev. 1165)

Conversely, some object to the use of courts or court-like review as stymying executive power in wartime, and interfering with the President's Article II powers. n183 According to this view, it is dangerous - and potentially unconstitutional - to require the President's wartime targeting decisions to be subject to additional reviews. These concerns, however, can be dealt with through emergency authorization mechanisms, the possibility of a presidential override, and design details that protect against ex ante review of operational decisionmaking.

#### Judicial oversight inevitably wrecks war powers, congressional restrictions is key to prevent that

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What the Supreme Court has done is carve itself a seat at the table. It has intimated, without ever deciding, that a constitutional basis for its actions exists—in addition to the statutory bases on which it decided the cases—meaning that its authority over overseas detentions may be an inherent feature of judicial power, not a policy question on which the legislature and executive can work their will. Whether the votes exist on the court to go this extra step we will find out soon enough. But the specter of a vastly different judicial posture in this area now haunts the executive branch—one in which the justices assert an inherent authority to review executive detention and interrogation practices, divine rights to apply with that jurisdiction based on due process and vaguely worded international humanitarian law principles not clearly implemented in U.S. law, and allow their own power to follow the military’s anywhere in the world. Such a posture would constitute an earthquake in the relationships among all three branches of government, and the doctrinal seeds for it have all been planted. Whether they ultimately take root depends on factors extrinsic to the war on terror—particularly the future composition of a Supreme Court now closely divided on these questions. It will also pivot on the manner in which the political branches posture the legal foundations of the war in the future. Building a strong legislative architecture now may be the only way to avert a major expansion of judicial power over foreign policy and warfare.

#### No flex impact

Englehardt 5

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Here it is worth reviewing the positions Yoo advocated while in the executive branch and since, and their consequences in the "war on terror." At every turn, Yoo has sought to exploit the "flexibility" he finds in the Constitution to advocate an approach to the "war on terror" in which legal limits are either interpreted away or rejected outright. Just two weeks after the September 11 attacks, Yoo sent an extensive memo to Tim Flanigan, deputy White House counsel, arguing that the President had unilateral authority to use military force not only against the terrorists responsible for the September 11 attacks but against terrorists anywhere on the globe, with or without congressional authorization.¶ Yoo followed that opinion with a series of memos in January 2002 maintaining, against the strong objections of the State Department, that the Geneva Conventions should not be applied to any detainees captured in the conflict in Afghanistan. Yoo argued that the president could unilaterally suspend the conventions; that al-Qaeda was not party to the treaty; that Afghanistan was a "failed state" and therefore the president could ignore the fact that it had signed the conventions; and that the Taliban had failed to adhere to the requirements of the Geneva Conventions regarding the conduct of war and therefore deserved no protection. Nor, he argued, was the president bound by customary international law, which insists on humane treatment for all wartime detainees. Relying on Yoo's reasoning, the Bush administration claimed that it could capture and detain any person who the president said was a member or supporter of al-Qaeda or the Taliban, and could categorically deny all detainees the protections of the Geneva Conventions, including a hearing to permit them to challenge their status and restrictions on inhumane interrogation practices.¶ Echoing Yoo, Alberto Gonzales, then White House counsel, argued at the time that one of the principal reasons for denying detainees protection under the Geneva Conventions was to "preserve flexibility" and make it easier to "quickly obtain information from captured terrorists and their sponsors." When CIA officials reportedly raised concerns that the methods they were using to interrogate high-level al-Qaeda detainees -- such as waterboarding -- might subject them to criminal liability, Yoo was again consulted. In response, he drafted the August 1, 2002, torture memo, signed by his superior, Jay Bybee, and delivered to Gonzales. In that memo, Yoo "interpreted" the criminal and international law bans on torture in as narrow and legalistic a way as possible; his evident purpose was to allow government officials to use as much coercion as possible in interrogations.¶ Yoo wrote that threats of death are permissible if they do not threaten "imminent death," and that drugs designed to disrupt the personality may be administered so long as they do not "penetrate to the core of an individual's ability to perceive the world around him." He said that the law prohibiting torture did not prevent interrogators from inflicting mental harm so long as it was not "prolonged." Physical pain could be inflicted so long as it was less severe than the pain associated with "serious physical injury, such as organ failure, impairment of bodily function, or even death."¶ Even this interpretation did not preserve enough executive "flexibility" for Yoo. In a separate section of the memo, he argued that if these loopholes were not sufficient, the president was free to order outright torture. Any law limiting the president's authority to order torture during wartime, the memo claimed, would "violate the Constitution's sole vesting of the Commander-in-Chief authority in the President."¶ Since leaving the Justice Department, Yoo has also defended the practice of "extraordinary renditions," in which the United States has kidnapped numerous "suspects" in the war on terror and "rendered" them to third countries with records of torturing detainees. He has argued that the federal courts have no right to review actions by the president that are said to violate the War Powers Clause. And he has defended the practice of targeted assassinations, otherwise known as "summary executions."¶ In short, the flexibility Yoo advocates allows the administration to lock up human beings indefinitely without charges or hearings, to subject them to brutally coercive interrogation tactics, to send them to other countries with a record of doing worse, to assassinate persons it describes as the enemy without trial, and to keep the courts from interfering with all such actions.¶

 Has such flexibility actually aided the U.S. in dealing with terrorism? In all likelihood, the policies and attitudes Yoo has advanced have made the country less secure. The abuses at Guantánamo and Abu Ghraib have become international embarrassments for the United States, and by many accounts have helped to recruit young people to join al-Qaeda. The U.S. has squandered the sympathy it had on September 12, 2001, and we now find ourselves in a world perhaps more hostile than ever before.¶ With respect to detainees, thanks to Yoo, the U.S. is now in an untenable bind: on the one hand, it has become increasingly unacceptable for the U.S. to hold hundreds of prisoners indefinitely without trying them; on the other hand our coercive and inhumane interrogation tactics have effectively granted many of the prisoners immunity from trial. Because the evidence we might use against them is tainted by their mistreatment, trials would likely turn into occasions for exposing the United States' brutal interrogation tactics. This predicament was entirely avoidable. Had we given alleged al-Qaeda detainees the fair hearings required by the Geneva Conventions at the outset, and had we conducted humane interrogations at Guantánamo, Abu Ghraib, Camp Mercury, and elsewhere, few would have objected to the U.S. holding some detainees for the duration of the military conflict, and we could have tried those responsible for war crimes. What has been so objectionable to many in the U.S. and abroad is the government's refusal to accept even the limited constraints of the laws of war.¶ The consequences of Yoo's vaunted "flexibility" have been self-destructive for the U.S. -- we have turned a world in which international law was on our side into one in which we see it as our enemy. The Pentagon's National Defense Strategy, issued in March 2005, states,¶ "Our strength as a nation state will continue to be challenged by those who employ a strategy of the weak, using international fora, judicial processes, and terrorism."¶ The proposition that judicial processes -- the very essence of the rule of law -- are to be dismissed as a strategy of the weak, akin to terrorism, suggests the continuing strength of Yoo's influence. When the rule of law is seen simply as a device used by terrorists, something has gone perilously wrong. Michael Ignatieff has written that "it is the very nature of a democracy that it not only does, but should, fight with one hand tied behind its back. It is also in the nature of democracy that it prevails against its enemies precisely because it does." Yoo persuaded the Bush administration to untie its hand and abandon the constraints of the rule of law. Perhaps that is why we are not prevailing.

#### XOs are illegitimately perceived—can’t solve if Congress doesn’t approve actions—can’t solve long-term—every president gets XOs revoked

