#### Focus on language-discourse in the war on terror fails to create effective models for combatting violence, understanding war, and history proves there’s no causality between language and war

Rodwell, 05

(Jonathan, PhD student at Manchester Met. researching the U.S. Foreign Policy, “Trendy But Empty: A Response to Richard Jackson,” 2005, <http://www.49thparallel.bham.ac.uk/back/issue15/rodwell1.htm>) /wyo-mm

However, having said that, the problem is Jackson’s own theoretical underpinning, his own justification for the importance of language. If he was merely proposing that the understanding of language as one of many causal factors is important that would be fine. But he is not. The epistemological and theoretical framework of his argument means the ONLY thing we should look at is language and this is the problem.[ii] Rather than being a fairly simple, but nonetheless valid, argument, because of the theoretical justification it actually becomes an almost nonsensical. My response is roughly laid out in four parts. Firstly I will argue that such methodology, in isolation, is fundamentally reductionist with a theoretical underpinning that does not conceal this simplicity. Secondly, that a strict use of post-structural discourse analysis results in an epistemological cul-de-sac in which the writer cannot actually say anything. Moreover the reader has no reason to accept anything that has been written. The result is at best an explanation that remains as equally valid as any other possible interpretation and at worse a work that retains no critical force whatsoever. Thirdly, possible arguments in response to this charge; that such approaches provide a more acceptable explanation than others are, in effect, both a tacit acceptance of the poverty of force within the approach and of the complete lack of understanding of the identifiable effects of the real world around us; thus highlighting the contradictions within post-structural claims to be moving beyond traditional causality, re-affirming that rather than pursuing a post-structural approach we should continue to employ the traditional methodologies within History, Politics and International Relations. Finally as a consequence of these limitations I will argue that the post-structural call for ‘intertextuals’ must be practiced rather than merely preached and that an understanding and utilisation of all possible theoretical approaches must be maintained if academic writing is to remain useful rather than self-contained and narrative. Ultimately I conclude that whilst undeniably of some value post-structural approaches are at best a footnote in our understanding . The first major problem then is that historiographically discourse analysis is so capacious as to be largely of little use. The process of inscription identity, of discourse development is not given any political or historical context, it is argued that it just works, is simply a universal phenomenon. It is history that explains everything and therefore actually explains nothing. To be specific if the U.S. and every other nation is continually reproducing identities through ‘othering’ it is a constant and universal phenomenon that fails to help us understand at all why one result of the othering turned out one way and differently at another time. For example, how could one explain how the process resulted in the 2003 invasion of Iraq but didn’t produce a similar invasion of Afghanistan in 1979 when that country (and by the logic of the Regan administrations discourse) the West was threatened by the ‘Evil Empire’. By the logical of discourse analysis in both cases these policies were the result of politicians being able to discipline and control the political agenda to produce the outcomes. So why were the outcomes not the same? To reiterate the point how do we explain that the language of the War on Terror actually managed to result in the eventual Afghan invasion in 2002? Surely it is impossible to explain how George W. Bush was able to convince his people (and incidentally the U.N and Nato) to support a war in Afghanistan without referring to a simple fact outside of the discourse; the fact that a known terrorist in Afghanistan actually admitted to the murder of thousands of people on the 11h of Sepetember 2001. The point is that if the discursive ‘othering’ of an ‘alien’ people or group is what really gave the U.S. the opportunity to persue the war in Afghanistan one must surly wonder why Afghanistan. Why not North Korea? Or Scotland? If the discourse is so powerfully useful in it’s own right why could it not have happened anywhere at any time and more often? Why could the British government not have been able to justify an armed invasion and regime change in Northern Ireland throughout the terrorist violence of the 1980’s? Surely they could have just employed the same discursive trickery as George W. Bush? Jackson is absolutely right when he points out that the actuall threat posed by Afghanistan or Iraq today may have been thoroughly misguided and conflated and that there must be more to explain why those wars were enacted at that time. Unfortunately that explanation cannot simply come from the result of inscripting identity and discourse. On top of this there is the clear problem that the consequences of the discursive othering are not necessarily what Jackson would seem to identify. This is a problem consistent through David Campbell’s original work on which Jackson’s approach is based[iii]. David Campbell argued for a linguistic process that ‘always results in an other being marginalized’ or has the potential for ‘demonisation’[iv]. At the same time Jackson, building upon this, maintains without qualification that the systematic and institutionalised abuse of Iraqi prisoners first exposed in April 2004 “is a direct consequence of the language used by senior administration officials: conceiving of terrorist suspects as ‘evil’, ‘inhuman’ and ‘faceless enemies of freedom creates an atmosphere where abuses become normalised and tolerated”[v]. The only problem is that the process of differentiation does not actually necessarily produce dislike or antagonism. In the 1940’s and 50’s even subjected to the language of the ‘Red Scare’ it’s obvious not all Americans came to see the Soviets as an ‘other’ of their nightmares. And in Iraq the abuses of Iraqi prisoners are isolated cases, it is not the case that the U.S. militarily summarily abuses prisoners as a result of language. Surely the massive protest against the war, even in the U.S. itself, is also a self evident example that the language of ‘evil’ and ‘inhumanity’ does not necessarily produce an outcome that marginalises or demonises an ‘other’. Indeed one of the points of discourse is that we are continually differentiating ourselves from all others around us without this necessarily leading us to hate fear or abuse anyone.[vi] Consequently, the clear fear of the Soviet Union during the height of the Cold War, and the abuses at Abu Ghirab are unusual cases. To understand what is going on we must ask how far can the process of inscripting identity really go towards explaining them? As a result at best all discourse analysis provides us with is a set of universals and a heuristic model.

