# 1NC v Dartmouth ChMa

## T – War Powers

#### Interpretation- command and chief powers are not war powers

Heidt 13

Stephen (PhD Candidate, GSU) "A Memorandum on the Topic Area.pdf"

~http://www.cedadebate.org/forum/index.php?topic=4846.0~~

First, the topic committee and voters need to understand that Presidential War Power is not

Commander in Chief Power. The topic paper, following a trend in legal “scholarship” and news

media, blurs the distinction between the categories by alluding to presidential war power as

commander in chief power (p9 at note 13). But war power is categorically distinct from

commander in chief power. This categorical distinction derives directly from the powers enumerated in the Constitution. Those powers can be summarized as Congress declares war,

Presidents execute wars.

Constitutional evidence:

Article 1, Section 8: “The Congress shall have the power: To declare war…to raise armies and

support armies…to provide and maintain a Navy, to make rules for the Government and

Regulation of the land and naval Forces, to provide for calling forth the Militia to execute the

Laws of the Union, suppress Insurrections and repel Invasions; to provide for organizing,

arming, and disciplining, the Militia, and for governing such Part of them as may be employed in

the Service of the United States…”

Article 1, Section 9: “The privilege of the Writ of Habeas Corpus shall not be suspended, unless

when in Cases of Rebellion or Invasion the public safety may require it.”

Article 1, Section 10 which reads: “No State shall, without the Consent of Congress…engage in

War, unless actually invaded, or in such imminent Danger as will not admit delay.”

Article II, Section 2: “The President shall be Commander in Chief of the Army and Navy of the

United States, and of the Militia of the several states…He shall have Power, by and with the

Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present

concur…”

To summarize: War powers are enumerated in Article 1 of the Constitution. Commander in

Chief power is enumerated in Article 2. The framers of the Constitution kept the two entirely

distinct, on purpose, as a means for resolving the tension between the danger that a strong

president would risk dictatorship and the need for unfettered power of the executive to conduct

and win war.

#### Violation: The aff restricts a C in C power

Schmid ‘10

Captain, United States Air Force181

http://jay.law.ou.edu/faculty/Jmaute/Gender%20Based%20Discrimination/COMBATING%20A%20DIFFERENT%20ENEMY%20PROPOSALS%20TO%20CHANGE%20THE%20CULTURE%20OF%20SEXUAL%20ASSAULT%20IN.pdf

Women still comprise only about fourteen percent of the armed forces, which leads sociologists and legal scholars to label ¶ their presence in the military as token.123 This minority status hampers women’s ability to influence the military culture.124 ¶ Thus, altering the demographics of the military, by increasing the number of women in the armed forces, may be the most ¶ effective way of changing the military culture.125 Just as President Truman successfully ordered the racial integration of the ¶ military, the President should use the commander-in-chief authority to fully integrate women in the military.126 Specifically, ¶ the President could give validity to women’s to women’s military service by directing the DoD to reevaluate recruitment, retention, and ¶ assignment policies affecting women.127

## Debt Ceiling DA

#### Obama’s pressuring the GOP with a strong display of Presidential strength and staying on message – the GOP will cave

Dovere, 10/1

(Edward, Politico, “Government shutdown: President Obama holds the line” <http://www.politico.com/story/2013/10/government-shutdown-president-obama-holds-the-line-97646.html?hp=f3>)

President Barack Obama started September in an agonizing, extended display of how little sway he had in Congress. He ended the month with a display of resolve and strength that could redefine his presidency. All it took was a government shutdown. This was less a White House strategy than simply staying in the corner the House GOP had painted them into — to the White House’s surprise, Obama was forced to do what he so rarely has as president: he said no, and he didn’t stop saying no. For two weeks ahead of Monday night’s deadline, Obama and aides rebuffed the efforts to kill Obamacare with the kind of firm, narrow sales pitch they struggled with in three years of trying to convince people the law should exist in the first place. There was no litany of doomsday scenarios that didn’t quite come true, like in the run-up to the fiscal cliff and the sequester. No leaked plans or musings in front of the cameras about Democratic priorities he might sacrifice to score a deal. After five years of what’s often seen as Obama’s desperation to negotiate — to the fury of his liberal base and the frustration of party leaders who argue that he negotiates against himself. Even his signature health care law came with significant compromises in Congress. Instead, over and over and over again, Obama delivered the simple line: Republicans want to repeal a law that was passed and upheld by the Supreme Court — to give people health insurance — or they’ll do something that everyone outside the GOP caucus meetings, including Wall Street bankers, seems to agree would be a ridiculous risk. “If we lock these Americans out of affordable health care for one more year,” Obama said Monday afternoon as he listed examples of people who would enjoy better treatment under Obamacare, “if we sacrifice the health care of millions of Americans — then they’ll fund the government for a couple more months. Does anybody truly believe that we won’t have this fight again in a couple more months? Even at Christmas?” The president and his advisers weren’t expecting this level of Republican melee, a White House official said. Only during Sen. Ted Cruz’s (R-Texas) 21-hour floor speech last week did the realization roll through the West Wing that they wouldn’t be negotiating because they couldn’t figure out anymore whom to negotiate with. And even then, they didn’t believe the shutdown was really going to happen until Saturday night, when the House voted again to strip Obamacare funding. This wasn’t a credible position, Obama said again Monday afternoon, but rather, bowing to “extraneous and controversial demands” which are “all to save face after making some impossible promises to the extreme right wing of their political party.” Obama and aides have said repeatedly that they’re not thinking about the shutdown in terms of political gain, but the situation’s is taking shape for them. Congress’s approval on dealing with the shutdown was at 10 percent even before the shutters started coming down on Monday according to a new CNN/ORC poll, with 69 percent of people saying the House Republicans are acting like “spoiled children.” “The Republicans are making themselves so radioactive that the president and Democrats can win this debate in the court of public opinion” by waiting them out, said Jim Manley, a Democratic strategist and former aide to Senate Majority Leader Harry Reid who has previously been critical of Obama’s tactics. Democratic pollster Stan Greenberg said the Obama White House learned from the 2011 debt ceiling standoff, when it demoralized fellow Democrats, deflated Obama’s approval ratings and got nothing substantive from the negotiations. “They didn’t gain anything from that approach,” Greenberg said. “I think that there’s a lot they learned from what happened the last time they ran up against the debt ceiling.” While the Republicans have been at war with each other, the White House has proceeded calmly — a breakthrough phone call with Iranian President Hassan Rouhani Friday that showed him getting things done (with the conveniently implied juxtaposition that Tehran is easier to negotiate with than the GOP conference), his regular golf game Saturday and a cordial meeting Monday with his old sparring partner Israeli Prime Minister Benjamin Netanyahu. White House press secretary Jay Carney said Monday that the shutdown wasn’t really affecting much of anything. “It’s busy, but it’s always busy here,” Carney said. “It’s busy for most of you covering this White House, any White House. We’re very much focused on making sure that the implementation of the Affordable Care Act continues.” Obama called all four congressional leaders Monday evening — including Boehner, whose staff spent Friday needling reporters to point out that the president hadn’t called for a week. According to both the White House and Boehner’s office, the call was an exchange of well-worn talking points, and changed nothing. Manley advised Obama to make sure people continue to see Boehner and the House Republicans as the problem and not rush into any more negotiations until public outrage forces them to bend. “He may want to do a little outreach, but not until the House drives the country over the cliff,” Manley said Monday, before the shutdown. “Once the House has driven the country over the cliff and failed to fund the government, then it might be time to make a move.” The White House believes Obama will take less than half the blame for a shutdown – with the rest heaped on congressional Republicans. The divide is clear in a Gallup poll also out Monday: over 70 percent of self-identifying Republicans and Democrats each say their guys are the ones acting responsibly, while just 9 percent for both say the other side is. If Obama is able to turn public opinion against Republicans, the GOP won’t be able to turn the blame back on Obama, Greenberg said. “Things only get worse once things begin to move in a particular direction,” he said. “They don’t suddenly start going the other way as people rethink this.”