Powell, 14

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Apparently President Obama has become convinced that he can make magic with that pen he keeps talking about, the one he plans to use for signing executive orders to revive his beleaguered presidency. Executive orders are irresistible, because a president doesn’t have to propose anything, debate the issues, endure hearings or solicit votes. An executive order can be issued in a few minutes — behind closed doors and away from bright lights. Paul Begala, who was an advisor to President Bill Clinton, reportedly remarked, “Stroke of the pen, law of the land, kinda cool.” What about the Constitution? It describes presidential power broadly. There isn’t anything in the Constitution that authorizes an executive order or limits what a president can do with it. Executive orders arise from “implied constitutional and statutory authority,” the Congressional Research Service reported. “If issued under a valid claim of authority and published in the Federal Register, executive orders may have the force and effect of law.” Many executive orders are in a twilight zone of dubious constitutional legitimacy if not open defiance of the Constitution, especially when they amount to lawmaking without congressional approval. Presidents have made extravagant claims with their executive orders, as Harry Truman did when he issued executive order 10340 that directed the Secretary of Commerce to stop a steelworkers strike by seizing privately-owned steel mills. Truman insisted that a prolonged strike would impair the government’s ability to fight his undeclared “police action” in Korea. Truman’s Solicitor General Philip B. Perlman declared that Article II, Section 2 of the Constitution “constitutes a grant of all the executive powers of which the Government is capable.” The case came before the Supreme Court as Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952). Justice Robert Jackson — like Truman, a Democrat — was incredulous at the administration’s position. He said, “The example of such unlimited executive power that must have most impressed the forefathers was the prerogative exercised by King George III. The description of its evils in the Declaration of Independence leads me to doubt that they were creating their new Executive in his image. Continental European examples were no more appealing. And, if we seek instruction from our own times, we can match it only from the executive powers in those governments we disparagingly describe as totalitarian. I cannot accept the view that the clause is a grant in bulk of all conceivable executive power.” Justice Hugo Black, another Democrat, wrote the majority opinion invalidating the seizures. Black explained that an executive order (1) “must stem either from an act of Congress or from the Constitution itself” and (2) an executive order is on dubious ground if it’s “incompatible with the express or implied will of Congress.” There have been thousands of executive orders, so it’s hard for government to keep track of them all, and it’s even harder for ordinary citizens. In 1974, the Senate Committee on National Emergencies and Delegated Emergency Powers was surprised to discover that “Since March 9, 1933, the United States has been in a state of declared national emergency. There are now in effect four presidentially-proclaimed states of national emergency. In addition to the national emergency declared by President Roosevelt [during the Great Depression], there are also the national emergency proclaimed by President Truman on December 16, 1950, during the Korean conflict, and the states of national emergency declared by President Nixon on March 23, 1970 and August 15, 1971.” The committee report continued, “These proclamations give force to 470 provisions of Federal law, delegating to the President extraordinary powers, ordinarily exercised by the Congress, which affect the lives of American citizens in a host of all-encompassing manners…The President may seize property, organize and control the means of production, seize commodities, assign military forces abroad, institute martial law, seize and control all transportation and communication, regulate the operation of private enterprise, restrict travel, and in a plethora of particular ways, control the lives of all Americans.” President Obama’s admirers like to talk about the wonderful things can be done with executive orders, but the historical record has been mixed. Some have been fine, while many have backfired badly. Executive orders go back to the beginning of our country, although they weren’t called that. Usually they were referred to as proclamations. President George Washington’s first proclamation was on October 3, 1789. He said, “Both Houses of Congress have by their joint Committee requested me to recommend to the People of the United States a day of public thanksgiving.” This was authorized by Congress. Washington’s Neutrality Proclamation wasn’t authorized by Congress. Issued on April 22, 1793, it declared that the United States would be neutral in the war between France and Great Britain, which had begun two months before. Members of Washington’s cabinet, including Secretary of State Thomas Jefferson, agreed that the United States was too fragile to become involved in another war. So far, so good. “ While executive orders are attractive to presidents because they can be issued quickly, they can be revoked quickly, too.” Abraham Lincoln expanded presidential powers via proclamations and executive orders. He did this in the name of suppressing rebellion rather than waging war, since the Constitution gave Congress the power to declare war. In April 1861, a Maryland militia officer named John Merryman was arrested and detained at Fort McHenry in Baltimore. He was said to have damaged Union facilities and trained Confederate soldiers. His lawyer obtained a writ of habeas corpus from Chief Justice Roger B. Tawney who directed George Cadwalader, the commander at Fort McHenry, to produce Merryman and explain the facts and the legal basis for detention. Cadwalader refused, saying that Lincoln had suspended habeas corpus. Tawney cited him for contempt, but a marshal couldn’t enter the fort to deliver the contempt citation. Tawney wrote what became known as the Ex Parte Merryman opinion, saying, in part, that “If the authority which the Constitution has confided to the judiciary department may upon any pretext be usurped by the military power, the people of the United States are no longer living under a government of laws.” On September 24, 1862, Lincoln issued a proclamation officially suspending habeas corpus, which meant that the government could detain people indefinitely. Lincoln “managed the home front, in part,”historian Mark E. Neely, Jr. reported, “by means of military arrests of civilians — thousands and thousands of them.” Lincoln had issued executive orders expanding the amount of Union territory subject to military control, particularly southern Illinois, Indiana and Ohio where “copperheads” were operating. In 1864, the Union army arrested Lambdin Milligan and four others in southern Indiana. They were charged with plotting to free Confederate prisoners-of-war. A military court sentenced the men to death, but they appealed for their constitutional right to habeas corpus. After the Civil War, in 1866, the Supreme Court noted that Indiana wasn’t under attack, and civilian courts were functioning, so Milligan and the others were entitled to a jury trial there. Justice David Davis wrote: “The Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers with the shield of protection all classes of men, at all times, in all circumstances.” Historian James G. Randall reflected, “No president has carried the power of presidential edict and executive order — independently of Congress — so far as [Lincoln] did. It would not be easy to state what Lincoln conceived to be the limit of his powers.” Lincoln’s best-known executive order was the Emancipation Proclamation. He hoped to provoke a slave revolt in the Confederacy and make it easier for the Union to win the Civil War. Accordingly, on September 22, 1862, he issued a preliminary Emancipation Proclamation. It applied to any state that didn’t return to the Union by January 1, 1863. No states returned. At that point, Lincoln issued the historic Emancipation Proclamation. It applied to slaves in the Confederacy — territory that the Union didn’t control. It neither abolished slavery nor extended citizenship to former slaves, but it did make the abolition of slavery a war aim. Until the early 20th century, executive orders were generally undocumented. They were addressed to a particular government agency which had the only copy. Nobody seemed to know how many executive orders there were. As late as the 1930s, there was an account, published in the New York Times, claiming that “there are no readily available means of ascertaining the true texts and history of the thousand or more executive orders issued since March 4, 1933.” The peacetime expansion of federal power began with Theodore Roosevelt who issued 1,006 executive orders, more than any previous president. They performed a wide range of administrative functions, especially the disposition of government-owned land. TR emphatically rejected the view that “what was necessary for the nation could not be done by the President unless he could find some specific authorization to do it…it was not only [the president’s] right but his duty to do anything that the needs of the nation demanded unless such action was forbidden by the Constitution or by the laws.” TR also said: “I think [the presidency] should be a very powerful office, and I think the President should be a very strong man who uses without hesitation every power the position yields.” He continued, “I believe in a strong executive. I believe in power.” According to biographer Henry Pringle, “It seldom occurred to Roosevelt that the duty of the executive was to carry out the mandates of the legislative. In so far as he was able, he reversed the theory. Congress, he felt, must obey the president.” He wanted the Supreme Court to obey him, too. Roosevelt acknowledged, “I did greatly broaden the use of executive power.” At times, TR seemed drunk with power, as when he remarked: “I don’t think that any harm comes from the concentration of power in one man’s hands.” Woodrow Wilson issued 1,791 executive orders. For instance, executive order 1810 (August 7, 1913) prohibited anyone from operating a flying machine or balloon across the Panama Canal Zone. Wilson issued executive order 1860 (November 11, 1913) to dictate interest rates for the Canal Zone — a surprising number of Wilson’s executive orders had to do with administering that little territory. Most of Wilson’s executive orders were issued during World War I. For instance, on April 14, 1917, he issued executive order 2594 to establish the Committee on Public Information — war propaganda. On April 28th, he issued executive order 2604 for censorship of messages sent via the trans-Atlantic cables. Executive order 2679-A (August 10, 1917) established the Food Administration. Executive order 2697 (September 7, 1917) required that anyone wishing to export coins, bullion or currency must file an application in triplicate with the nearest Federal Reserve bank. Executive order 2736 (October 23, 1917) authorized Food Administrator Herbert Hoover to requisition food. Executive order 2953 (September 12, 1918) authorized the sale of property seized in accordance with the Trading with the Enemy Act. Franklin D. Roosevelt issued 3,723 executive orders, more than any other U.S. president. In his Inaugural Address, he said: “I shall ask the Congress for the one remaining instrument to meet the [depression] crisis — broad executive power to wage a war against the emergency, as great as the power that would be given me if we were in fact invaded by a foreign foe.” On March 6, 1933, FDR issued Proclamation 2029 that cited Wilson’s Trading with the Enemy Act to justify ordering banks closed for a National Bank Holiday. FDR sent his Emergency Banking bill to the House of Representatives, and it was passed after only 38 minutes of debate — apparently without members reading it. In 1933, FDR issued executive order 6102 that made it illegal for Americans to own gold bullion or gold certificates, even though historically gold provided the best protection against inflation and monetary crises. Violators faced the prospect of a fine up to $10,000 or up to 10 years in prison. Since economic fascism was popular during the early 1930s, FDR issued executive orders to suspend antitrust laws and establish German-style cartels in dozens of industries, restricting total industry output, allocating market shares and fixing above-market wages and prices. Above-market wages discouraged employers from hiring, and above-market prices discouraged consumers from buying, so these executive orders weren’t good for the country. Among them: \* 6204-A, for the rayon weaving industry \* 6205-C, for the silk manufacturing industry \* 6216, for the ship building and ship repairing industries \* 6242-B, for electrical manufacturing \* 6248, for the corset and brassiere industries \* 6250, for theaters \* 6253, for the fishing tackle industry \* 6254, for the iron and steel industries \* 6255, for the forest products industry \* 6256, for the petroleum industry \* 6543-A, for the drapery and upholstery industries With executive orders, FDR multiplied the number of government bureaucracies. He established the Civilian Conservation Corps by issuing executive order 6101. The Public Works Administration followed with executive order 6174. Then came these executive orders: \* 6225, the Central Statistical Board \* 6340, the Commodity Credit Corporation \* 6420-B, the Civil Works Administration \* 6433-A, the National Emergency Council \* 6470, the Public Works Emergency Housing Corporation \* 6474, the Federal Alcohol Control Administration \* 6514, the Electric Home and Farm Authority \* 6581, the Export-Import Bank of Washington \* 6623, the Federal Employment Stabilization Office \* 6632, the National Recovery Review Board \* 6770, the Industrial Emergency Committee \* 6777, the National Resources Board \* 7027, the Resettlement Administration \* 7034, the Works Progress Administration While some of the programs provided relief for desperate people, they failed to achieve a sustained revival of private sector job creation. Indeed, relief spending was the main reason government spending doubled and taxes tripled during the New Deal era (1933-1940). Where did the tax revenue come from? The biggest source of federal revenue was the federal excise tax on cigarettes, beer, soda, chewing gum and other cheap pleasures consumed disproportionately by poor and middle income people. This means the cost of relief programs for poor and middle income people was borne mainly by poor and middle income people. In May 1939, FDR’s Secretary of the Treasury Henry Morgenthau lamented, “We are spending more than we have ever spent before, and it does not work. After eight years of this administration, we have just as much unemployment as when he started.” New Deal unemployment averaged 17 percent, and it didn’t go down significantly until the government began removing more than 10 million men from the civilian work force via military conscription for World War II. FDR’s most controversial executive order was 9066 which he issued on February 19, 1942. It established the War Relocation Authority to forcibly move Japanese-Americans away from the Pacific Coast into “relocation camps” for the duration of World War II. About 70 percent of these people were second-generation, born in the United States. Three individuals, Fred Korematsu, Gordon Hirabayashi and Minoru Yasui, were convicted of refusing to comply with internment. The case went up to the Supreme Court which upheld FDR’s executive order in Korematsu v. United States, 323 U.S. 214 (1944). The majority opinion asserted that protecting against potential Japanese espionage was more important than protecting individual rights. Six of FDR’s 8 appointees sided with him against the interned Japanese. The lone Republican appointee, Owen Roberts, was opposed. FDR’s Solicitor General Charles Fahey, who argued the case before the Supreme Court, allegedly suppressed reports by the FBI and the Office of Naval Intelligence, showing that there wasn’t any evidence Japanese-Americans posed a security threat to the United States. The suppressed reports came to light years later, and the convictions were overturned November 10, 1983 by the U.S. District Court for the Northern District of California, thereby eliminating the case as a possible precedent for future arbitrary imprisonment. President Nixon issued two executive orders that had unfortunate consequences. On August 15, 1971, he announced his New Economic Policy, which happened to be what Bolshevik firebrand Vladimir Lenin called one of his misadventures. Nixon issued executive order 11615 that declared: “to stabilize the economy, reduce inflation, and minimize unemployment, it is necessary to stabilize prices, rents, wages, and salaries.” These controls failed to stop inflation which hit double-digits during the 1970s, and they caused chronic shortages, rationing and business disruption — making it harder to create private sector jobs. By maintaining below-market prices, controls simultaneously encouraged producers to provide less, while encouraging consumers to demand more. Hence, the shortages. Although this experience with price controls had been a flop, Nixon decided to try again. On June 13, 1973, he signed executive order 11723 that called for a freeze on prices, while he continued to control wages, salaries and rents. Nixon’s executive orders made a bad situation worse. For instance, his price control administrator C. Jackson Grayson confessed: “lumber controls were beginning to lead to artificial middlemen, black markets and sawmill shutdowns. Companies trapped with low base-period profit margins were beginning to consider selling out those with higher base periods, sending their capital overseas, or reducing their efforts. Instances of false job upgrading — which were actually ‘raises’ in disguise — were reported. To keep away from profit-margin controls, companies were considering dropping products where costs, and thus prices, had increased. And shortages of certain products (like molasses and fertilizer) were appearing because artificially suppressed domestic prices had allowed higher world prices to pull domestic supplies abroad.” In 1999, Bill Clinton waged war with executive orders. He issued executive order 13088 that declared the governments of the Federal Republic of Yugoslavia (Serbia and Montenegro) and the Republic of Serbia posed “an extraordinary threat to the national security and foreign policy of the United States.” Therefore, Clinton proclaimed a “national emergency.” He ordered the seizure of property belonging to the named governments in the United States, and he prohibited Americans from conducting commercial transactions with those governments. Clinton’s executive order 13119 declared that the region was a war zone. Executive order 13120 summoned military reserve units for active duty. None of this was authorized by Congress. On the contrary, Congress voted down a resolution to declare war. Congress wouldn’t “authorize” the air war. Clinton ignored Congress and kept America in the war. When, on June 10, 1999, NATO announced it was over, Clinton ordered American soldiers to serve in the Kosovo Force. Not long after that, we found ourselves in an open-ended national emergency declared on September 14, 2001 and extended since by both George W. Bush and Barack Obama. This means the president has standby powers from hundreds of statutes that would enable him to re-introduce military conscription, seize private property and in myriad ways establish a government-run economy. How could an executive order be revoked? First, an executive order can be revoked by another executive order. Probably all presidents revoke some executive orders by their predecessors. For example, Bill Clinton’s executive order 12919, issued on June 3, 1994, was about national security. It revoked all or part of more than a dozen executive orders issued between 1939 and 1991. President Obama revoked executive orders 13258 (2002) and 13422 (2007), both of which were issued by George W. Bush, and Obama amended executive order 12866 (1993) which had been issued by Bill Clinton. These executive orders had to do with regulatory processes. So, while executive orders are attractive to presidents because they can be issued quickly, they can be revoked quickly, too. Second, an executive order can be revoked by legislation. Reportedly every president since Grover Cleveland has had some of his executive orders modified or revoked by legislation. The Congressional Research Service cited a number of examples: “in 2006, Congress revoked part of an executive order from November 12, 1838, which reserved certain public land for lighthouse purposes. Congress has also explicitly revoked executive orders in their entirety, such as the Energy Policy Act of 2005 which revoked a December 13, 1912 executive order that created Naval Petroleum Reserve Number 2.” An executive order by President George H.W. Bush, to establish a human fetal tissue bank for research purposes, was revoked when Congress declared that ‘the provisions of Executive Order 12806 shall not have any legal effect.’” Third, an executive order can be revoked by a federal appeals court or the Supreme Court. For example, President Clinton’s executive order12954 prohibited the federal government from hiring contractors who replaced strikers. He argued that strikers can become violent when they’re replaced, so it would be better to appease strikers and support union workplace monopolies by banning replacements. But executive order 12954 conflicted with a 7-0 U.S. Supreme Court decision in NLRB v. Mackay Radio & Telegraph Company, 304 U.S. 333 (1938),. In part, that court decided “[The employer] is not bound to discharge those hired to fill the places of strikers.” D.C. Circuit Judge Laurence Silberman said, “We think it untenable to conclude that there are no judicially enforceable limitations on presidential actions [enabling] the President to bypass scores of statutory limitations on governmental authority.” Accordingly, the U.S. Court of Appeals for the D.C. Circuit revoked Clinton’s executive order in Chamber of Commerce v. Reich, 74 F.3d 1322 (D.C. Cir. 1996). While executive orders look like an easy option for a beleaguered president, they increase the temptation to over-reach. They’re likely to inflame controversy and motivate opponents to further mobilize their forces. In the end, when opponents come to power again, whatever has been established with executive orders is most vulnerable to being swept away by a whirlwind