**Won’t pass**

**Mayer, 12/30/13** (Amy, “One thing that didn’t happen in 2013: a Farm Bill” High Plains Public Radio, <http://hppr.org/post/one-thing-didn-t-happen-2013-farm-bill>)

**The inability to settle on a farm bill illustrates the deep divisions that have become the norm on Capitol Hill.** The massive food and agriculture package used to be relatively easy thanks to bipartisan and urban-rural alliances. But this year, progress was a slow slog. ¶ A nine-month extension passed in January bought some time. This summer, the Senate passed its bill, but the House didn’t. Then the House sent two bills to the conference committee, one for agriculture and the other for food stamps. ¶ The conference committee charged with drafting a final bill met off and on for months. The main negotiators were the leaders from each party of the Agriculture Committees of each house – Sen. Debbie Stabenow and Sen. Thad Cochran from the Senate, and Rep. Colin Peterson and Rep. Frank Lucas from the House. Despite reporting progress, the four lawmakers were unable to finish the job before the House adjourned for the year on Friday.¶ There are three fundamental reasons today’s lawmakers have such a hard time getting the job done. Iowa State University political scientist David Peterson says one is the striking chasm separating today’s Washington politicians.¶ “**We’ve seen an increasing polarization within Congress**, in particular we’ve seen the modern Republican Party move further to the right,” Peterson said. “The Democrats have moved some to the left, but really what is driving it is the Republicans have moved further to the right.”¶ **That leaves fewer players drawn toward the middle, where compromises are forged**. And it takes a majority of both bodies, plus the president, to enact laws.¶ “The problem we’ve got right now is that **the amount of things that a majority of the House**, and in particular a majority of the Republicans—a majority of the majority party in the House—the Democratic Senate, and the Democratic president **can agree on is vanishingly small**,” Peterson said.¶ On top of polarization and gridlock, add the lack of earmarks. Peterson says in times past, Congressional leaders could use those small, very specific addendums to sway neutral lawmakers to their side of a bill. But in the last decade, he says, Congress got rid of earmarks. Now **deadlines are a main driver pushing Congress to act, though they haven’t been very effective**. To be sure, it’s not just the farm bill suffering from this. Everything in Congress is, but the farm bill’s history of wending its way through relatively easily makes the delay more striking.

**Vote won’t be for weeks and negotiations don’t involve Obama**

**Clayton, 1/2/14** (Chris, “New Year means New Farm Bill” <http://www.kxlo-klcm.com/site/index.php?option=com_content&view=article&id=2269:new-year-means-new-farm-bill&catid=8:ag-news-pod&Itemid=115>)

USDA will continue holding back on any effort to implement permanent law with expectations that **Congress will move over the next few weeks to complete work on a farm bill.**¶ Agriculture Secretary Tom Vilsack told DTN earlier this week he has high hopes Congress will follow through on conference negotiations between the House and Senate. Such efforts allow USDA to avoid buying milk products at twice the market price because of provisions in permanent law, the secretary said.¶ "I honestly think right now what we are seeing are positive signs from the leadership of the conference committee on the House and the Senate side and some indication from the House and Senate leadership that there is a desire and interest to get this done," Vilsack said.¶ The Senate returns to session Monday while the House returns Tuesday. **Though no meeting time has been set, the House and Senate conferees on the farm bill could schedule a meeting later next week to vote on some contentious issues** the principal negotiators have not been able to resolve in private talks.¶ "So at this point in time, our focus is on providing technical assistance, ideas and creative thought so whatever differences exist between the House and Senate can be resolved quickly and when they get back **in a week or so they can finish up the conference report, have the conference committee vote on whatever issues divide them and present a conference report** and hopefully get it passed," Vilsack said.

solve food prices—tons of things overcome

First, warming

Damian **Carrington 11**, head environment reporter at the Guardian, “Food prices driven up by global warming, study shows”, May 5, <http://www.guardian.co.uk/environment/2011/may/05/food-prices-global-warming>

Global warming has already harmed the world's food production and has driven up food prices by as much as 20% over recent decades, new research has revealed. The drop in the productivity of crop plants around the world was not caused by changes in rainfall but was because higher temperatures can cause dehydration, prevent pollination and lead to slowed photosynthesis. Lester Brown, president of the Earth Policy Institute, Washington DC, said the findings indicate a turning point: "Agriculture as it exists today evolved over 11,000 years of reasonably stable climate, but that climate system is no more." Adaptation is difficult because our knowledge of the future is not strong enough to drive new investments, he said, "so we just keep going, hoping for the best." The scientists say their work shows how crucial it is to find ways to adapt farming to a warmer world, to ensure that rises in global population are matched by rising food production. "It is vital," said Wolfram Schlenker, at Columbia University in New York and one of the research team. "If we continue to have the same seed varieties and temperatures continue to rise, then food prices will rise further. [Addressing] that is the big question." The new research joins a small number of studies in which the fingerprint of climate change has been separated from natural variations in weather and other factors, demonstrating that the effects of warming have already been felt in the world. Scientists have shown that the chance of the severe heatwave that killed thousands in Europe in 2003 was made twice as likely by global warming, while other work showed that the floods that caused £3.5bn of damage in England in 2000 were made two to three times more likely.