#### 2 links -

#### Obama will veto the aff

Gersen and Posner, 8

Kirkland and Ellis Professor of Law, The University of Chicago (Jacob and Eric, “Soft Law: Lessons from Congressional Practice” 61 Stan. L. Rev. 573, lexis)

In addition, if a hard statute is the only legislative vehicle for articulating constitutional views, some statements will not be produced because of an anticipated presidential veto, even when Congress thinks the statute constitutionally unproblematic. Especially when a particular bill has implications for the constitutional roles of Congress and the President, Congress and the President might have good-faith disagreement about the relevant constitutional norms. The President may veto statutes that violate his interpretation of his constitutional powers, in which case Congress's opposing interpretation will not have a formal public airing. In this case, the legislature alone must advance its interpretation of the Constitution; the legislature and the President can only advance a consensus interpretation. n178 Exclusive reliance on hard statutes will produce a body of constitutional law that is biased and incomplete.

#### Obama will fight the plan with signing statements

Mork 6

(Steven, JD @ MSU, "DISAPPROVING SIGNING STATEMENTS AND THE PRESENTMENT CLAUSE: WHEN WORDS SHOULD SPEAK LOUDER THAN ACTIONS," <http://www.law.msu.edu/king/2006/2006_Mork.pdf>)

The current and conventional approach of the federal judiciary is to view a ¶ President’s signature sufficient to enact a bill into law.9 This conventional approach ¶ necessarily concludes that a President’s signature is sufficient and irrefutable evidence of ¶ approval. Consequently, the federal courts find that a President’s action of signing ¶ speaks louder than his words of disapproval. This conventional approach provides ¶ judicial efficiency in determining whether a President has enacted a bill into law by only ¶ requiring concrete evidence of a signature to reach a conclusion. However, the ¶ conventional approach has historically provided a controversial loophole through which ¶ Presidents have attempted to use signing statements to effectively veto a portion or ¶ portions of a bill by introducing an interpretation of a bill different from Congress 10 or ¶ negating a portion of a bill by interpreting it as unconstitutional11 while precluding ¶ Congressional review of the President’s interpretation. Use of the controversial loophole ¶ has been less apparent during the recent presidential administration, possibly because the ¶ President has not had a need to bypass Congressional review since the same political¶ party has controlled both the Presidency and Congress. Nonetheless, the loophole still ¶ lies sleeping for use at any time and, hence, remains a sleeping controversy.12

#### This causes widespread Congressional backlash

Dean 6

(John, JD, Former Counsel to the President, "The Problem with Presidential Signing Statements: Their Use and Misuse by the Bush Administration," <http://writ.lp.findlaw.com/dean/20060113.html>)