#### Congressional action key, the alt’s nuclear war

Austin, 2013 Director of Policy Innovation at the EastWest Institute, Costs of American Cyber Superiority, <http://www.chinausfocus.com/peace-security/costs-of-american-cyber-superiority/>

The United States is racing for the technological frontier in military and intelligence uses of cyber space. It is ahead of all others, and has mobilized massive non-military assets and private contractors in that effort. This constellation of private sector opportunity and deliberate government policy has been aptly labeled in recent months and years by so many credible observers (in The Economist, The Financial Times and the MIT Technology Review) as the cyber industrial complex. The United States is now in the unusual situation where the head of a spy agency (NSA) also runs a major military unified command (Cyber Command). This is probably an unprecedented alignment of Praetorian political power in any major democracy in modern political history. This allocation of such political weight to one military commander is of course for the United States to decide and is a legitimate course of action. But it has consequences. The Snowden case hints at some of the blow-back effects now visible in public. But there are others, less visible. The NSA Prism program exists because it is technologically possible and there have been no effective restraints on its international targeting. This lack of restraint is especially important because the command and control of strategic nuclear weapons is a potential target both of cyber espionage and offensive cyber operations. The argument here is not to suggest a similarity between the weapons themselves, but to identify correctly the very close relationship between cyber operations and nuclear weapons planning. Thus the lack of restraint in cyber weapons might arguably affect (destabilize) pre-existing agreements that constrain nuclear weapons deployment and possible use. The cyber superiority of the United States, while legal and understandable, is now a cause of strategic instability between nuclear armed powers. This is similar to the situation that persisted with nuclear weapons themselves until 1969 when the USSR first proposed an end of the race for the technological frontier of potential planetary devastation. After achieving initial capability, the U.S. nuclear missile build up was not a rational military response to each step increase in Soviet military capability. It was a race for the technological frontier – by both sides – with insufficient recognition of the consequences. This conclusion was borne out by a remarkable Top Secret study commissioned in 1974 by the U.S. Secretary of Defense, Dr James Schlesinger. By the time it was completed and submitted in 1981, it assessed that the nuclear arms build-up by both sides was driven – not by a supposed tit for tat escalation in capability of deployed military systems – but rather by an unconstrained race for the technological limits of each side’s military potential and by its own military doctrinal preferences. The decisions of each side were not for the most part, according to this now declassified study, a direct response to particular systems that the other side was building. In 1969, the USSR acted first to propose an end to the race for the technological frontier of nuclear weapons because it knew it was losing the contest and because it knew there was political sentiment in the United States and in its Allied countries that supported limitations on the unbridled nuclear fetish. As we ponder the American cyber industrial complex of today, we see a similar constellation of opposition to its power emerging. This constellation includes not just the political rivals who see they are losing in cyber space (China and Russia), but nervous allies who see themselves as the likely biggest victims of the American race for cyber superiority, and loyal American military commanders who can see the risks and dangers of that quest. It is time for the United States to take stock of the collateral damage that its quest for cyber military power, including its understandable quest for intelligence superiority over the terrorist enemy, has caused amongst its allies. The loss has not yet been seen at the high political level among allies, in spite of several pro forma requests for information from countries such as Germany. The loss of U.S. credibility has happened more at the popular level. Around the world, once loyal supporters of the United States in its war on terrorism had a reasonable expectation to be treated as faithful allies. They had the expectation, perhaps naïve, that privacy was a value the Americans shared with them. They did not expect to be subject to such a crude distinction (“you are all non-Americans now”). They did not want to know that their entire personal lives in cyber space are now recoverable – should someone so decide – by the running of a bit of software in the NSA. After the Prism revelations, so many of these foreign citizens with an internationalist persuasion and solidarity for the United States now feel a little betrayed. Yet, in the long run, the most influential voice to end the American quest for cyber military superiority may come from its own armed forces. There are military figures in the United States who have had responsibility for nuclear weapons command and control systems and who, in private, counsel caution. They advocate the need to abandon the quest for cyber dominance and pursue a strategy of “mutual security” in cyber space – though that has yet to be defined. They cite military exercises where the Blue team gets little or no warning of Red team disruptive cyber attack on systems that might affect critical nuclear command and control or wider war mobilization functions. Strategic nuclear stability may be at risk because of uncertainty about innovations in cyber attack capability. This question is worth much more attention. U.S. national security strategy in cyber space needs to be brought under stronger civilian oversight and subject to **more** rigorous public scrutiny. The focus on Chinese cyber espionage has totally preempted proper debate about American cyber military power. Most in the United States Congress have lined up to condemn Snowden. That is understandable. But where are the critical voices looking at the bigger picture of strategic instability in cyberspace that existed before Snowden and has now been aggravated because of him? The Russian and Chinese rejections of reasonable U.S. demands for Snowden’s extradition may be every bit as reasonable given their anxiety about unconstrained American cyber superiority.