#### Plan popular in congress

Jakes 13

(Laura Jakes, writer for the Associate Press. “Congress Considers Putting Limits on Drone Strikes” 2-6-13 http://www.military.com/daily-news/2013/02/06/congress-considers-putting-limits-on-drone-strikes.html//wyoccd)

WASHINGTON -- Uncomfortable with the Obama administration's use of deadly drones, a growing number in Congress is looking to limit America's authority to kill suspected terrorists, even U.S. citizens. The Democratic-led outcry was emboldened by the revelation in a newly surfaced Justice Department memo that shows drones can strike against a wider range of threats, with less evidence, than previously believed.¶ The drone program, which has been used from Pakistan across the Middle East and into North Africa to find and kill an unknown number of suspected terrorists, is expected to be a top topic of debate when the Senate Intelligence Committee grills John Brennan, the White House's pick for CIA chief, at a hearing Thursday.¶ The White House on Tuesday defended its lethal drone program by citing the very laws that some in Congress once believed were appropriate in the years immediately after the Sept. 11 attacks but now think may be too broad.¶ "It has to be in the agenda of this Congress to reconsider the scope of action of drones and use of deadly force by the United States around the world because the original authorization of use of force, I think, is being strained to its limits," Sen. Chris Coons, D-Del., said in a recent interview.¶ Rep. Steny Hoyer of Maryland, the No. 2 Democrat in the House, said Tuesday that "it deserves a serious look at how we make the decisions in government to take out, kill, eliminate, whatever word you want to use, not just American citizens but other citizens as well."¶ Hoyer added: "We ought to carefully review our policies as a country."¶ The Senate Foreign Relations Committee likely will hold hearings on U.S. drone policy, an aide said Tuesday, and Chairman Robert Menendez, D-N.J., and the panel's top Republican, Sen. Bob Corker of Tennessee, both have quietly expressed concerns about the deadly operations. And earlier this week, a group of 11 Democratic and Republican senators urged President Barack Obama to release a classified Justice Department legal opinion justifying when U.S. counterterror missions, including drone strikes, can be used to kill American citizens abroad.¶ Without those documents, it's impossible for Congress and the public to decide "whether this authority has been properly defined, and whether the president's power to deliberately kill Americans is subject to appropriate limitations and safeguards," the senators wrote.

#### Political capital theory not true—and if the plan causes a fight it means Obama will get to pass more legislation—winning wins

Hirsh, 2013

[Michael, national journal chief correspondent, There’s No Such Thing as Political Capital, 3-30-13, http://www.nationaljournal.com/magazine/there-s-no-such-thing-as-political-capital-20130207] /Wyo-MB

But the abrupt emergence of the immigration and gun-control issues illustrates how suddenly shifts in mood can occur and how political interests can align in new ways just as suddenly. Indeed, the pseudo-concept of political capital masks a larger truth about Washington that is kindergarten simple: You just don’t know what you can do until you try. Or as Ornstein himself once wrote years ago, “Winning wins.” In theory, and in practice, depending on Obama’s handling of any particular issue, even in a polarized time, he could still deliver on a lot of his second-term goals, depending on his skill and the breaks. Unforeseen catalysts can appear, like Newtown. Epiphanies can dawn, such as when many Republican Party leaders suddenly woke up in panic to the huge disparity in the Hispanic vote.¶ Some political scientists who study the elusive calculus of how to pass legislation and run successful presidencies say that political capital is, at best, an empty concept, and that almost nothing in the academic literature successfully quantifies or even defines it. “It can refer to a very abstract thing, like a president’s popularity, but there’s no mechanism there. That makes it kind of useless,” says Richard Bensel, a government professor at Cornell University. Even Ornstein concedes that the calculus is far more complex than the term suggests. Winning on one issue often changes the calculation for the next issue; there is never any known amount of capital. “The idea here is, if an issue comes up where the conventional wisdom is that president is not going to get what he wants, and he gets it, then each time that happens, it changes the calculus of the other actors” Ornstein says. “If they think he’s going to win, they may change positions to get on the winning side. It’s a bandwagon effect.”

#### Countries will cooperate over food

Burger et al. 10

\*Kees Burger Development Economics, Corresponding author, Wageningen University, Hollandseweg \*\*Jeroen Warner AND Eefje Derix Disaster Studies, Wageningen Universit “Governance of the world food system and crisis prevention” http://www.stuurgroepta.nl/rapporten/Foodshock-web.pdf

Both European water and agricultural policies are based on the belief that there will always be cheap food aplenty on the world market. A recent British report 23 reflects this optimism. Although production is now more prone to world market price shocks, their effects on farm incomes are softened by extensive income supports (van Eickhout et al. 2007). Earlier, in a 2003 report, a European group of agricultural economists wrote: Food security is no longer a prime objective of European food and agricultural policy. There is no credible threat to the availability of the basic ingredients of human nutrition from domestic and foreign sources. If there is a food security threat it is the possible disruption of supplies by natural disasters or catastrophic terrorist action. The main response necessary for such possibilities is the appropriate contingency planning and co-ordination between the Commission and Member States (Anania et al. 2003). Europe, it appears, feels rather sure of itself, and does not worry about a potential food crisis**.** We are also not aware of any special measures on standby. Nevertheless a fledgling European internal security has been called into being that can be deployed should (food) crises strike. The Maastricht Treaty (1992) created a quasi-decision-making platform to respond to transboundary threats. Since 9/11 the definition of what constitutes a threat has been broadened and the protection capacity reinforced. In the Solidarity Declaration of 2003 member states promised to stand by each other in the event of a terrorist attack, natural disaster or human-made calamity (the European Security Strategy of 2003). Experimental forms of cooperation are tried that leave member-state sovereignty intact, such as pooling of resources. The EU co-operates in the area of health and food safety but its mechanisms remain decentrslised by dint of the principle of subsidiarity. The silo mentality between the European directorates is also unhelpful, leading to Babylonian confusion. Thus, in the context of forest fires and floods the Environment DG refers to ‘civil protection’. The European Security and Defence Policy( ESDP) of 2006, which is hoped to build a bridge between internal and external security policy, on the other hand refers to ‘crisis management’, while the ‘security’ concept mainly pertains to pandemics (Rhinard et al. 2008: 512, Boin et al. 2008: 406).