Bush's use of signing statements thus potentially brings him into conflict with his own Justice Department. The Justice Department is responsible for defending the constitutionality of laws enacted by Congress. What is going to happen when the question at issue is the constitutionality of a provision the President has declared unconstitutional in a signing statement?¶ Does the President's signing statement overcome the presumption of constitutionality? I doubt it. Will the Department of Justice have a serious conflict of interest? For certain, it will.¶ Should thus Congress establish its own non-partisan legal division, not unlike the Congressional Reference Service, to protect its interests, since the Department of Justice may have conflicts? It's something to think about.¶ These are just a few practical and constitutional problems that arise when a president acts as if there is his government, and then there is the Congress' government. Signing statements often ignore the fact the only Congress can create all the departments and agencies of the Executive Branch, and only Congress can fund these operations.¶ And the power to create and fund is also, by implication, the power to regulate and to oversee. Congress can, to some extent, direct how these agencies will function without infringing on presidential power.¶ Impact Of Presidential Signing Statements¶ The immediate impact of signing statements, of course, is felt within the Executive Branch: As I noted, Bush's statements will likely have a direct influence on how that branch's agencies and departments interpret and enforce the law.¶ It is remarkable that Bush believes he can ignore a law, and protect himself, through a signing statement. Despite the McCain Amendment's clear anti-torture stance, the military may feel free to use torture anyway, based on the President's attempt to use a signing statement to wholly undercut the bill.¶ This kind of expansive use of a signing statement presents not only Presentment Clause problems, but also clashes with the Constitutional implication that a veto is the President's only and exclusive avenue to prevent a bill's becoming law. The powers of foot-dragging and resistance-by-signing-statement, are not mentioned in the Constitution alongside the veto, after all. Congress wanted to impeach Nixon for impounding money he thought should not be spent. Telling Congress its laws do not apply makes Nixon's impounding look like cooperation with Congress, by comparison.¶ The longer term impact of signing statements is potentially grave - and is being ignored by the Bush administration. But it cannot be ignored forever. Defiance by Bush of Congressional lawmaking will come back to haunt this President.¶ Watergate was about abuse of power. Nixon, not unlike Bush, insisted on pushing the powers of the presidency to, and beyond, their limits. But as Nixon headed into his second term with even grander plans than he'd had in the first term, the Congress became concerned. (And for good reason.)¶ Bush, who has been pushing the envelope on presidential powers, is just beginning to learn what kind of Congressional blowback can result.¶ First, there are the leaks: People within the Executive branch become troubled by a president's overreaching. When Nixon adopted extreme measures, people within the administration began leaking. The same is now happening to Bush, for there was the leak about the use of torture. And, more recently, there was the leak as to the use of warrantless electronic surveillance on Americans.¶ Once the leaks start, they continue, and Congressional ire is not far behind. The overwhelming Congressional support for Senator John McCain's torture ban suggests, too, that Congress will not be happy if leaks begin to suggest the President - as his signing statement foreshadows - is already flouting the ban.¶ In short, Bush's signing statements, which are now going over the top, are going to cause a Congressional reaction. It is inevitable. If Republican lose control of either the House or Senate - and perhaps even if they don't, if the subject is torture or an egregious violation of civil liberties -- then the Bush/Cheney administration will wish it had not issued all those signing statements.

#### Capital is key – he’s holding the line

Allen 9-19

Jonathan Allen 9/19, Politico, 9/19/13, GOP battles boost President Obama, dyn.politico.com/printstory.cfm?uuid=17961849-5BE5-43CA-B1BC-ED8A12A534EB

There’s a simple reason President Barack Obama is using his bully pulpit to focus the nation’s attention on the battle over the budget: In this fight, he’s watching Republicans take swings at each other. And that GOP fight is a lifeline for an administration that had been scrambling to gain control its message after battling congressional Democrats on the potential use of military force in Syria and the possible nomination of Larry Summers to run the Federal Reserve. If House Republicans and Obama can’t cut even a short-term deal for a continuing resolution, the government’s authority to spend money will run out on Oct. 1. Within weeks, the nation will default on its debt if an agreement isn’t reached to raise the federal debt limit. For some Republicans, those deadlines represent a leverage point that can be used to force Obama to slash his health care law. For others, they’re a zero hour at which the party will implode if it doesn’t cut a deal. Meanwhile, “on the looming fiscal issues, Democrats — both liberal and conservative, executive and congressional — are virtually 100 percent united,” said Sen. Charles Schumer (D-N.Y.). Just a few days ago, all that Obama and his aides could talk about were Syria and Summers. Now, they’re bringing their party together and shining a white hot light on Republican disunity over whether to shut down the government and plunge the nation into default in a vain effort to stop Obamacare from going into effect. The squabbling among Republicans has gotten so vicious that a Twitter hashtag — #GOPvsGOPugliness — has become a thick virtual data file for tracking the intraparty insults. Moderates, and even some conservatives, are slamming Texas Sen. Ted Cruz, a tea party favorite, for ramping up grassroots expectations that the GOP will shut down the government if it can’t win concessions from the president to “defund” his signature health care law. “I didn’t go to Harvard or Princeton, but I can count,” Sen. Bob Corker (R-Tenn.) tweeted, subtly mocking Cruz’s Ivy League education. “The defunding box canyon is a tactic that will fail and weaken our position.” While it is well-timed for the White House to interrupt a bad slide, Obama’s singular focus on the budget battle is hardly a last-minute shift. Instead, it is a return to the narrative arc that the White House was working to build before the Syria crisis intervened. And it’s so important to the president’s strategy that White House officials didn’t consider postponing Monday’s rollout of the most partisan and high-stakes phase even when a shooter murdered a dozen people at Washington’s Navy Yard that morning. The basic storyline, well under way over the summer, was to have the president point to parts of his agenda, including reducing the costs of college and housing, designed to strengthen the middle class; use them to make the case that he not only saved the country from economic disaster but is fighting to bolster the nation’s finances on both the macro and household level; and then argue that Republicans’ desire to lock in the sequester and leverage a debt-ceiling increase for Obamacare cuts would reverse progress made. The president is on firm ground, White House officials say, because he stands with the public in believing that the government shouldn’t shut down and that the country should pay its bills.

#### Collapses the global economy

Davidson 9-10

Adam Davidson 9/10/13, economy columnist for The New York Times, co-founder of Planet Money, NPR’s team of economics reporters, “Our Debt to Society,” NYT, <http://www.nytimes.com/2013/09/15/magazine/our-debt-to-society.html?pagewanted=all&_r=0>