### CIR

#### No risk or impact to economic decline

Drezner ‘11 Daniel W. Drezner, professor of international politics at the Fletcher School of Law and Diplomacy at Tufts University, “Please come down off the ledge, dear readers,” Foreign Policy, 8/12/11, http://drezner.foreignpolicy.com/posts/2011/08/12/please\_come\_down\_off\_the\_ledge\_dear\_readers

So, when we last left off this debate, things were looking grim. My concern in the last post was that the persistence of hard times would cause governments to take actions that would lead to a collapse of the open global economy, a spike in general riots and disturbances, and eerie echoes of the Great Depression. Let's assume that the global economy persists in sputtering for a while, because that's what happens after major financial shocks. Why won't these other bad things happen? Why isn't it 1931? Let's start with the obvious -- it's not gonna be 1931 because there's some passing familiarity with how 1931 played out. The Chairman of the Federal Reserve has devoted much of his academic career to studying the Great Depression. I'm gonna go out on a limb therefore and assert that if the world plunges into a another severe downturn, it's not gonna be because central bank heads replay the same set of mistakes. The legacy of the Great Depression has also affected public attitudes and institutions that provide much stronger cement for the current system. In terms of [public] attitudes, compare the results of this mid-2007 poll with this mid-2010 poll about which economic system is best. I'll just reproduce the key charts below: The headline of the 2010 results is that there's eroding U.S. support for the global economy, but a few other things stand out. U.S. support has declined, but it's declined from a very high level. In contrast, support for free markets has increased in other major powers, such as Germany and China. On the whole, despite the worst global economic crisis since the Great Depression, public attitudes have not changed all that much. While there might be populist demands to "do something," that something is not a return to autarky or anything so [drastic]. Another big difference is that multilateral economic institutions are much more robust now than they were in 1931. On trade matters, even if the Doha round is dead, the rest of the World Trade Organization's corpus of trade-liberalizing measures are still working quite well. Even beyond the WTO, the complaint about trade is not the deficit of free-trade agreements but the surfeit of them. The IMF's resources have been strengthened as a result of the 2008 financial crisis. The Basle Committee on Banking Supervision has already promulgated a plan to strengthen capital requirements for banks. True, it's a slow, weak-assed plan, but it would be an improvement over the status quo. As for the G-20, I've been pretty skeptical about that group's abilities to collectively address serious macroeconomic problems. That is setting the bar rather high, however. One could argue that the G-20's most useful function is reassurance. Even if there are disagreements, communication can prevent them from growing into anything worse. Finally, a note about the possibility of riots and other general social unrest. The working paper cited in my previous post noted the links between austerity measures and increases in disturbances. However, that paper contains the following important paragraph on page 19: [I]n countries with better institutions, the responsiveness of unrest to budget cuts is generally lower. Where constraints on the executive are minimal, the coefficient on expenditure changes is strongly negative -- more spending buys a lot of social peace. In countries with Polity-2 scores above zero, the coefficient is about half in size, and less significant. As we limit the sample to ever more democratic countries, the size of the coefficient declines. For full democracies with a complete range of civil rights, the coefficient is still negative, but no longer significant. This is good news!! The world has a hell of a lot more democratic governments now than it did in 1931. What happened in London, in other words, might prove to be the exception more than the rule. So yes, the recent economic news might seem grim. Unless political institutions and public attitudes buckle, however, we're unlikely to repeat the mistakes of the 1930's. And, based on the data we've got, that's not going to happen.

#### CIR won’t pass, Midterms create bipartisan consensus on inaction, and GOP infighting made Boehner back down

Marcus 3/2 (Ruth Marcus, member of the Washington Post Writers Group. Why John Boehner and Washington have the blahs

Mar. 2, 2014, http://archive.delawareonline.com/article/20140305/OPINION16/303050001/Why-John-Boehner-Washington-blahs)

“Blah, blah, blah, blah,” said the speaker of the House.¶ John Boehner (R-Ohio), drawing out the words in a tone of ennui, was speaking about a new tax reform plan and its comatose-on-arrival prospects.¶ But the import of Boehner’s dismissive words — he’s happy to have a “public conversation,” loath to engage on the details — extends beyond tax reform. It’s hard to imagine a more fitting motto for the second session of the 113th Congress.¶ To say that lawmakers (a generous term, under the indolent circumstances) are treading water is an insult to swimmers everywhere. A better analogy might be to hibernating grizzlies, except without the eventual fearsomeness.¶ Having roused themselves just long enough to avoid another government shutdown and avert a catastrophic default on the debt, members of Congress are preparing to lumber back to their dens for the remainder of 2014, stopping only to gorge on enough campaign cash to make it through election season.¶ Indeed, inaction is a plan that generates the scarcest commodity in Washington these days — bipartisan agreement. Republicans and Democrats have differing priorities, but they have reached the same dreary conclusion: not gonna happen.¶ On the Republican side, the best example is immigration reform. Boehner worked on it, hired an aide (Arizona Republican Sen. John McCain’s former top immigration adviser) to help him make it happen, issued a set of principles.¶ Until, facing yet another revolt within his ranks, Boehner balked, blaming President Obama and Republicans’ lack of trust in the president’s commitment to enforce the laws.¶ On the Democratic side, the prime example may be fast-track trade promotion authority. Obama wants it, unions hate it, Senate Majority Leader Harry Reid has declared his opposition.¶ “Everyone would be well-advised just to not push this right now,” the Nevada Democrat said. Will the president push? Notably, he didn’t mention the issue in a recent appearance before the House Democratic Caucus.

#### Govt. wants the aff to shore up fragmented cyber ops

Perera, 13

(David Perera is executive editor of the FierceMarkets Government Group, which includes FierceGovernment, FierceGovernmentIT, FierceHomelandSecurity, and FierceMobileGovernment. “SASC calls for new oversight of Cyber Command” <http://www.fiercegovernmentit.com/story/sasc-calls-new-oversight-cyber-command/2013-06-26>) Henge

The Senate Armed Services Committee says it has concerns that oversight of Cyber Command and the cyber mission within the Defense Departments "is fragmented and weak," calling for creation of a Senate-confirmed position within the undersecretary of defense for policy to supervise and manage the funds of offensive cyber forces. The Senate committee voted 23-3 on June 14 to report its version of the fiscal 2014 national defense authorization act (S. 1197), detailing its intentions in a newly released legislative report (.pdf). In the report, the committee says fragmented oversight of Cyber Command and the cyber mission is partly unavoidable, "inasmuch as cyber operations affect every segment of the department, making clear lines of jurisdiction and responsibility impossible to draw." Different defense organizations are in charge of defensive and offensive cybersecurity, while others have responsibility over "technology, architectures, and acquisition, and another for policy and operational considerations." The committee doesn't propose a broad consolidation--although among its other proposals besides creation of the new supervisory position within the USD(P) is to fold the duties of the DoD chief information officer into the deputy chief information officer and give the DCMO authority over the National Security Agency's Information Assurance Directorate. SASC also proposes the chartering of a joint software assurance office as a means of satisfying a provision from the fiscal 2013 authorization act that mandates the use of automated vulnerability analysis tools for DoD systems. The center "would be a logical choice for managing the purchase and distribution of licenses for commercial automated code analysis tools" and for managing the development of improvements to software code analysis tools, the report says. Defense acquisition of cloud computing would also come under increased scrutiny under the SASC proposal through a requirement that the undersecretaries of defense for acquisition technology and logistics, and for intelligence, the DoD CIO and the chair of the Joint Requirement Oversight Council supervise the development and implementation of cloud capabilities for intelligence, surveillance, and reconnaissance data analysis. The supervision would entail enforcing requirements for interoperability and attribute-based access controls for all ISR cloud systems within military services and agencies, as well as enterprisewide data discovery across domains, and the "correlation of data stored in cloud and non-cloud databases, relational and non-relational databases." The intelligence community in particular has embraced NoSQL databases. The committee also calls for a comprehensive Internet mapping capability, stating that "charting this new terrain is as fundamental to operations in cyberspace as maps of physical terrain have always been to military campaigns."

#### Winners win

Hirsh 2/7 (Michael, National Journal, “There’s no such thing as political capital” 2-7-13 <http://www.nationaljournal.com/magazine/there-s-no-such-thing-as-political-capital-20130207>)

In terms of Obama’s second-term agenda, what all these shifting tides of momentum and political calculation mean is this: Anything goes. Obama has no more elections to win, and he needs to worry only about the support he will have in the House and Senate after 2014. But if he picks issues that the country’s mood will support—such as, perhaps, immigration reform and gun control—there is no reason to think he can’t win far more victories than any of the careful calculators of political capital now believe is possible, including battles over tax reform and deficit reduction.¶ Amid today’s atmosphere of Republican self-doubt, a new, more mature Obama seems to be emerging, one who has his agenda clearly in mind and will ride the mood of the country more adroitly. If he can get some early wins—as he already has, apparently, on the fiscal cliff and the upper-income tax increase—that will create momentum, and one win may well lead to others. “Winning wins.”

### 2AC Agamben

#### The ballot should simulate the effects of the aff—KT fairness—also decision-making, political engagement on this topic is key to exposing hypocrisy and making the govt. accountable

Mellor, 13

Ewan E. Mellor [European University Institute, Political and Social Sciences, Graduate Student, Paper Prepared for BISA Conference 2013, “Why policy relevance is a moral necessity: Just war theory, impact, and UAVs”]

**This section of the paper considers** more generally **the need for** just war **theorists to engage with policy debate about the use of force**, as well as to engage with the more fundamental moral and philosophical principles of the just war tradition. **It draws on John Kelsay’s conception of just war thinking as being a social practice**,35 **as well as on** Michael **Walzer’s understanding of the role of the social critic in society**.36 It argues that **the just war tradition is a form of “practical discourse” which is concerned with questions of “how we should act.**”37¶ Kelsay argues that:¶ [T]he criteria of jus ad bellum and jus in bello provide a framework for structured participation in a public conversation about the use of military force . . . citizens who choose to speak in just war terms express commitments . . . [i]n the process of giving and asking for reasons for going to war, those who argue in just war terms seek to influence policy by persuading others that their analysis provides a way to express and fulfil the desire that military actions be both wise and just.38¶ He also argues that “**good just war thinking involves continuous and complete deliberation**, in the sense that one attends to all the standard criteria at war’s inception, at its end, and throughout the course of the conflict.”39 **This is important as it highlights the need for** just war **scholars to engage with the ongoing operations in war and the specific policies that are involved**. The question of whether a particular war is just or unjust, and the question of whether a particular weapon (like drones) can be used in accordance with the jus in bello criteria, only cover a part of the overall justice of the war. **Without an engagement with the reality of war, in terms of the policies used in waging it, it is impossible to engage with the “moral reality of war,”**40 **in terms of being able to discuss it and judge it in moral terms**.¶ Kelsay’s description of just war thinking as a social practice is similar to Walzer’s more general description of social criticism. **The** just war **theorist, as a social critic, must be involved with his or her own society and its practices**. In the same way that the social critic’s distance from his or her society is measured in inches and not miles,41 **the** just war **theorist must be close to and must understand the language through which war is constituted, interpreted and reinterpreted**.42 **It is only by understanding the values and language that their own society purports to live by that the social critic can hold up a mirror to that society to**¶ **demonstrate its hypocrisy and to show the gap that exists between its practice and its values**.43 **The tradition** itself provides a set of values and principles and, as argued by Cian O’Driscoll, **constitutes a “language of engagement” to spur participation in public and political debate.**44 This language is part of “our common heritage, the product of many centuries of arguing about war.”45 These principles and this language provide the terms through which people understand and come to interpret war, not in a deterministic way but by providing the categories necessary for moral understanding and moral argument about the legitimate and illegitimate uses of force.46 **By spurring and providing the basis for political engagement the just war tradition ensures that the acts that occur within war are considered according to just war criteria and allows policy-makers to be held to account on this basis**.¶ **Engaging with the reality of war requires recognising that war is**, as Clausewitz stated, **a continuation of policy**. **War**, according to Clausewitz, **is subordinate to politics and to political choices and these political choices can, and must, be judged and critiqued**.47 ***Engagement and political debate are morally necessary as the alternative is disengagement and moral quietude, which is a sacrifice of the obligations of citizenship***.48 ***This engagement must bring*** just war ***theorists into contact with the policy makers and will require work that is accessible and relevant to policy makers***, **however this does not mean a sacrifice of critical distance or an abdication of truth in the face of power**. By engaging in detail with the policies being pursued and their concordance or otherwise with the principles of the just war tradition **the policy-makers will be forced to account for their decisions and justify them in just war language**. In contrast to the view, suggested by Kenneth Anderson, that “the public cannot be made part of the debate” and that “[w]e are necessarily committed into the hands of our political leadership”,49 **it is incumbent upon** just war **theorists to ensure that the public are informed and are capable of holding their political leaders to account**. To accept the idea that the political leadership are stewards and that accountability will not benefit the public, on whose behalf action is undertaken, but will only benefit al Qaeda,50 is a grotesque act of intellectual irresponsibility. As Walzer has argued, **it is precisely because it is “our country” that we are “especially obligated to criticise its policies**.”51