#### Preventing extinction needs to come first

Paul Wapner, associate professor and director of the Global Environmental Policy Program at American University, Winter 2003, Dissent, online: http://www.dissentmagazine.org/menutest/archives/2003/wi03/wapner.htm

All attempts to listen to nature are social constructions-except one. Even the most radical postmodernist must acknowledge the distinction between physical existence and non-existence. As I have said, postmodernists accept that there is a physical substratum to the phenomenal world even if they argue about the different meanings we ascribe to it. This acknowledgment of physical existence is crucial. We can't ascribe meaning to that which doesn't appear. What doesn't exist can manifest no character. Put differently, yes, the postmodernist should rightly worry about interpreting nature's expressions. And all of us should be wary of those who claim to speak on nature's behalf (including environmentalists who do that). But we need not doubt the simple idea that a prerequisite of expression is existence. This in turn suggests that preserving the nonhuman world-in all its diverse embodiments-must be seen by eco-critics as a fundamental good. Eco-critics must be supporters, in some fashion, of environmental preservation. Postmodernists reject the idea of a universal good. They rightly acknowledge the difficulty of identifying a common value given the multiple contexts of our value-producing activity. In fact, if there is one thing they vehemently scorn, it is the idea that there can be a value that stands above the individual contexts of human experience. Such a value would present itself as a metanarrative and, as Jean-François Lyotard has explained, postmodernism is characterized fundamentally by its "incredulity toward meta-narratives." Nonetheless, I can't see how postmodern critics can do otherwise than accept the value of preserving the nonhuman world. The nonhuman is the extreme "other"; it stands in contradistinction to humans as a species. In understanding the constructed quality of human experience and the dangers of reification, postmodernism inherently advances an ethic of respecting the "other." At the very least, respect must involve ensuring that the "other" actually continues to exist. In our day and age, this requires us to take responsibility for protecting the actuality of the nonhuman. Instead, however, we are running roughshod over the earth's diversity of plants, animals, and ecosystems. Postmodern critics should find this particularly disturbing. If they don't, they deny their own intellectual insights and compromise their fundamental moral commitment.

#### Posner and Vermeule are wrong---external checks are effective

Aziz Z. Huq 12, Assistant Professor of Law, University of Chicago Law School, "Binding the Executive (by Law or by Politics)", May 25, www.law.uchicago.edu/files/file/400-ah-binding.pdf

Paulson ’ s genuflection and Obama ’ s reticence, I will contend here, are symptomatic of our political system ’ s operation rather than being aberration al . It is generally the case that even in the heart of crisis, and even on matters where executive competence is supposedly at an acme , legislators employ formal institutional powers not only to delay executive initiatives but also affirmatively to end presidential policies. 20 Numerous examples from recent events illustrate the point. Congressional adversaries of Obama, for instance, cut off his policy of emptying Guantánamo Bay via appropriations riders. 21 Deficit hawks spent 2011 resisting the President’s solutions to federal debt, while the President declined to short - circuit negotiations with unilateral action. 22 Even in military matters, a growing body of empirical research suggests Congress often successfully influences the course of overseas engagements to a greater degree than legal scholars have discerned or acknowledged. 23¶ That work suggests that the failure of absolute congressional control over military matters cannot be taken as evidence of “the inability of law to constrain the executive ” in more subtle ways (p 5). The conventional narrative of executive dominance , in other words, is at best incomplete and demands supplementing .¶ This Review uses The Executive Unbound as a platform to explore how the boundaries of discretionary executive action are established. As the controversial national security policies of the Bush administration recede in time, the issue of executive power becomes ripe for reconsideration. Arguments for or against binding the executive are starting to lose their partisan coloration. There is more room to investigate the dynamics of executive power in a purely positive fashion without the impinging taint of ideological coloration.¶ Notwithstanding this emerging space for analys i s, t here is still surprising inattention to evidence of whether the executive is constrained and to the positive question of how constraint works. The Executive Unbound is a significant advance because it takes seriously this second “ mechanism question. ” Future studies of the executive branch will ignore its i mportant and trenchant analysis at their peril. 24 Following PV ’ s lead, I focus on the descriptive , positive question of how the executive is constrained . I do speak briefly and in concluding to normative matters . B ut f irst and foremost, my arguments should be understood as positive and not normative in nature unless otherwise noted.¶ Articulating and answering the question “ W hat binds the executive ?” , The Executive Unbound draws a sharp line between legal and political constraints on discretion — a distinction between laws and institutions on the one hand, and the incentives created by political competition on the other hand . While legal constraints usually fail, it argues, political constraints can prevail. PV thus postulate what I call a “strong law/ politics dichotomy. ” My central claim in this Review is that this strong law/politics dichotomy cannot withstand scrutiny. While doctrinal scholars exaggerate law ’s autonomy, I contend, the realists PV underestimate the extent to which legal rules and institutions play a pivotal role in the production of executive constraint. Further, the political mechanisms they identify as substitutes for legal checks cannot alone do the work of regulating executive discretion. Diverging from both legalist and realist positions, I suggest that law and politics do not operate as substitutes in the regulation of executive authority. 25 They instead work as interlocking complements. An account of the borders of executive discretion must focus on the interaction of partisan and electoral forces on the one hand and legal rules. It must specify the conditions under which the interaction of political actors’ exertions and legal rules will prove effective in limiting such discretion.