If the debt ceiling isn’t lifted again this fall, some serious financial decisions will have to be made. Perhaps the government can skimp on its foreign aid or furlough all of NASA, but eventually the big-ticket items, like Social Security and Medicare, will have to be cut. At some point, the government won’t be able to pay interest on its bonds and will enter what’s known as sovereign default, the ultimate national financial disaster achieved by countries like Zimbabwe, Ecuador and Argentina (and now Greece). In the case of the United States, though, it won’t be an isolated national crisis. If the American government can’t stand behind the dollar, the world’s benchmark currency, then the global financial system will very likely enter a new era in which there is much less trade and much less economic growth. It would be, by most accounts, the largest self-imposed financial disaster in history.¶ Nearly everyone involved predicts that someone will blink before this disaster occurs. Yet a small number of House Republicans (one political analyst told me it’s no more than 20) appear willing to see what happens if the debt ceiling isn’t raised — at least for a bit. This could be used as leverage to force Democrats to drastically cut government spending and eliminate President Obama’s signature health-care-reform plan. In fact, Representative Tom Price, a Georgia Republican, told me that the whole problem could be avoided if the president agreed to drastically cut spending and lower taxes. Still, it is hard to put this act of game theory into historic context. Plenty of countries — and some cities, like Detroit — have defaulted on their financial obligations, but only because their governments ran out of money to pay their bills. No wealthy country has ever voluntarily decided — in the middle of an economic recovery, no less — to default. And there’s certainly no record of that happening to the country that controls the global reserve currency.¶ Like many, I assumed a self-imposed U.S. debt crisis might unfold like most involuntary ones. If the debt ceiling isn’t raised by X-Day, I figured, the world’s investors would begin to see America as an unstable investment and rush to sell their Treasury bonds. The U.S. government, desperate to hold on to investment, would then raise interest rates far higher, hurtling up rates on credit cards, student loans, mortgages and corporate borrowing — which would effectively put a clamp on all trade and spending. The U.S. economy would collapse far worse than anything we’ve seen in the past several years.¶ Instead, Robert Auwaerter, head of bond investing for Vanguard, the world’s largest mutual-fund company, told me that the collapse might be more insidious. “You know what happens when the market gets upset?” he said. “There’s a flight to quality. Investors buy Treasury bonds. It’s a bit perverse.” In other words, if the U.S. comes within shouting distance of a default (which Auwaerter is confident won’t happen), the world’s investors — absent a safer alternative, given the recent fates of the euro and the yen — might actually buy even more Treasury bonds. Indeed, interest rates would fall and the bond markets would soar.¶ While this possibility might not sound so bad, it’s really far more damaging than the apocalyptic one I imagined. Rather than resulting in a sudden crisis, failure to raise the debt ceiling would lead to a slow bleed. Scott Mather, head of the global portfolio at Pimco, the world’s largest private bond fund, explained that while governments and institutions might go on a U.S.-bond buying frenzy in the wake of a debt-ceiling panic, they would eventually recognize that the U.S. government was not going through an odd, temporary bit of insanity. They would eventually conclude that it had become permanently less reliable. Mather imagines institutional investors and governments turning to a basket of currencies, putting their savings in a mix of U.S., European, Canadian, Australian and Japanese bonds. Over the course of decades, the U.S. would lose its unique role in the global economy.¶ The U.S. benefits enormously from its status as global reserve currency and safe haven. Our interest and mortgage rates are lower; companies are able to borrow money to finance their new products more cheaply. As a result, there is much more economic activity and more wealth in America than there would be otherwise. If that status erodes, the U.S. economy’s peaks will be lower and recessions deeper; future generations will have fewer job opportunities and suffer more when the economy falters. And, Mather points out, no other country would benefit from America’s diminished status. When you make the base risk-free asset more risky, the entire global economy becomes riskier and costlier.

#### Collapse causes nuclear conflicts

Harris and Burrows 9

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

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

## Warfighting DA

#### Obama’s Syria maneuver has maximized presidential war powers because it’s on his terms

Posner 9/3

(Eric, Law Prof at University of Chicago, Obama Is Only Making His War Powers Mightier, www.slate.com/articles/news\_and\_politics/view\_from\_chicago/2013/09/obama\_going\_to\_congress\_on\_syria\_he\_s\_actually\_strengthening\_the\_war\_powers.html)

President **Obama’s** surprise **announcement that he will ask Congress for approval of a military attack on Syria is being hailed as a vindication of the rule of law and a revival of the central role of Congress in war-making**, even by critics. **But all of this is wrong. Far from breaking new legal ground, President Obama has reaffirmed the primacy of the executive in matters of war and peace. The war powers of the presidency remain as mighty as ever**. It would have been different if the president had announced that only Congress can authorize the use of military force, as dictated by the Constitution, which gives Congress alone the power to declare war. That would have been worthy of notice, a reversal of the ascendance of executive power over Congress. But the president said no such thing. He said: “I believe I have the authority to carry out this military action without specific congressional authorization.” Secretary of State John Kerry confirmed that the president “has the right to do that”—launch a military strike—“no matter what Congress does.” Thus, **the president believes that the law gives him the option to seek a congressional yes or to act on his own. He does not believe that he is bound to do the first. He has merely stated the law as countless other presidents and their lawyers have described it before him**. The president’s announcement should be understood as a political move, not a legal one. His motive is both self-serving and easy to understand, and it has been all but acknowledged by the administration. If Congress now approves the war, it must share blame with the president if what happens next in Syria goes badly. If Congress rejects the war, it must share blame with the president if Bashar al-Assad gases more Syrian children. The big problem for Obama arises if Congress says no and he decides he must go ahead anyway, and then the war goes badly. He won’t have broken the law as he understands it, but he will look bad. He would be the first president ever to ask Congress for the power to make war and then to go to war after Congress said no. (In the past, presidents who expected dissent did not ask Congress for permission.) **People who celebrate the president for humbly begging Congress for approval** also apparently **don’t realize that his understanding of the law—that it gives him the option to go to Congress**—**maximizes executive power vis-à-vis Congress**. If the president were required to act alone, without Congress, then he would have to take the blame for failing to use force when he should and using force when he shouldn’t. **If he were required to obtain congressional authorization, then Congress would be able to block him. But if he can have it either way, he can force Congress to share responsibility when he wants to and avoid it when he knows that it will stand in his way.**

#### The plancauses countries to doubt the credibility of our threats – collapses security guarantees and deterrence – causes nuclear war

Zeisberg 4

(MARIAH ZEISBERG, Research Fellow, The Political Theory Project, Department of Political Science, "INTERBRANCH CONFLICT AND CONSTITUTIONAL MAINTENANCE: THE CASE OF WAR POWERS" SEPTEMBER 22, 2004, KB)