#### Thinking about worst-case cyber scenarios is good- key to preparedness and reduces chances of cyber war

**Clarke and Knake ‘10**

[Richard Alan Clarke is the former National Coordinator for Security, Infrastructure Protection, and Counter-terrorism for the United States. Robert K. Knake, Former international affairs fellow in residence @ CFR. Cyber War. ETB]

In the seminal 1983 movie about computers and war, War Games, ¶ starring a young Matthew Broderick, the tinny computer voice ¶ asked haltingly, “Do you want to play a game of thermonuclear war?” ¶ Why don’t we play a game of cyber war in order to elucidate some of ¶ the policy choices that shape a strategy. DoD runs such exercises, ¶ called Cyber Storm, annually. The CIA’s annual cyber war exercise, ¶ Silent Horizon, has been happening since 2007. For the purposes of ¶ this analysis, I’ll make the same request of you that I made of students ¶ at Harvard’s Kennedy School and national security bureaucrats sitting ¶ around the White House Situation Room conference table: “Don’t ¶ fight the scenario.” By that I mean, **do not spend a lot of time rejecting** ¶ **the premise that circumstances could happen someday that would** ¶ **result in the U.S. being on the edge of conflict with Russia or China. When U.S. cyber warriors talk about the “big one,” they usually** ¶ **have in mind a conflict in cyberspace with Russia or China**, the two ¶ nations with the most sophisticated offensive capability other than ¶ the U.S. **No one wants hostilities with those countries to happen.** ¶ **Thinking about it, for the purposes of understanding what cyber** ¶ **war would look like, does not make it more likely**. In fact, **by under­**¶ **standing the risks of our current cyber war posture, we might reduce** ¶ **the chances of a real cyber war.** **And if, despite our intentions, a** ¶ **cyber war does happen, it would be best to have thought in advance** ¶ **about how it could unravel.**¶ **Certainly, I did not want to see the attack of 9/11 happen, but I** ¶ **had chaired countless** “tabletop exercises,” or **war game scenarios,** **to** ¶ **get myself and the bureaucracy ready in case something like it did** ¶ **happen**. **When it came, we had already thought through how to re­**¶ **spond on the day of an attack and the few days thereafter**. We spent ¶ enormous effort to try to prevent attacks, but we also devoted some ¶ time to thinking about what we would do if one succeeded. **Had we** ¶ **not done so, that awful day would have been even worse**. **So**, **in that** ¶ **spirit of learning by visualizing, let’s think about a period of rising** ¶ **tensions** between the U.S. and China.

#### Life should be valued as apriori – it precedes the ability to value anything else

Amien **Kacou. 2008**. WHY EVEN MIND? On The A Priori Value Of “Life”, Cosmos and History: The Journal of Natural and Social Philosophy, Vol 4, No 1-2 (2008) cosmosandhistory.org/index.php/journal/article/view/92/184

Furthermore, that manner of **finding things good** that is in pleasure **can certainly not exist in any world without consciousness (i.e., without “life,”** as we now understand the word)—slight analogies put aside. In fact, we can begin to develop a more sophisticated definition of the concept of “pleasure,” in the broadest possible sense of the word, as follows: it is the common psychological element in all psychological experience of goodness (be it in joy, admiration, or whatever else). In this sense, pleasure can always be pictured to “mediate” all awareness or perception or judgment of goodness: there is pleasure in all consciousness of things good; pleasure is the common element of all conscious satisfaction. In short, it is simply the very experience of liking things, or the liking of experience, in general. In this sense, **pleasure is, not only uniquely characteristic of life but also, the core expression of goodness in life—the most general sign or phenomenon for favorable conscious valuation**, in other words. This does not mean that “good” is absolutely synonymous with “pleasant”—what we value may well go beyond pleasure. (The fact that we value things needs not be reduced to the experience of liking things.) However, what we value beyond pleasure remains a matter of speculation or theory. Moreover, we note that a variety of things that may seem otherwise unrelated are correlated with pleasure—some more strongly than others. In other words, there are many things the experience of which we like. For example: the admiration of others; sex; or rock-paper-scissors. But, again, what they are is irrelevant in an inquiry on a priori value—what gives us pleasure is a matter for empirical investigation. Thus, we can see now that, in general, **something primitively valuable is attainable in living—that is, pleasure itself.** And it seems equally clear that we have a priori logical reason to pay attention to the world in any world where pleasure exists. Moreover, **we can now also articulate a foundation for a security interest in our life: since the good of pleasure can be found in living** (to the extent pleasure remains attainable),[17] **and only in living, therefore, a priori, life ought to be continuously (and indefinitely) pursued at least for the sake of preserving the possibility of finding that good.** However, this platitude about the value that can be found in life turns out to be, at this point, insufficient for our purposes. It seems to amount to very little more than recognizing that our subjective desire for life in and of itself shows that life has some objective value. For what difference is there between saying, “living is unique in benefiting something I value (namely, my pleasure); therefore, I should desire to go on living,” and saying, “I have a unique desire to go on living; therefore I should have a desire to go on living,” whereas the latter proposition immediately seems senseless? In other words, “life gives me pleasure,” says little more than, “I like life.” Thus, we seem to have arrived at the conclusion that **the fact that we already have some (subjective) desire for life shows life to have some (objective) value.** But, if that is the most we can say, then it seems our enterprise of justification was quite superficial, and the subjective/objective distinction was useless—for all we have really done is highlight the correspondence between value and desire. Perhaps, our inquiry should be a bit more complex.

**Risk framing empowers agency and is key to solve the alt by broadening coalitions AGAINST the state**

**Borraz, ‘7** [OLIVIER BORRAZ Centre de Sociologie des Organisations, Sciences Po-CNRS, Paris, “Risk and Public Problems,” Journal of Risk Research, 10, 7, Oct 2007, 941-957]

First, risk is the result of a dynamic, haphazard, controversial and unstable process of construction. In a sense, risk is never entirely stabilized, it is associated with many uncertainties, its status like its boundaries change, following the dynamics of contention which contributed to its emergence. More than a frame, risk is thus closer to a state in the life of a public problem (Gilbert, 2003b), a state characterized by fluidity in its boundaries, struggles over the definition of the risk, debates as to who is accountable, etc. Labelling a problem as a risk exerts pressure on political authorities, in a way which tests their capacity to act. It is also an opportunity for rules and power relations to be redefined. Generally, the boundary between risk and crisis is unclear (Besanc ̧on et al., 2004). Second, risk is inseparable from wider political controversies and conflicting values, ideas and interests. Whatever the issue, be it limited in scale (sewage sludge or mobile phone masts) or on the contrary high profile (nuclear waste, global warming, asbestos, GMO), the move into the state of risk allows for links to be made with broader political, economic, social, moral, ethical or environmental issues. The risk of an activity is always more than just a health or environmental safety issue: it also questions the multiple dimensions surrounding that activity (its benefits, use, effects, etc.).

**Perm solves and case is a net benefit – only by strategically utilizing biopolitical tools like apocalyptic imagery and policy reform can we resist biopower**

JL **Schatz. 2012**. Professor of English and Feminist Evolutionary Studies & Director of Debate at Binghamton University. The Importance of Apocalypse: The Value of End-Of-The-World Politics While Advancing Ecocriticism. Journal of Ecocriticism: A New Journal of Nature, Society and Literature. 4(2)