**Legal grey holes not inevitable**

Philip **Alston 11,** John Norton Pomeroy Professor of Law at the NYU School of Law, UN Special Rapporteur on extrajudicial, summary or arbitrary executions from 2004 until 2010, “The CIA and Targeted Killings Beyond Borders,” 2011, 2 Harv. Nat'l Sec. J. 283, lexis nexis

The second problem with Vermeule's approach is the extent to which it **blurs empirical conclusions with normative arguments**. While he never actually states that black or grey holes are normatively desirable, he simply concludes that they are "inevitable" or "unavoidable", and that "decrying their existence is pointless." n558 He situates himself as a realist who is merely observing the reluctance of judges and legislators to scrutinize executive responses to emergencies. The legislators, he says, are "best [\*430] understood as Schmittian lawmakers," n559 while the judges are prudent in not being prepared to shoulder the responsibility of extending the rule of law to emergency situations, even those very broadly defined. n560 Scholars, it seems, are also realists, or at least are equally pusillanimous, since only a handful of them "takes seriously a model of 'global due process.'" n561. But it is done with an air of resignation and pragmatism rather than arguing, as Schmitt would, that it is both inevitable and normatively desirable for the sovereign to enjoy unfettered, dictatorial, powers. It is important to note that the empirical foundation upon which Vermeule bases his analysis is not only rather slight, but also ignores or downplays important examples of cases in which **the courts have in fact pushed back significantly against the executive in relation to conditions of detention and the use of torture**. n562 The results are far from perfect, but they hardly justify the conclusion that black and grey holes are necessarily inevitable.¶ Vermeule seeks to buttress his reliance on this empirical fatalism and his dismissal of "the aspiration to extend legality everywhere . . . [as] hopelessly utopian," n563 by asserting that there is unanimous support among the legal and political elites in the United States that the executive must be able to act illegally:¶ There are too many domains affecting national security in which official opinion holds unanimously, across institutions and partisan lines and throughout the modern era, that executive action must proceed untrammeled by even the threat of legal regulation and judicial review . . . . n564¶ This amounts to a normative argument, but because it is intertwined so carefully with the empirical argument he avoids tackling it head on. Thus, Dyzenhaus's argument for both the importance and feasibility of a common law constitutionalism that upholds the rule of law in the thick sense of vindicating fundamental constitutive principles is never really engaged with directly. Instead, claims of principle are refuted on the basis [\*431] of pragmatic arguments in favor of "hypocritical lip-service" which enables a "veil of decency" n565 to conceal the violations of the law that are being perpetrated and subsequently either overlooked or upheld by the courts. Vermeule concedes that judges could insist upon compliance with the rule of law, but asserts that it is "institutionally impossible for them to do so." n566¶ While Vermeule assiduously avoids any reference to or engagement with either international or foreign law, he invites such engagement when he argues that legal black and grey holes are not a peculiarly American response to the post-9/11 emergency, but rather are "integral to the administrative state," and hence "no legal order governing a massive and massively diverse administrative state can hope to dispense with them." n567 In other words, the United States should not be considered exceptional in this regard. The reality, however, is that almost **all of the principal common law jurisdictions with which the United States can be reasonably be compared (such as Canada, the United Kingdom, and Australia) have, within reasonable limits, respected the rule of law in emergency situations**. Roach has surveyed the extent to which this has been achieved and highlights the crucial role of the right given to states under domestic and international human rights law to derogate from certain rights in the case of emergency. n568 But the difference between Vermeule's approach and the derogation approach is that the latter compels governments to be explicit and open about the derogations, to demonstrate that they fall within specified limits, and to accept that the legality of any derogations is subject to judicial review. The need to spell out the derogation, to notify it publicly, and to be able and prepared to justify it against pre-determined criteria also ensure that the public will be much more involved in the process.

#### there’s a tangible impact to activist advocacies. Only an understanding of the consequences of our advocacies can make us ethically responsible.

David Kennedy, Manley O. Hudson Professor of Law at Harvard Law School, 2004, The Dark Sides of Virtue: Reassessing International Humanitarianism, p. xvii-xviii