The first significant argument of pro-Presidency insularists is that flexibility is a prime value in the conduct of foreign affairs, and especially war. Implicit in this argument is the recognition that the executive is functionally superior to Congress in achieving flexibility and swiftness in war operations, a recognition I share. The Constitution cannot be meant to curtail the very flexibility that may be necessary to preserve the nation; and yet, according to the insularists, any general norm which would include Congress in decision-making about going to war could only undermine that flexibility. Writing on the War Powers Act, Eugene Rostow predicts that it would, “put the Presidency in a straightjacket of a rigid code, and prevent new categories of action from emerging, in response to the necessities of a tense and unstable world.” In fact, Rostow believes, “[t]he centralization of authority in the president is particularly crucial in matters of national defense, war, and foreign policy, where a unitary executive can evaluate threats, consider policy choices, and mobilize national resources with a speed and energy that is far superior to any other branch.” Pro-presidency insularists are fond of quoting Hamilton, who argued that “[o]f all the cares or concerns of government, the direction of war most peculiarly demands those qualities which distinguish the exercise of power by a single hand.” ¶ This need for flexibility, some insularists argue, is especially acute given modern conditions, where devastating wars can develop quickly. Today, “many foreign states have the power to attack U.S. forces - and some even the U.S. mainland - almost instantly,” and in such a world it is impracticable to require the President to seek advance authorization for hostilities. Such a requirement would simply be too risky to U.S. security. We furthermore face a nuclear age, and the system of deterrence that operates to contain that threat requires that a single person be capable of responding to nuclear attack with nuclear weapons immediately. Rostow writes, “the requirement for advance authorization would collapse the system of deterrence, making preemptive strikes by our enemies more likely.” Hence, “modern conditions” require the President to “act quickly, and often alone.” ¶ While this does not mean that Congress has no role to play in moments of crisis, it does mean that Congress should understand its role largely in terms of cooperating with the President to support his negotiations and decisions regarding relationships with foreign powers. Rostow writes,¶ “Congress should be able to act effectively both before and after moments of crisis or potential crisis. It may join the President in seeking to deter crisis by publicly defining national policy in advance, through the sanctioning of treaties or other legislative declarations. Equally, Congress may participate formally in policymaking after the event through legislative authorization of sustained combat, either by means of a declaration of war, or through legislative action having more limited legal and political consequences. Either of these devices, or both in combination, should be available in situations where cooperation between the two branches is indicated at many points along an arc ranging from pure diplomacy at one end to a declaration of war at the other.” ¶ In other words, for Congress to understand itself as having any justifiable role in challenging executive security determinations, especially at moments of crisis, would be to undermine the strength that the executive requires in order to protect the nation. Conflict in this domain represents political degradation.¶ Flexibility is also a key value to support the stability of the global security order, some pro-Presidency insularists argue. International security systems require guarantees that an attack on an ally will be retaliated as quickly as possible. Given such a system, the requirement of congressional consultation “vitiates the security guarantee.” It is important to note that the US does not simply play a role in international collective security systems: it is a central player in those systems, and hence “it is necessary for the system that U.S. participation be assured and credible. But this means that in order to support collective security, the fundamental function for Congress is to support the executive in ways that send a clear message of national resolve, so unequivocal and unmistakable that international pillagers and those who advise them can have no doubts.” ¶ This value of flexibility is sometimes applied to the mechanisms for foreign policy themselves. John Yoo, for example, argues that there must be a diversity of mechanisms for going to war, including unilateral action by the President. On Yoo’s account, Congress is granted authority in foreign affairs in times of peace, the President for times of danger. Yoo interprets the understructured nature of war powers to indicate that “the Framers did not intend the Constitution to establish a single, correct method for going to war. . . [d]uring times of relative peace, Congress can use its authority over funding and the raising of the military to play a leading role in foreign policy. In times of emergency or national danger, however, the President can seize the initiative in warmaking.” ¶ A second insularist argument is that the “nature of foreign affairs” is such that this domain cannot be guided by law. Jefferson’s oft-cited quote, that “[t]he transaction of business with foreign nations is Executive altogether,” is sometimes used in support of this argument, although I do not believe Jefferson understood himself to be making this point. Robert Bork is instead the most prominent insularist arguing this position. Far from believing that the President’s use of force can be bound by law, Bork denies that law governing foreign affairs—whether domestic or international—even exists. In Bork’s own words,¶ “[T]here are areas of life, and the international use of armed force seems to be one of them, in which the entire notion of law—law conceived as a body of legal principles declared in advance to control decisions to be made in the future—where that conception of law is out of place. The pretense that there is such a law and that it has been constantly violated, has debilitating effects upon our foreign policy . . . [t]wo examples come to mind: one is international law about the use of force, and the other is domestic law, that is, the War Powers Act. These two bodies of ‘law’ arise from different sources, but they are alike in that they are not law in any recognizable sense. They are not enforceable.” ¶ Since law in this domain simply cannot exist, the idea of a legislative body playing any role in guiding decisions here is simply senseless. Bork points us to the simple fact of the matter—that “Presidential use or support of force abroad will succeed when the public approves and fail when it disapproves. Law has little to do with the outcome.” ¶ The third important argument on behalf of insularity is that Congress already possesses all the power it needs to contain a wayward executive. This power is wielded mainly through Congress’ “power of the purse,” but also through Congress’ power to raise the military and commission (or de-commission) troops. It is in the course of approving Presidential requests for funding measures that Congress discusses the merits of his actions, and Congress retains the simple power to block the president’s actions simply by refusing him funds or military resources. Yoo argues,¶ “One might respond that it is unreasonable to expect Congress to use its appropriations powers to cut off troops in the field. Surely members of Congress will not take actions that might be interpreted as undermining the safety and effectiveness of the military, once committed and in the midst of hostilities. We should not mistake a failure of political will, however, for a violation of the Constitution. Congress undoubtedly possessed the power to end the Kosovo war, it simply chose not to. Affirmatively providing funding for a war, or at the very least refusing to cut off previous appropriations, represents a political determination by Congress that it will provide minimal support for a war, but that ultimately it will leave it to the President to receive the credit either for success or failure.” ¶ Furthermore, it is simply a fact that the President relies upon Congress to wage the wars he wishes to pursue. As Bobbit points out, unless Congress “by statute, provides an army, transport, weapons, and materials . . . there is nothing for the President to command.” Bobbit insists, though, that this does not mean that Congress can appropriately “interfere in the operation of that power” once handed over. Just as Congress, once it has established and vested the judiciary, has no authority to interfere in the operation of the judicial power, so too Congress, once it vests the President with command of a military, has no authority to interfere in how that command is used. Hence Bobbit believes that the only constitutionally legitimate way for Congress to engage in decisionmaking on the use of the sovereign war power is to remove forces from the command of the President. Bobbit continues, “[a]s a structural matter, Congress has the first and last word. It must provide forces before the President can commence hostilities, and it can remove those forces, by decommissioning them or by forbidding their use in pursuit of a particular policy at any time.” Bobbit is quite explicit about the implications of his position:¶ “Does this mean that presidents can simply ransack the current Defense Appropriations Act for available forces and that Congress then has no way to stop a president from unilaterally making war so long as one-third plus one of the members of one House sustains his veto - for the balance of the biennium? It may well mean that.” ¶ The fourth argument is that the kind of challenging characteristic of interbranch deliberation would endanger the well-being of troops in the field, as foreign nations interpret Congressional challenging to mean that we lack the will to support our soldiers. This argument is not about the comparative advantages of the presidency as an institution, or about the meaning of law: rather, it directly challenges the value of conflict itself. In fact, as we saw in chapter two, settlement theorists and realists seem to believe that the conditions of war and insecurity are the most congenial territory for their claims about the importance of deference and settlement, precisely because peace, stability, and the very possibility of rights-protection are all at stake in this issue. Rostow cites Dean Acheson’s comments on the Korean War:¶ “An incredulous country and world held its breath and read the mounting casualties suffered by these gallant troops, most of them without combat experience. In the confusion of the retreat even their divisional commander, Major General William F. Dean, was captured. Congressional hearings on a resolution of approval at such a time, opening the possibility of endless criticism, would hardly be calculated to support the shaken morale of the troops or the unity that, for the moment, prevailed at home. The harm it could do seemed to me to outweigh the little good that might ultimately accrue.”