Anything is justified in the name of saving the environment because it is a question of our very survival. Here we find the logic of things like resource wars that strive to secure geopolitical interests in order to get others to clean up their acts in the name of environmental security4. **From this perspective the mobilizing potentials of apocalyptic imagery can influence populations for the purposes of war instead of positive ecological awareness.** **This fear causes such critics to refrain from utilizing descriptions of omnicide while simultaneously criticizing the most effective tactic activists on the frontlines have**. Luke and Darier’s Foucauldian approach to ecocriticism is not without value. They demonstrate how “discourse delineate[s] ... the terms of intelligibility whereby a particular ‘reality’ can be known and acted upon. When we speak of a discourse we may be referring to a specific group of texts, but also importantly to the social practices to which those texts are inextricably linked” (Doty, 1996: 6). Power continuously operates in both hegemonic and resistant ways regardless if we are monkey-wrenching, speaking at a political press conference, or using the written language of the academic. No matter the form, the way we articulate our discourse must construct reality in a precise way in order to render it intelligible for others to understand. Judith Butler notes that “the media’s evacuation of the human through the image has to be understood ... in terms of the broader problem that normative schemes of intelligibility establish what will and will not be human” (146)5. Once other animals and the environment are understood as less than human their lives become inconsequential compared to the short-term benefit of human civilization. To this ends—despite Luke and Darier’s fear of being coopted—**apocalyptic imagery can help** in two regards. First, it helps **people recognize the interconnection of the global ecology in order to appreciate the similarity between humans and other species**. Second, **it provides a self-motivating reason for people to change their behavior to avert extinction even when confronting those who refuse to recognize the intrinsic value of non-human animals**. In either case **omnicidal images change** both the **mindset and** the **actions** of those we encounter, thereby fostering new directions for humanity to evolve. **Any hesitancy to deploy images of apocalypse out of the risk of acting in a biopolitical manner ignores how any particular metaphor—apocalyptic or not—always risks getting coopted. It does not excuse inaction. Clearly hegemonic forces have already assumed control of determining environmental practices when one looks at the debates surrounding** offshore **drilling**, **climate change**, **and biodiversity** within the halls of Congress. “As this ideological quagmire worsens, urgent problems ... will go unsolved ... only to fester more ominously into the future. ... [E]cological crisis ... cannot be understood outside the larger social and global context ... of internationalized markets, finance, and communications” (Boggs 774). **If it weren’t for people such as Watson connecting things like whaling to the end of the world it wouldn’t get the needed coverage to enter into public discourse. It takes big news to make headlines and hold attention spans in the electronic age**. Sometimes it even takes a reality TV show on Animal Planet. As Luke reminds us, “Those who dominate the world exploit their positions to their advantage by defining how the world is known. Unless they also face resistance, questioning, and challenge from those who are dominated, they certainly will remain the dominant forces” (2003: 413). **Merely sitting back and theorizing over metaphorical deployments does a grave injustice to the gains activists are making on the ground. It** also **allows hegemonic institutions to continually define the debate over the environment by framing out any attempt for significant change, whether it be radical or reformist**. **Only by jumping on every opportunity for resistance can ecocriticism have the hopes of combatting the current ecological reality.** This means we must recognize that we cannot fully escape the master’s house since the surrounding environment always shapes any form of resistance. Therefore, **we ought to act even if we may get coopted**. As Foucault himself reminds us, “instead of radial ruptures more often one is dealing with mobile and transitory points of resistance, producing cleavages in a society that shift about[.] ... And **it is** doubtless **the strategic codification of these points of resistance that makes a revolution possible**, somewhat similar to the way in which the state relies on the institutional ntegration of power relationships. It is in this sphere of force relations that we must try to analyze the mechanisms of power” (96-­‐97). Here Foucault “asks us to think about resistance differently, as not anterior to power, but a component of it. If we take seriously these notions on the exercise and circulation of power, then we ... open ... up the field of possibility to talk about particular kinds of environmentalism” (Rutherford 296). This is not to say that all actions are resistant. Rather, the revolutionary actions that are truly resistant oftentimes appear mundane since it is more about altering the intelligibility that frames discussions around the environment than any specific policy change. Again, this is why people like Watson use one issue as a jumping off point to talk about wider politics of ecological awareness. Campaigns that look to the government or a single policy but for a moment, and then go on to challenge hegemonic interactions with the environment through other tactics, allows us to codify strategic points of resistance in numerous places at once. Again, this does not mean we must agree with every tactic. It does mean that even failed attempts are meaningful. For example, while PETA’s ad campaigns have drawn criticism for comparing factory farms to the Holocaust, and featuring naked women who’d rather go naked than wear fur, their importance extends beyond the ads alone6. By bringing the issues to the forefront they draw upon known metaphors and reframe the way people talk about animals despite their potentially anti-Semitic and misogynist underpinnings. Michael Hardt and Antonio Negri’s theorization of the multitude serves as an excellent illustration of how **utilizing the power of the master’s biopolitical tools can become powerful enough to deconstruct its house despite the risk of cooptation or backlash**. For them, the multitude is defined by the growing global force of people around the world who are linked together by their common struggles without being formally organized in a hierarchal way. While Hardt and Negri mostly talk about the multitude in relation to global capitalism, their understanding of the commons and analysis of resistance is useful for any ecocritic. They explain, [T]he multitude has matured to such an extent that it is becoming able, through its networks of communication and cooperation ... [and] its production of the common, to sustain an alternative democratic society on its own. ... Revolutionary politics must grasp, in the movement of the multitudes and through the accumulation of common and cooperative decisions, the moment of rupture ... that can create a new world. In the face of the destructive state of exception of biopower, then, there is also a constituent state of exception of democratic biopolitics[,] ... creating ... a new constitutive temporality. (357) Once one understands the world as interconnected—instead of constructed by different nationstates and single environments—conditions in one area of the globe couldn’t be conceptually severed from any other. In short, we’d all have a stake in the global commons. **Ecocritics can then utilize biopolitics to shape discourse and fight against governmental biopower by waking people up to the pressing need to inaugurate a new future for there to be any future. Influencing other people through argument and end-of-the-world tactics is not the same biopower of the state so long as it doesn’t singularize itself but for temporary moments.** Therefore, “it is not unreasonable to hope that in a biopolitical future (after the defeat of biopower) war will no longer be possible, and the intensity of the cooperation and communication among singularities ... will destroy its [very] possibility” (Hardt & Negri 347). In the context of capitalism, when wealth fails to trickle down it would be seen as a problem for the top since it would stand testament to their failure to equitably distribute wealth. In the context of environmentalism, not-in-my-backyard reasoning that displaces ecological destruction elsewhere would be exposed for the failure that it is. There is no backyard that is not one’s own. Ultimately, **images of planetary doom demonstrate how we are all interconnected and** in doing so **inaugurate a new world where multitudes, and not governments, guide the fate of the planet.**

#### State action key is key, wishing it away’s unproductive

Pasha ’96 [July-Sept. 1996, Mustapha Kamal, Professor and Chair of the Department of Politics and International Relations at the University of Aberdeen, “Security as Hegemony”, Alternatives: Global, Local, Political, Vol. 21, No. 3, pp. 283-302, JSTOR]

An attack on the postcolonial state as the author of violence and its drive to produce a modern citizenry may seem cathartic, without producing the semblance of an alternative vision of a new political community or fresh forms of life among existing political communities. Central to this critique is an assault on the state and other modern institutions said to disrupt some putatively natural flow of history. Tradition, on this logic, is uprooted to make room for grafted social forms; modernity gives birth to an intolerant and insolent Leviathan, a repository of violence and instrumental rationality's finest speci- men. Civil society - a realm of humaneness, vitality, creativity, and harmony - is superseded, then torn asunder through the tyranny of state-building. The attack on the institution of the state appears to substitute teleology for ontology. In the Third World context, especially, the rise of the modern state has been coterminous with the negation of past histories, cultures, identities, and above all with violence. The stubborn quest to construct the state as the fount of modernity has subverted extant communities and alternative forms of social organization. The more durable consequence of this project is in the realm of the political imaginary: the constrictions it has afforded; the denials of alternative futures. The postcolonial state, however, has also grown to become more heterodox - to become more than simply modernity's reckless agent against hapless nativism. The state is also seen as an expression of greater capacities against want, hunger, and injustice; as an escape from the arbitrariness of communities established on narrower rules of inclusion/exclusion; as identity removed somewhat from capri- cious attachments. No doubt, the modern state has undermined tra- ditional values of tolerance and pluralism, subjecting indigenous so- ciety to Western-centered rationality. But tradition can also conceal particularism and oppression of another kind. Even the most elastic interpretation of universality cannot find virtue in attachments re- furbished by hatred, exclusivity, or religious bigotry. A negation of the state is no guarantee that a bridge to universality can be built. Perhaps the task is to rethink modernity, not to seek refuge in a blind celebration of tradition. Outside, the state continues to inflict a self-producing "security dilemma"; inside, it has stunted the emergence of more humane forms of political expres- sion. But there are always sites of resistance that can be recovered and sustained. A rejection of the state as a superfluous leftover of modernity that continues to straitjacket the South Asian imagination must be linked to the project of creating an ethical and humane order based on a restructuring of the state system that privileges the mighty and the rich over the weak and the poor.74 Recognizing the constrictions of the modern Third World state, a reconstruction of state-society re- lations inside the state appears to be a more fruitful avenue than wishing the state away, only to be swallowed by Western-centered globalization and its powerful institutions.A recognition of the patent failure of other institutions either to deliver the social good or to procure more just distributional rewards in the global political economy may provide a sobering reassessment of the role of the state. An appreciation of the scale of human tragedy accompanying the collapse of the state in many local contexts may also provide im- portant points of entry into rethinking the one-sided onslaught on the state. Nowhere are these costs borne more heavily than in the postcolonial, so-called Third World, where time-space compression has rendered societal processes more savage and less capable of ad- justing to rhythms dictated by globalization

#### Agamben’s use of the concept “bare life” is devoid of historical context to the point of meaninglessness

Thomas **Lemke. 2011**. Former assistant professor of sociology at Wuppertal U and research fellow at the Institute for Social Research in Frankfurt. Biopolitics: an advanced introduction. P 63

 Agamben's attempt to correct and amend Foucault (cf. 1998, 9) also abandons the latters central insight, namely, that biopolitics is a historical phenomenon that cannot be separated from the development of modern states, the emergence of the human sciences, and the formation of capitalist relations of production. **Without the biopolitical project's necessary placement within a historical-social context, "bare life" becomes an abstraction whose complex conditions of emergence must remain as obscure as its political implications. Agamben tends to erase the historical difference between antiquity and the present, as well as the differences between the Middle Ages and modernity.** Not only does **he avoid the question of what biopolitics has to do with a political economy of life**; he also suppresses the significance that gender has for his line of inquiry. He does not investigate to what extent the production of "bare life" is also a patriarchal project, one that codifies gender difference through a strict and dichotomous apportionment of nature and politics (cf. DeuberMankowsky 2002).

#### no root cause of war

Greg **Cashman**. **2000**. Professor of Political Science at Salisbury State University “What Causes war?: An introduction to theories of international conflict” pg. 9

Two warnings need to be issued at this point. First, **while we have been using a single variable explanation of war merely for the sake of simplicity, multivariate explanations of war are likely to be much more powerful. Since social and political behaviors are extremely complex, they are almost never explainable through a single factor. Decades of research have led most analysts to reject monocausal explanations of war**. For instance, international relations theorist J. David **Singer suggests that we ought to move away from the concept of “causality” since it has become associated with the search for a single cause of war; we should instead redirect our activities toward discovering “explanations”—a term that implies multiple causes of war, but also a certain element of randomness or chance in their occurrence.**

#### Agamben collapses the distinction between democracies and totalitarianism and overexaggerates the extent of bare life

Thomas **Lemke. 2011**. Former assistant professor of sociology at Wuppertal U and research fellow at the Institute for Social Research in Frankfurt. Biopolitics: an advanced introduction. P 55-6.

**Agambens reconstruction of the interrelationships between sovereign rule and biopolitical exception results in an unsettling outcome.** The thesis of the concentration camp as "the hidden matrix of the politics in which we still live" (Agamben 2000, 44) makes claims for an inner link between the emergence of human rights and the development of concentration camps. In this sense, **there is no sharp division between parliamentary democracies and totalitarian dictatorships, liberal constitutional states and authoritarian regimes**. Agambens claim of an "inner solidarity between democracy and totalitarianism" (1998,10) has provoked much resistance. Although his thesis of the camp as "biopolitical paradigm of the modern" (ibid., 117) in no way makes relative or trivializes Nazi extermination policies, it remains the case that Agamben ignores important and essential differences. **The criticism that Agamben "levels" differences is a less relevant argument than his lack of concretization and the excessive dramatization that may lead, ultimately, to the impression that homo sacer is "forever and everywhere"** (Werber 2002, 622).