Of course, activism and policy making are not always so distinct. The activist aspires not only to articulate what the universal requires, but also to make that articulation effective. The humanitarian policy maker is not simply governing to solve problems or please constitu­encies, but to foster outcomes which vindicate humanitarian values and objectives. We might see activists and policy makers as partners in governance. Increasingly, they share a common vocabulary. Per­haps the most familiar is the international law of force, whose terms — proportionality, self-defense, military necessity — have be­come common to military strategists, statesmen, and humanitarians alike. It can be unsettling to think of humanitarians, whether activists or policy makers, as participants in the world of power and influence. It is difficult to think of humanitarian vocabularies — human rights, hu­manitarian law — as idioms of statecraft. Humanitarians are used to thinking of their efforts as marginal, weak, barely able to be heard. Those who develop humanitarian policies often see themselves giv­ing advice rather than making policy, formulating proposals which others — the real rulers — will need to implement. But our work, our ideas, our institutions, our professional prac­tices of advocacy and policy making do have consequences. State power is now routinely exercised in the vocabularies of these helping professions. As is economic power. We should own the uses made of the institutions and professional practices we have set loose in the world. We should come to see humanitarians less as people outside looking in than as participants in governance. Their truth is also power. DARK SIDES Once we see international humanitarians as participants in global governance — as rulers — it seems irresponsible not to be as attentive as possible to the costs, as well as the benefits, of our work. Inter­national humanitarian efforts to rebuild societies, to reproach and shame the unjust, or to protect the vulnerable can all be swamped by the opposition and inattention of others, or undone by lack of re­sources and commitment among humanitarians themselves. Making humanitarian headway is almost always harder, more expensive, and more time-consuming than we expect. These quite formidable problems of implementation are not my focus. I am concerned about the difficulties which our best efforts themselves may bring, and with the unacknowledged costs of routine humanitarian endeavors on the international stage. I do not propose a unified theory for the dark sides of international humanitarianism. My sense, rather, is that things can go wrong in all sorts of different ways. We promise more than can be delivered — and come to believe our own promises. We enchant our tools, substitute work on our own institutions and promotion of our own professional expertise for work on the problems which gave rise to our humanitarian hopes. At worst, we can find our own work contributing to the very prob­lems we hoped to solve. Humanitarianism tempts us to hubris, to an idolatry about our intentions and routines, to the conviction that we know more than we do about what justice can be.

#### Legal restraints work – the theory of the exception is self-serving and wrong

William E. **Scheuerman 6**, Professor of Political Science at Indiana University, Carl Schmitt and the Road to Abu Ghraib, Constellations, Volume 13, Issue 1

Yet this argument relies on Schmitt’s controversial model of politics, as outlined eloquently but unconvincingly in his famous Concept of the Political. To be sure, there are intense conflicts in which it is naïve to expect an easy resolution by legal or juridical means. But the argument suffers from a troubling circularity: **Schmitt** occasionally **wants to define “political” conflicts as those irresolvable by legal** or juridical **devices in order** then **to argue against** **legal** or juridical **solutions** to them. **The claim** also **suffers from** a certain **vagueness** and lack of conceptual precision. At times, it seems to be directed against trying to resolve conflicts in the courts or juridical system narrowly understood; at other times it is directed against any legal regulation of intense conflict. The former argument is surely stronger than the latter. After all, **legal devices have undoubtedly played a positive role** **in taming** or at least minimizing the potential dangers of harsh **political antagonisms**. In the Cold War, for example, international law contributed to the peaceful resolution of conflicts which otherwise might have exploded into horrific violence, even if attempts to bring such conflicts before an international court or tribunal probably would have failed.22¶ Second, Schmitt dwells on the legal inconsistencies that result from modifying the traditional state-centered system of international law by expanding protections to non-state fighters. His view is that irregular combatants logically enjoyed no protections in the state-centered Westphalian model. By broadening protections to include them, international law helps undermine the traditional state system and its accompanying legal framework. Why is this troubling? The most obvious answer is that Schmitt believes that the traditional state system is normatively superior to recent attempts to modify it by, for example, extending international human rights protections to individuals against states. 23 But what if we refuse to endorse his nostalgic preference for the traditional state system? Then a sympathetic reading of the argument would take the form of suggesting that the project of regulating irregular combatants by ordinary law must fail for another reason: it rests on a misguided quest to integrate incongruent models of interstate relations and international law. We cannot, in short, maintain core features of the (state-centered) Westphalian system while extending ambitious new protections to non-state actors.¶ This is a powerful argument, but it remains flawed. Every modern legal order rests on diverse and even conflicting normative elements and ideals, in part because human existence itself is always “in transition.” When one examines the so-called classical liberal legal systems of nineteenth-century England or the United States, for example, one quickly identifies liberal elements coexisting uneasily alongside paternalistic and authoritarian (e.g., the law of slavery in the United States), monarchist, as well as republican and communitarian moments. The same may be said of the legal moorings of the modern welfare state, which arguably rest on a hodgepodge of socialist, liberal, and Christian and even Catholic (for example, in some European maternity policies) programmatic sources. In short, **it is by no means self-evident that trying to give coherent legal form to a transitional** political and social **moment is always doomed to fail**. Moreover, there may be sound reasons for claiming that the contemporary transitional juncture in the rules of war is by no means as incongruent as Schmitt asserts. In some recent accounts, **the general trend** towards extending basic protections to non-state actors **is** plausibly interpreted in a more **positive** – **and by no means incoherent** – light.24¶ Third, Schmitt identifies a deep tension between the classical quest for codified and stable law and the empirical reality of a social world subject to permanent change: “The tendency to modify or even dissolve classical [legal] concepts…is general, and in view of the rapid change of the world it is entirely understandable” (12). Schmitt’s postwar writings include many provocative comments about what contemporary legal scholars describe as the dilemma of legal obsolescence. 25 In The Partisan, he suggests that the “great transformations and modifications” in the technological apparatus of modern warfare place strains on the aspiration for cogent legal norms capable of regulating human affairs (17; see also 48–50). Given the ever-changing character of warfare and the fast pace of change in military technology, it inevitably proves difficult to codify a set of cogent and stable rules of war. The Geneva Convention proviso that legal combatants must bear their weapons openly, for example, seems poorly attuned to a world where military might ultimately depends on nuclear silos buried deep beneath the surface of the earth, and not the success of traditional standing armies massed in battle on the open field. “Or what does the requirement mean of an insignia visible from afar in night battle, or in battle with the long-range weapons of modern technology of war?” (17).¶ As I have tried to show elsewhere, these are powerful considerations deserving of close scrutiny; Schmitt is probably right to argue that the enigma of legal obsolescence takes on special significance in the context of rapid-fire social change.26 Unfortunately, he seems uninterested in the slightest possibility that we might successfully adapt the process of lawmaking to our dynamic social universe. To be sure, he discusses the “motorization of lawmaking” in a fascinating 1950 publication, but only in order to underscore its pathological core.27 Yet **one** possible **resolution** of the dilemma he describes **would be** to figure how **to reform the process** whereby rules of war are adapted to novel changes in military affairs in order **to minimize the danger of** anachronistic or **out-of-date law. Instead, Schmitt** simply **employs the dilemma of legal obsolescence as a battering ram** against the rule of law and the quest to develop a legal apparatus suited to the special problem of irregular combatants.