## Courts CP

#### An appropriate appellate court should submit a writ of certification to the United States Supreme Court requesting clarification of Presidential authority to introduce United States armed forces into hostilities, the United States Supreme Court should rule that the President possesses no authority to exclude women from forces introduced into hostilities.

#### It solves

O’Brien ‘11

(David M. Orsquo;Brien is Leone Reaves and George W. Spicer Professor of Government and Foreign Affairs at the University of Virginia. He is the author of several books, including Constitutional Law and Politics and Storm Center: The Supreme Court in American Politics , winner of the American Bar Associationrsquo;s Silver Gavel Award and now in its widely adopted Seventh Edition.¶ *Storm Center: The Supreme Court in American Politics* W W Norton & Company Incorporated, 2011, TSW)

#### Although most cases now come as certiorari petitions, Congress provides that appellate courts may also submit a writ of certification to the Court, requesting the justices to clarify or "make¶ more certain" a point of federal law. The Court receives only¶ a handful of such cases each term. Congress also gave the Court¶ the power to issue certain extraordinary writs, or orders. In a¶ few cases, the Court may issue writs of mandamus and prohibition, ordering lower courts or public officials either to do some-¶ thing or to refrain from some action. In addition, the Court has¶ die power to grant writs of habeas corpus (“produce the body"),¶ enabling it to review cases by prisoners who claim that their constitutional rights have been violated and that they are unlawfully¶ imprisoned.

#### CP solves – empirically courts can restrict

Fisher 2005

(Louis Fisher, senior specialist in separation of Powers with the Congressional Research Service, September 2005, “Judicial Review of the War Power,” Presidential Studies Quarterly, Vol 35, No 3, http://www.constitutionproject.org/pdf/422.pdf)

The terrorist attacks of 9/11, followed by the creation of a military tribunal, treatment of detainees, and passage of the USA Patriot Act, brought to the fore again the ¶ question of what role federal courts should play in policing the war power. Contempo­¶ rary legal studies often argue that foreign affairs-and particularly issues of war and ¶ peace-lie beyond the scope of judicial jurisdiction and competence. However, the record ¶ over the past two centuries demonstrates that not only have courts decided war power ¶ issues many times, they have curbed presidential military actions in time of war.

#### Courts don’t link to politics - avoids political fallout

Whittington ‘05

(Keith E., Professor of Politics - Princeton University, "Interpose Your Friendly Hand: Political Supports for the Exercise of Judicial Review by the United States Supreme Court”, [The American Political Science Review](http://proquest.umi.com.proxy.lib.umich.edu/pqdweb?RQT=318&pmid=28600&TS=1245862067&clientId=17822&VInst=PROD&VName=PQD&VType=PQD), Nov., (99)4, p. 583)

There are **some issues** that **politicians cannot easily handle**. For individual legislators, their **constituents may be sharply divided on a given issue** or overwhelmingly hostile to a policy that the legislator would nonetheless like to see adopted. Party leaders, including **presidents and legislative leaders**, must similarly sometimes manage deeply divided or cross-pressured coalitions. When faced with such issues, elected officials **may actively seek to turn over controversial political questions to the courts so as to circumvent a paralyzed legislature and avoid the political fallout that would come with taking direct action themselves**. As Mark Graber (1993) has detailed **in cases such as** slavery and **abortion, elected officials may prefer judicial resolution of disruptive political issues to direct legislative action,** especially when the courts are believed to be sympathetic to the politician's own substantive preferences but **even when the attitude of the courts is uncertain** or unfavorable (see also, Lovell 2003). Even when politicians do not invite judicial intervention, strategically minded courts will take into account not only the policy preferences of well-positioned policymakers but also the willingness of those potential policymakers to act if doing so means that they must assume responsibility for policy outcomes. For cross-pressured **politicians** and coalition leaders, **shifting blame for controversial decisions to the Court** **and obscuring their own relationship to those decisions may preserve electoral support and coalition unity without threatening** active **judicial review** (Arnold 1990; Fiorina 1986; Weaver 1986). The conditions for the exercise of judicial review may be relatively favorable when judicial invalidations of legislative policy can be managed to the electoral benefit of most legislators. In the cases considered previously, fractious coalitions produced legislation that presidents and party leaders deplored but were unwilling to block. Divisions within the governing coalition can also prevent legislative action that political leaders want taken, as illustrated in the following case.