#### Agamben’s methodology is flawed—his argument is a giant assertion with no proof.

Lewis, 99 (Stephen, “Homo Sacer: Sovereign Power and Bare Life (Review)”, *Modernism/Modernity* 6.3, p. 165, Project MUSE, Humanities Professor at Chicago,)

There are a number of objections one could raise to specific aspects of the book, particularly its premise that concepts such as "sovereign power" and "bare life" describe realities that remain more or less constant over twenty-four centuries of history. I will focus here, however, on what I think is the most fundamentally objectionable aspect of the book: its methodology, or the set of assumptions about what constitutes a good argument that governs its "historico-philosophical" approach to its subject matter. The best way to demonstrate these assumptions is by considering Agamben's adoption of the term "biopolitics." He takes up the term from Michel Foucault with the intent of moving beyond Foucault's thinking of the "double bind" exerted upon the political subject by, on the one hand, "subjective technologies" and, on the other, "political technologies" (5-6). Agamben's claim is that his approach to biopolitics clarifies the precise nature of this "point at which the voluntary servitude of individuals comes into contact with objective power" because he grounds it in an analysis of the juridico-institutional structure of sovereign power, a realm of political reality that Foucault refused to take seriously (119). Agamben's rhetoric when explaining why Foucault did not see the structural nature of modern power in the more complete and illuminating way that Agamben does is interesting. For Agamben, any failings in Foucault's thinking arise not from a problem with Foucault's methods of research or from deficits in his command of evidence, but, rather, from the assumption that Foucault could not have thought otherwise than as he did because he was thinking at the very limits then of Western thought. The "blind spot" in the "double bind" Foucault locates constitutes, says Agamben, "something like a vanishing point that the different perspectival lines of Foucault's inquiry (and, more generally, of the entire Western reflection on power) converge toward without reaching" (6). Unfortunately, yet perhaps unsurprisingly, Agamben intimates that he, too, is thinking at the very limits of current thought (presumably he finds himself able to think beyond Foucault's horizon because he is alive and thinking now, after Foucault). Agamben's use of what Thomas Pavel has called the "rhetoric of the end" calls attention to the problems that occur when a book is structured by apocalyptic claims about the end (and thus the inaccessibility) of certain modes of being or of thought rather than by empirically or historiographically grounded argument. [2](http://muse.jhu.edu/journals/modernism-modernity/v006/6.3lewis.html%22%20%5Cl%20%22FOOT2#FOOT2) There is nothing inherently objectionable about claiming that the end of a certain era has occurred; the point is simply that, to my mind, the reader ought to be able to decide from evidence-based argumentation whether the claim is reasonable. [3](http://muse.jhu.edu/journals/modernism-modernity/v006/6.3lewis.html%22%20%5Cl%20%22FOOT3#FOOT3) Agamben says that his intent in describing the hidden connection between totalitarianism and democracy on an "historico-philosophical" plane rather than through detailed historiographical inquiry is not to "[level] the enormous differences that characterize [the] history and [. . .] rivalry" of democracy and totalitarianism (10). Instead, his intent is to make the structure of this hidden connection known so that it can one day be surpassed through a new form of politics. The problem, however, is that the rhetoric of the end he employs in lieu of historiographical argument prevents him from saying precisely what this new form of politics could be and thus makes its attainment seem mysteriously difficult. Indeed Agamben tends to fall back on impossible-to-prove categorical assertions rather than reasonable explanations when he tells why, for instance, the categories of classical politics, or, alternatively, religion-based ethical systems, cannot be "returned to" in any sense. Functioning hand-in-hand with such categorical assertions about the inaccessibility of the past are equally unsupported gestures towards a future politics articulated in what reads at times like a language of secularized apophatism, which in the present book Agamben tends to employ in conjunction with discussions of Benjamin's messianism.

#### Whatever being is impossible to realize—we can only empty out the concept of rights if there is a concrete alternative.

Daly, 04 (<http://www.borderlandsejournal.adelaide.edu.au/vol3no1_2004/daly_noncitizen.htm>,

The non-citizen and the concept of 'human rights', Frances Daly, Australian National University

2004).

What it is that we might want a human potentiality to mean is, of course, a complex, difficult and open-ended issue. But **it is important for us to ask whether a human potentiality must start from emptiness. Agamben repeatedly refers to the need to begin from a place of 'amorphousness' and 'inactuality', assuming that there is something that will necessarily follow from the simple fact of human existence – but why should we assume this**? What might constitute or form this potentiality is surely concerned with what is latent but as yet unrealized. For Agamben, there is nothing latent that is not already tainted by a sense of a task that must be done (Agamben, 1993: 43). **There is no ability to achieve any displacement with what is present within values of community and justice, there is only an immobilizing nothingness that assumes a false essence, vocation or destiny. If the 'whatever' being that he contends is indeed emerging, and it possesses, as he argues, "an original relation to desire", it is worthwhile asking what this desire is for** (Agamben, 1993: 10). If it is simply life itself, then it is not clear why this should be devoid of any content. **Any process of emptying out, of erasing and abolishing, such as that which Agamben attempts, is done for a reason - it involves critique and rejection, on the basis, necessarily, that something else is preferable. But Agamben provides us with very little of what is needed to understand how we might engage with this option**

#### the state’s inevitable

John Mearsheimer, R. Wendell Harrison Distinguished Service Professor of political science at the University of Chicago and co-director of the Program on International Security Policy, The Tragedy of Great Power Politics, 2001, p. 366

Another reason to doubt these claims about the state’s impending demise is that there is no plausible alternative on the horizon. If the state disappears, presumably some new political entity would have to take its place, but it seems that nobody has identified that replacement. Even if the state disappeared, however, that would not necessarily mean the end of the security competition and war. After all, Thucydides and Machiavelli wrote long before the birth of the state system. Realism merely requires anarchy; it does not matter what kind of political units make up the system. They could be states, city-states, cults, empires, tribes, gangs, feudal principalities, or whatever. Rhetoric aside, we are not moving toward a hierarchic international system, which would effectively mean some kind of world government. In fact, anarchy looks like it will be with us for a long time. Finally, there is good reason to think that the state has a bright future. Nationalism is probably the most powerful political ideology in the world, and it glorifies the state.10 Indeed, it is apparent that a large number of nations around the world want their own state, or rather nation-state, and they seem to have little interest in any alternative political arrangement. Consider, for example, how badly the Palestinians want their own state, and before 1948, how desperately the Jews wanted their own state. Now that the Jews have Israel it is unthinkable that they would give it up. If the Palestinians get their own state, they will surely go to great lengths to ensure its survival.

#### Quality of life’s increasing and violence is declining

Pinker 2011 (Steven Pinker, Ph.D., is Harvard College Professor and Johnstone Family Professor in Harvard University’s psychology departmentOctober 20, 2011, Steven Pinker’s War and Peace, Abridged, http://greatergood.berkeley.edu/article/item/steven\_pinkers\_war\_and\_peace\_abridged)