#### The alternative fails – movements can’t coalesce, even if collapse is inevitable

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While Latin American experiences can and should spur the postneoliberal imagination, the region's lessons are also sobering ones. Here, audacious forms of neoliberalized accumulation by dispossession inadvertently prepared the ground for widespread social mobilization and radical resistance politics. And in the decade or so that followed, electoral realignments in Venezuela, Brazil, Argentina, Bolivia, Chile and elsewhere consolidated progressive gains, as a period of hegemonic dispute gave way to region-wide hegemonic instability (Sader 2009). **Moving purposefully in the direction of postneoliberal forms of governance has**, however, **been a challenge, even for the region's largest economies**. Global financial flows, trading regimes, and investment policies continue to be guided by logics of short-term, price competition—in the context of global overaccumulation—while progressive forms of multilateral coordination can only be negotiated in the long shadows of imperial and neoimperial power (Drake 2006). As Sader (2009:176) notes:¶ the deregulation fostered by neoliberal policies favoured the hegemony of financial capital in its speculative mode. In order to instate a different model, it would be necessary to introduce new forms of economic regulation, **which would be very difficult, even in the current crisis**, once deregulation has a foothold. **It could not come from a single country**, no matter what its importance, **because others would benefit from the flow of capital rejected in this country**. At the same time, **it would be hard to come to a large-scale international agreement, due to the different interests of the biggest powers and international corporations**.¶ **Whereas neoliberalism may have exposed the limits of financial capitalism, it has also undermined the strategic and organizational resources required for its transcendence**. In Sader's (2009) eyes, the root of the problem for progressive forces is what he characterizes as a “gulf” between the evident failures of neoliberalized capitalism and the potential of postneoliberal movements, forces, and interests. The short- and medium-term prospects for such forms of alternative politics will surely be structured (and to some extent constrained) by the neoliberalized terrains on which they must be prosecuted. **This is not simply a matter of contending with** (residual) **neoliberal power centers**, in economics ministries, in international financial institutions, in think tanks, in the media, and in much of the corporate sector. Perhaps more intractably, **it must also entail overcoming the profound reconstitution of** cross-national, interlocal, and cross-scalar **relations through** various forms of **market rule**, which facilitate the reproduction of neoliberalized logics of action, institutional routines, and political projects—both through the dull compulsion of competitive pressures and through the harsh imperatives of regulatory downloading.

#### The alt doesn’t influence legal decisionmaking and results in tyranny

Paul **Passavant**, Ph.D., Hobart and William Smith College Associate Professor of Political Science, December 20**10**, Yoo's Law, Sovereignty, and Whatever, Constellations Volume 17, Issue 4, pages 549–571