## Lift Physical Requirements CP

#### Text: The United States federal government should lift all physical strength requirements for the United States military.

## Case

#### Specifically, sexual harassment in the workplace and media masculinity

Som 10

[Susan,“The Hidden Patriarchy: Examining Ordinary Language use and Social Explanation Reveals Patterns of Demeaning Sexism”,

Chicago Maroon, April 30th, 2010, Susan Som is a second year student at The University of Chicago studying Anthropology, available online at http://www.chicagomaroon.com/2010/4/30/the-hidden-patriarchy, accessed July 7, 2010/]

With the striking down of the current sexual assault policy, the student body has sent a clear message against institutionalized sexism. We should go further, however. It is easy to criticize the policies of others, but it takes real courage to take responsibility for our own actions. If the majority of the students were offended by the current sexual assault policy, then they should fight hypocrisy by putting an end to the forms of patriarchy at this campus that they themselves create. When we think about gender inequality, most people immediately think about concrete socio-economic facts. The educated majority at this University understands that there is systematic inequality for gay citizens who are unfairly discriminated against because they defy conventional, yet arbitrary, gender roles. Most of us know that women, on average, get paid less than male counterparts, in addition to being less likely to get promoted—and when they are promoted, many times unfair expectations are placed upon them. Sexual harassment, though usually not reported, is very common in the work place. One-third of women in the military have admitted to being sexually harassed, and many more cases go unreported out of fear of retribution. Few of us know that every year about 50,000 women are brought against their will to the United States for sexual exploitation. When these facts are mentioned, most people are shocked. These problems, however, are hardly new. They have persisted for decades, which indicates that the problem is much deeper. Anthropologist David Graeber gives us a telling example. He points to a popular trick among high school teachers who assign students to write an essay imagining that they were to switch genders and describe what it would be like to live for one day as a member of the opposite sex. The results are almost always exactly the same: all the girls in class write long and detailed essays demonstrating that they have spent a great deal of time thinking about such questions, while roughly half the boys refuse to write the essay entirely. Almost invariably, they express profound resentment about having to imagine what it might be like to be a woman. This phenomenon is caused by, and contributes to, the silence of women. Forms of this structural ignorance are developed in our toys, advertisements, and other forms of media (movies, music, television, pornography). These are in turn tied to the economic and political inequality of the genders. We can see many examples of this ignorance here at the University of Chicago. Why must women waste their time by shaving their legs? While there may be a slight stigma attached to growing a beard, men still have the option of growing one. Women do not have such an option. There is a common notion that as we get older, the majority of women lose their beauty while men become more distinguished. This perception is socially structured by our patriarchy. It is clear that there are higher standards of beauty for women than for men. If common UChicago bedroom practices are similar to that of the rest of the country, we would see that even in the bedroom there is inequality.

#### Patriarchy doesn’t cause war- links between the two are symptoms and not causes of war

Brian **Martin**, professor of social sciences at the University of Wollongong (Australia), 19**90**

[“Uprooting War”, London Freedom Press, 1984, Revised 1990, available online at http://www.uow.edu.au/~bmartin/pubs/90uw/uw10.html, accessed July 7, 2010//Thur]

While these connections between war and male domination are suggestive, they do not amount to a clearly defined link between the two. It is too simplistic to say that male violence against women leads directly to organised mass warfare. Many soldiers kill in combat but are tender with their families; many male doctors are dedicated professionally to relieving suffering but batter their wives. The problem of war cannot be reduced to the problem of individual violence. Rather, social relations are structured to promote particular kinds of violence in particular circumstances. While there are some important connections between individual male violence and collective violence in war (rape in war is a notable one), these connections are more symptoms than causes of the relationship between patriarchy and other war-linked structures. Even the link between overt sexism and the military is being attenuated as war becomes more bureaucratised and face-to-face combat is reduced in importance. Typical military tasks in a highly technological military force include flying a plane, servicing a computer, operating communications equipment, administering supplies and supervising launching of missiles. Such tasks are similar to duties in the civilian workforce, and the need for highly developed sexism of traditional military training is not present. Military training and activity, though still containing much emphasis on brutality and obedience, is becoming more oriented to technical competence and bureaucratic performance. To the extent that women can perform as competent technicians or bureaucrats, they too can serve the war system effectively. Furthermore, the functional value of women to the military does not demonstrate an automatic connection between war and domination over women: while women's services may be useful to the military, they are not necessarily essential to its survival. To get at the connection between patriarchy and war, it is necessary to look at the links between patriarchy and both the state and bureaucracy, as well as between patriarchy and the military.

#### The environment is indestructible

Easterbrook 95

Distinguished Fellow, Fullbright Foundation

**(**Gregg, A Moment on Earth pg 25)

IN THE AFTERMATH OF EVENTS SUCH AS LOVE CANAL OR THE Exxon Valdez oil spill, every reference to the environment is prefaced with the adjective "fragile." "Fragile environment" has become a welded phrase of the modern lexicon, like "aging hippie" or "fugitive financier." But the notion of a fragile environment is profoundly wrong. Individual animals, plants, and people are distressingly fragile. The environment that contains them is close to indestructible. The living environment of Earth has survived ice ages; bombardments of cosmic radiation more deadly than atomic fallout; solar radiation more powerful than the worst-case projection for ozone depletion; thousand-year periods of intense volcanism releasing global air pollution far worse than that made by any factory; reversals of the planet's magnetic poles; the rearrangement of continents; transformation of plains into mountain ranges and of seas into plains; fluctuations of ocean currents and the jet stream; 300-foot vacillations in sea levels; shortening and lengthening of the seasons caused by shifts in the planetary axis; collisions of asteroids and comets bearing far more force than man's nuclear arsenals; and the years without summer that followed these impacts. Yet hearts beat on, and petals unfold still. Were the environment fragile it would have expired many eons before the advent of the industrial affronts of the dreaming ape. Human assaults on the environment, though mischievous, are pinpricks compared to forces of the magnitude nature is accustomed to resisting.