Over the past century, violent images from World War II concentration camps, Cambodia, Rwanda, Darfur, Iraq, and many other times and places have been seared into our collective consciousness. These images have led to a common belief that technology, centralized nation-states, and modern values have brought about unprecedented violence.¶ Felix Möckel¶ Our seemingly troubled times are routinely contrasted with idyllic images of hunter-gatherer societies, which allegedly lived in a state of harmony with nature and each other. The doctrine of the noble savage—the idea that humans are peaceable by nature and corrupted by modern institutions—pops up frequently in the writing of public intellectuals like, for example, Spanish philosopher José Ortega y Gasset, who argued that “war is not an instinct but an invention.”¶ But now that social scientists have started to count bodies in different historical periods, they have discovered that the romantic theory gets it backward: Far from causing us to become more violent, something in modernity and its cultural institutions has made us nobler. In fact, our ancestors were far more violent than we are today. Indeed, violence has been in decline over long stretches of history, and today we are probably living in the most peaceful moment of our species’ time on earth.¶ A history of violence¶ In the decade of Darfur and Iraq, that statement might seem hallucinatory or even obscene. But if we consider the evidence, we find that the decline of violence is a fractal phenomenon: We can see the decline over millennia, centuries, decades, and years. When the archeologist Lawrence Keeley examined casualty rates among contemporary hunter-gatherers—which is the best picture we have of how people might have lived 10,000 years ago—he discovered that the likelihood that a man would die at the hands of another man ranged from a high of 60 percent in one tribe to 15 percent at the most peaceable end. In contrast, the chance that a European or American man would be killed by another man was less than one percent during the 20th century, a period of time that includes both world wars. If the death rate of tribal warfare had prevailed in the 20th century, there would have been two billion deaths rather than 100 million, horrible as that is.¶ Ancient texts reveal a stunning lack of regard for human life. In the Bible, the supposed source of all our moral values, the Hebrews are urged by God to slaughter every last resident of an invaded city. “Go and completely destroy those wicked people, the Amalekites,” reads a typical passage in the book of Samuel. “Make war on them until you have wiped them out.” The Bible also prescribes death by stoning as the penalty for a long list of nonviolent infractions, including idolatry, blasphemy, homosexuality, adultery, disrespecting one’s parents, and picking up sticks on the Sabbath. The Hebrews, of course, were no more murderous than other tribes; one also finds frequent boasts of torture and genocide in the early histories of the Hindus, Christians, Muslims, and Chinese.¶ But from the Middle Ages to modern times, we can see a steady reduction in socially sanctioned forms of violence. Many conventional histories reveal that mutilation and torture were routine forms of punishment for infractions that today would result in a fine. In Europe before the Enlightenment, crimes like shoplifting or blocking the king’s driveway with your oxcart might have resulted in your tongue being cut out, your hands being chopped off, and so on. Many of these punishments were administered publicly, and cruelty was a popular form of entertainment.¶ We also have very good statistics for the history of one-on-one murder, because for centuries many European municipalities have recorded causes of death. When the criminologist Manuel Eisner scoured the records of every village, city, county, and nation he could find, he discovered that homicide rates in Europe had declined from 100 killings per 100,000 people per year in the Middle Ages to less than one killing per 100,000 people in modern Europe.¶ And since 1945 in Europe and the Americas, we’ve seen steep declines in the number of deaths from interstate wars, ethnic riots, and military coups, even in South America. Worldwide, the number of battle deaths has fallen from 65,000 per conflict per year to less than 2,000 deaths in this decade. Since the end of the Cold War in the early 1990s, we have seen fewer civil wars, a 90 percent reduction in the number of deaths by genocide, and even a reversal in the 1960s-era uptick in violent crime.¶ Given these facts, why do so many people imagine that we live in an age of violence and killing? The first reason, I believe, is that we have better reporting. As political scientist James Payne once quipped, the Associated Press is a better chronicler of wars across the globe than were 16th-century monks. There’s also a cognitive illusion at work. Cognitive psychologists know that the easier it is to recall an event, the more likely we are to believe it will happen again. Gory war zone images from TV are burned into memory, but we never see reports of many more people dying in their beds of old age. And in the realms of opinion and advocacy, no one ever attracted supporters and donors by saying that things just seem to be getting better and better. Taken together, all these factors help create an atmosphere of dread in the contemporary mind, one that does not stand the test of reality.¶ Finally, there is the fact that our behavior often falls short of our rising expectations. Violence has gone down in part because people got sick of carnage and cruelty. That’s a psychological process that seems to be continuing, but it outpaces changes in behavior. So today some of us are outraged—rightly so—if a murderer is executed in Texas by lethal injection after a 15-year appeal process. We don’t consider that a couple of hundred years ago a person could be burned at the stake for criticizing the king after a trial that lasted 10 minutes. Today we should look at capital punishment as evidence of how high our standards have risen, rather than how low our behavior can sink.¶ Expanding the circle¶ Why has violence declined? Social psychologists find that at least 80 percent of people have fantasized about killing someone they don’t like. And modern humans still take pleasure in viewing violence, if we are to judge by the popularity of murder mysteries, Shakespearean dramas, the Saw movie franchise, Grand Theft Auto, and hockey.¶ What has changed, of course, is people’s willingness to act on these fantasies. The sociologist Norbert Elias suggested that European modernity accelerated a “civilizing process” marked by increases in self-control, long-term planning, and sensitivity to the thoughts and feelings of others. These are precisely the functions that today’s cognitive neuroscientists attribute to the prefrontal cortex. But this only raises the question of why humans have increasingly exercised that part of their brains. No one knows why our behavior has come under the control of the better angels of our nature, but there are four plausible suggestions.¶ The first is that the 17th-century philosopher Thomas Hobbes got it right. Life in a state of nature is nasty, brutish, and short—not because of a primal thirst for blood but because of the inescapable logic of anarchy. Any beings with a modicum of self-interest may be tempted to invade their neighbors and steal their resources. The resulting fear of attack will tempt the neighbors to strike first in preemptive self-defense, which will in turn tempt the first group to strike against them preemptively, and so on. This danger can be defused by a policy of deterrence—don’t strike first, retaliate if struck—but to guarantee its credibility, parties must avenge all insults and settle all scores, leading to cycles of bloody vendetta.¶ These tragedies can be averted by a state with a monopoly on violence. States can inflict disinterested penalties that eliminate the incentives for aggression, thereby defusing anxieties about preemptive attack and obviating the need to maintain a hair-trigger propensity for retaliation. Indeed, Manuel Eisner attributes the decline in European homicide to the transition from knightly warrior societies to the centralized governments of early modernity. And today, violence continues to fester in zones of anarchy, such as frontier regions, failed states, collapsed empires, and territories contested by mafias, gangs, and other dealers of contraband.¶ James Payne suggests another possibility: that the critical variable in the indulgence of violence is an overarching sense that life is cheap. When pain and early death are everyday features of one’s own life, one feels less compunction about inflicting them on others. As technology and economic efficiency lengthen and improve our lives, we place a higher value on life in general.¶ A third theory, championed by journalist Robert Wright, invokes the logic of non-zero-sum games: scenarios in which two agents can each come out ahead if they cooperate, such as trading goods, dividing up labor, or sharing the peace dividend that comes from laying down their arms. As people acquire know-how that they can share cheaply with others and develop technologies that allow them to spread their goods and ideas over larger territories at lower cost, their incentive to cooperate steadily increases, because other people become more valuable alive than dead.¶ Nachmi Artzy, NaPix 2009¶ Then there is the scenario sketched by philosopher Peter Singer. Evolution, he suggests, bequeathed people a small kernel of empathy, which by default they apply only within a narrow circle of friends and relations. Over the millennia, people’s moral circles have expanded to encompass larger and larger polities: the clan, the tribe, the nation, both sexes, other races, and even animals. The circle may have been pushed outward by expanding networks of reciprocity, à la Wright, but it might also be inflated by the inexorable logic of the Golden Rule: The more one knows and thinks about other living things, the harder it is to privilege one’s own interests over theirs. The empathy escalator may also be powered by cosmopolitanism, in which journalism, memoir, and realistic fiction make the inner lives of other people, and the precariousness of one’s own lot in life, more palpable—the feeling that “there but for fortune go I.”¶ Whatever its causes, the decline of violence has profound implications. It is not a license for complacency: We enjoy the peace we find today because people in past generations were appalled by the violence in their time and worked to end it, and so we should work to end the appalling violence in our time. Nor is it necessarily grounds for optimism about the immediate future, since the world has never before had national leaders who combine pre-modern sensibilities with modern weapons.¶ But the phenomenon does force us to rethink our understanding of violence. Man’s inhumanity to man has long been a subject for moralization. With the knowledge that something has driven it dramatically down, we can also treat it as a matter of cause and effect. Instead of asking, “Why is there war?” we might ask, “Why is there peace?” If our behavior has improved so much since the days of the Bible, we must be doing something right. And it would be nice to know what, exactly, it is.

#### Transition away from it causes extinction.

Rubin 8 (Dani, Earth Editor for PEJ News. “Beyond Post-Apocalyptic Eco-Anarchism,” <http://www.pej.org/html/modules.php?op=modload&name=News&file=article&sid=7133&mode=thread&order=0&thold=0>.)

Unlike twenty-five years ago, increasingly, people are adopting the anarcho-apocalyptic, civilization-must-fall-to-save-the-world attitude. It is a fairly clean and tight worldview, zealously bulletproof, and it scares me. I want the natural world, the greater community of life beyond our species, with all its beautiful and terrifying manifestations, and its vibrant landscapes to survive intact – I think about this a lot. A quick collapse of global civilization, will almost certainly lead to greater explosive damage to the biosphere, than a mediated slower meltdown. When one envisions the collapse of global society, one is not discussing the demise of an ancient Greek city-state, or even the abandonment of an empire like the Mayans. The end of our global civilization would not only result in the death of six billion humans, just wiping nature’s slate clean. We also have something like 5,000 nuclear facilities spread across the planet’s surface. And this is just one obvious and straightforward fact cutting across new radical arguments in favor of a quick fall. We have inserted ourselves into the web of life on planet Earth, into its interstitial fibers, over the last 500 years. We are now a big part of the world’s dynamic biological equation set – its checks and balances. If we get a “fever” and fall into social chaos, even just considering our non-nuclear toys laying about, the damage will be profound. It will be much more devastating than our new visionaries of post-apocalyptic paradise have prophesized. If one expands upon current examples of social chaos that we already see, like Afghanistan or Darfur, extrapolating them across the globe, encompassing Europe, Asia, North and South America, and elsewhere, then one can easily imagine desperate outcomes where nature is sacrificed wholesale in vain attempts to rescue human life. The outcomes would be beyond “ugly”; they would be horrific and enduring. That is why I cannot accept this new wave of puritanical anarcho-apocalyptic theology. The end-point of a quick collapse is quite likely to resemble the landscape of Mars, or even perhaps the Moon. I love life. I do not want the Earth turned barren. I think that those who are dreaming of a world returned to its wilderness state are lovely, naive romantics – dangerous ones. Imagine 100 Chernobyl’s spewing indelible death. Imagine a landscape over-run with desperate and starving humans, wiping out one ecosystem after another. Imagine endless tribal wars where there are no restraints on the use of chemical and biological weapons. Imagine a failing industrial infrastructure seeping massive quantities of deadly toxins into the air, water and soil. This is not a picture of primitive liberation, of happy post-civilized life working the organic farm on Salt Spring Island.

#### The concept of bare life over-determines the power of the state—theories that emphasize resistance are more powerful.

Cesarino & Negri 04 (Cesare, associate professor of cultural studies, Antonio, professor emeritus @ the Collège International de Philosophie, “It’s a Powerful Life: A Conversation on Contemporary Philosophy,” Cultural Critique, Vol. 57, Spring 2004, pg. 172-173)

I believe Giorgio is writing a sequel to *Homo Sacer*, and I feel that this new work will be resolutive for his thought—in the sense that he will be forced in it to resolve and find a way out of the ambiguity that has qualified his understanding of naked life so far. He already attempted something of the sort in his recent book on Saint Paul, but I think this attempt largely failed: as usual, this book is extremely learned and elegant; it remains, however, somewhat trapped within Pauline exegesis, rather than constituting a full-fledged attempt to reconstruct naked life as a potentiality for exodus, to rethink naked life fundamentally in terms of exodus. I believe that the concept of naked life is not an impossible, unfeasible one. I believe it is possible to push the image of power to the point at which a defenseless human being [*un povero Cristo*] is crushed, to conceive of that extreme point at which power tries to eliminate that ultimate resistance that is the sheer attempt to keep oneself alive. From a logical standpoint, it is possible to think all this: the naked bodies of the people in the camps, for example, can lead one precisely in this direction. But this is also the point at which this concept turns into ideology: to conceive of the relation between power and life in such a way actually ends up bolstering and reinforcing ideology. Agamben, in effect, is saying that such is the nature of power: in the final instance, power reduces each and every human being to such a state of powerlessness. But this is absolutely not true! On the contrary: the historical process takes place and is produced thanks to a continuous constitution and construction, which undoubtedly confronts the limit over and over again—but this is an extraordinarily rich limit, in which desires expand, and in which life becomes increasingly fuller. Of course it is possible to conceive of the limit as absolute pow-erlessness, especially when it has been actually enacted and enforced in such a way so many times. And yet, isn't such a conception of the limit precisely what the limit looks like from the standpoint of constituted power as well as from the standpoint of those who have already been totally annihilated by such a power—which is, of course, one and the same standpoint? Isn't this the story about power that power itself would like us to believe in and reiterate? Isn't it far more politically useful to conceive of this limit from the standpoint of those who are not yet or not completely crushed by power, from the standpoint of those still struggling to overcome such a limit, from the standpoint of the process of constitution, from the standpoint of power [*potenza*]?