For some on the left, it has become conventional to celebrate, if not cultivate, pluralism, whether this means multiple forms of being or multiple interpretive possibilities with regard to texts. It has also become conventional to be critical of “sovereignty” and of “law.” Multiplicity is thought to be a threat to sovereignty, and this threat is thought to be democratizing or a force that resists oppression. The Italian philosopher Giorgio Agamben exemplifies these tendencies within contemporary political and legal theory. In some of his earlier and less well-known work, he aspires toward a “coming community” that he calls “whatever being.” Whatever being embraces the infinite communicative possibilities of language as pure means beyond a preoccupation with true or false propositions.¶ In his best-known work, Agamben links sovereignty to the production of rightless subjects and the Nazi death camps. He urges us to rethink the very ontological basis of politics in the West, creating a human being beyond sovereignty or law, in order to avoid perilous outcomes. One key to surpassing the logic of sovereignty, according to Agamben, is whatever being's positive relation to the singularities of life and the multiplicities of communication.¶ Whatever being is also being outside of law. If “law” persists in this “coming community,” it would be a “law” that has become deactivated and deposed from its prior purposes. “Law” will have become an object for play – something to be toyed with the way that children might come upon a disused object and play with it by putting it to uses disconnected from whatever purpose this object might once have had.¶ Why does the fact of playful communicative possibilities lead to either more democracy or a less brutal world? The most conservative United States Supreme Court justices have recently embraced the fact that texts are open to multiple interpretations. For example, Samuel Alito has suggested that the meaning of public monuments is open to multiple interpretations that may shift over time to avoid a potential First Amendment establishment clause problem over a monument of the Ten Commandments in a public park.1 Yet, as the late Justice Blackmun has written regarding state endorsement of religion, “government cannot be premised on the belief that all persons are created equal when it asserts that God prefers some.”2 Recognizing the possibility of multiple interpretations, as this instance shows, does not lead necessarily to outcomes friendly to democracy.¶ In this essay, I investigate how playing with the multiplicity of communicative possibilities can, **contrary to Agamben's expectations**, actually **facilitate aspirations for unitary sovereign power**. My argument unfolds in the context of the legal arguments put forward by Bush administration lawyer John Yoo, particularly those enabling torturous interrogations.¶ Those, like Agamben, who favor interpretive pluralism in itself rarely, if ever, have right-wing supporters of unchecked presidentialism in mind. Reading the scholarship and legal memoranda of John Yoo, formerly in the Bush administration's Office of Legal Counsel (OLC) and presently a University of California, Berkeley law professor, however, approaches an experience of pure mediality or of law that has become deposed or disconnected from its purposes. Yoo is well known as the author of the key legal memoranda asserting the president's discretionary power to make war, to engage in warrantless surveillance, and, most infamously, justifying torturous methods of interrogation. Some scholars refer to Lewis Carroll's Alice in Wonderland to describe the experience of reading Yoo's legal memos.3 Is **John Yoo an exemplar of the whatever being** and pure mediality that Agamben describes and to which he contends politics should aspire?¶ In this paper, I describe how Yoo gestures toward pure mediality, as he indicates the experience of language itself as pure communicability or as pure means in his legal work when he emphasizes the openness of law to being exposed to new, different, flexible, or plural interpretive possibilities. I argue, however, that Yoo is not well described as whatever being. His work repeats too consistently in the direction of absolute presidential decisionism to be open to whatever.¶ Instead, Yoo's work may capture a broader development within our society that Agamben describes as the emergence of whatever being. Without saying that there has been no resistance to the Bush administration's warrantless wiretapping and policies of torturous interrogations, the contrast between the response to the Nixon administration and the Bush administration is striking. Richard Nixon resigned one step ahead of impeachment in the midst of mass protests against his presidency. The articles of impeachment, for instance, addressed how Nixon engaged in warrantless wiretapping, and refused to execute laws passed by Congress faithfully while repeatedly engaging in conduct that violated the constitutional rights of citizens. Congress also passed major acts of legislation to prevent a president such as Nixon from ever again abusing power the way he had. These laws include the War Powers Act of 1973, the Budget Impoundment and Control Act of 1974, and the Foreign Intelligence Surveillance Act (FISA) of 1978.¶ In contrast, almost no one seems to have noticed that the Bush administration claimed power to make war at the president's sole discretion. Additionally, upon learning that the Bush administration engaged in criminal acts of surveillance, Congress amended FISA in the summer of 2008 to expand the government's power to spy on Americans, while immunizing from legal accountability non-state actors who collaborated with the then-criminal acts of government officials who followed Bush's illegal orders. Congress tried to make it impossible for those detained to question, legally, their detention or to bring the torturous treatment they endured to a court's attention, while allowing the intelligence agencies to continue to engage in torturous acts by passing the Military Commissions Act of 2006 (MCA). This complicity on the part of Congress cannot be explained on partisan grounds as many Democrats voted in favor of the MCA, and upon becoming the majority party in Congress, they have not rescinded it. Indeed, it was a Democratic-controlled Congress that brushed the Bush administration's illegal surveillance under the rug in 2008.4 Moreover, upon taking power in 2006, the Democratic leadership immediately stated that they would not pursue impeachment. Former Reagan administration Department of Justice lawyer Bruce Fein has decried the lack of outrage at the Bush administration's illegalities by suggesting that the nation has become a collection of constitutional “illiterates.”5 **Perhaps law is being deposed as Agamben suggests**.¶ Both Agamben's and Fein's observations may also indicate a failure of what Michel Foucault would call disciplinary power – the power to constitute subjects capable of exercising power, here the powers of liberal democracy – a failure that Gilles Deleuze has identified with the emergence of societies of control, and a subjective and ontological diversity that Michael Hardt and Antonio Negri call the “multitude.”6 They also indicate practices of textual “interpretation” where interpretative acts extricate legal texts from the narratives that once oriented their purposes and animated these texts for a republican and anti-monarchical polity. Robert Cover argues, however, that law is part of a narrative practice constitutive of subjects and a way of life.7 Insofar as interpretive practices become extricated from the possibility of narrative, then, we may indeed doubt the continuing existence of “law,” as Agamben posits. Psychoanalytic theory also identifies a loss of a structuring meaning in contemporary society and describes this as the decline of symbolic efficiency.8¶ In sum, there appears to be a phenomenon emerging in contemporary society that a variety of different theoretical and political perspectives are struggling to grasp and evaluate. While Agamben welcomes the failures of disciplinary powers as enabling the emergence of whatever being and the “coming community,” it is a cause for concern among those seeking to keep the faith with republicanism, with liberal democracy, or with a Constitution representing these aspirations. In this light, we can be more specific than Agamben about the kind of threat that whatever being poses to the state or to sovereignty.¶ Contrary to Agamben's contentions, I find that whatever being is no threat at all to the kind of unitary sovereignty that Agamben uses to theorize the state in his book Homo Sacer. Why would it be? Whatever being would be equally at ease with the legal justifications on behalf of a “unitary” sovereignty as it would anything else. If we, however, give the achievements of the people their due and consider the question of sovereignty from the perspective of popular sovereignty, of the assemblies and assemblages of power through which liberal democratic states seek to extend themselves and to govern at a distance, then whatever being is very much a danger to this type of power. Whatever being can be understood as facilitating a process of deposing this law and this state. A relation of whatever to the installation of a state of unchecked presidential powers and torture can be the **death knell of popular sovereignty** dedicated to the purpose of opposing tyranny. Whatever being is not the enemy of any state or form of “sovereignty.” It is the enemy of popular sovereignty. Whatever ruins democracy. **If we want more than unchecked presidential power and torture, then we will have to dedicate ourselves to certain purposes**, like resisting tyranny and recalling that this was the purpose of the U.S. Constitution.