#### Even if predictions in the abstract are wrong, policy debates is productive, improves predictive accuracy, and solves cession of the debate to cloistered experts

Tetlock and Gardner 2011 (Philip Tetlock is a professor of organizational behavior at the Haas Business School at the University of California-Berkeley, AND Dan Gardner is a columnist and senior writer for the Ottawa Citizen and the author of The Science of Fear, received numerous awards for his writing, including the Michener Award, M.A. History from York, "OVERCOMING OUR AVERSION TO ACKNOWLEDGING OUR IGNORANCE" July 11 www.cato-unbound.org/2011/07/11/dan-gardner-and-philip-tetlock/overcoming-our-aversion-to-acknowledging-our-ignorance/)

The optimists are right that there is much we can do at a cost that is quite modest relative to what is often at stake. For example, why not build on the IARPA tournament? Imagine a system for recording and judging forecasts. Imagine running tallies of forecasters’ accuracy rates. Imagine advocates on either side of a policy debate specifying in advance precisely what outcomes their desired approach is expected to produce, the evidence that will settle whether it has done so, and the conditions under which participants would agree to say “I was wrong.” Imagine pundits being held to account. Of course arbitration only works if the arbiter is universally respected and it would be an enormous challenge to create an analytical center whose judgments were not only fair, but perceived to be fair even by partisans dead sure they are right and the other guys are wrong. But think of the potential of such a system to improve the signal-to-noise ratio, to sharpen public debate, to shift attention from blowhards to experts worthy of an audience, and to improve public policy. At a minimum, it would highlight how often our forecasts and expectations fail, and if that were to deflate the bloated confidence of experts and leaders, and give pause to those preparing some “great leap forward,” it would be money well spent. But the pessimists are right, too, that fallibility, error, and tragedy are permanent conditions of our existence. Humility is in order, or, as Socrates said, the beginning of wisdom is the admission of ignorance. The Socratic message has always been a hard sell, and it still is—especially among practical people in business and politics, who expect every presentation to end with a single slide consisting of five bullet points labeled “The Solution.” We have no such slide, unfortunately. But in defense of Socrates, humility is the foundation of the fox style of thinking and much research suggests it is an essential component of good judgment in our uncertain world. It is practical. Over the long term, it yields better calibrated probability judgments, which should help you affix more realistic odds than your competitors on policy bets panning out.

#### Our impacts aren’t constructed until they prove it.

Yudkowsky 6 – Eliezer Yudkowsky, Research Fellow at the Singularity Institute for Artificial Intelligence that has published multiple peer-reviewed papers on risk assessment. Cognitive biases potentially affecting judgment of global risks Forthcoming in Global Catastrophic Risks, eds. Nick Bostrom and Milan Cirkovic. August 31, 2006.

**Every** true **idea which discomforts you will seem to match** the pattern of at least one **psychological error**. Robert Pirsig said: “The world’s biggest fool can say the sun is shining, but that doesn’t make it dark out.” If you believe someone is guilty of a psychological error, then **demonstrate your competence by first demolishing their** **consequential factual errors. If there are no factual errors, then what matters the psychology?** The temptation of psychology is that, **knowing a little psychology, we can meddle in arguments where we** **have no** technical **expertise –** instead sagely analyzing the psychology of the disputants. If someone wrote a novel about an asteroid strike destroying modern civilization, then someone might criticize that novel as extreme, dystopian, apocalyptic; symptomatic of the author’s naive inability to deal with a complex technological society. We should recognize this as a literary criticism, not a scientific one; it is about good or bad novels, not good or bad hypotheses. To quantify the annual probability of an asteroid strike in real life, one must study astronomy and the historical record: no amount of literary criticism can put a number on it. Garreau (2005) seems to hold that a scenario of a mind slowly increasing in capability, is more mature and sophisticated than a scenario of extremely rapid intelligence increase. But that’s a technical question, not a matter of taste; no amount of psychologizing can tell you the exact slope of that curve. It’s harder to abuse heuristics and biases than psychoanalysis. Accusing someone of conjunction fallacy leads naturally into listing the specific details that you think are burdensome and drive down the joint probability. Even so, do not lose track of the real- world facts of primary interest; do not let the argument become about psychology. Despite all dangers and temptations, it is better to know about psychological biases than to not know. Otherwise we will walk directly into the whirling helicopter blades of life. But **be very careful not to have too much fun accusing others of biases**. That is the road that leads to becoming a sophisticated arguer – someone who, faced with any discomforting argument, finds at once a bias in it. The one whom you must watch above all is yourself. Jerry Cleaver said: “What does you in is not failure to apply some high-level, intricate, complicated technique. It’s overlooking the basics. Not keeping your eye on the ball.” Analyses should finally center on testable real-world assertions. Do not take your eye off the ball.

#### All lives are infinitely valuable, the only ethical option is to maximize the number saved

**Cummisky, 96** (David, professor of philosophy at Bates, Kantian Consequentialism, p. 131)

Finally, even if one grants that saving two persons with dignity cannot outweigh and compensate for killing one—because dignity cannot be added and summed in this way—this point still does not justify deontologieal constraints. On the extreme interpretation, why would not killing one person be a stronger obligation than saving two persons? If I am concerned with the priceless dignity of each, it would seem that 1 may still saw two; it is just that my reason cannot be that the two compensate for the loss of the one. Consider Hills example of a priceless object: If I can save two of three priceless statutes only by destroying one. Then 1 cannot claim that saving two makes up for the loss of the one. But Similarly, the loss of the two is not outweighed by the one that was not destroyed. Indeed, even if dignity cannot be simply summed up. How is the extreme interpretation inconsistent with the idea that I should save as many priceless objects as possible? Even if two do not simply outweigh and thus compensate for the lass of the one, each is priceless: thus, I have good reason to save as many as I can. In short, it is not clear how the extreme interpretation justifies the ordinary killing'letting-die distinction or even how it conflicts with the conclusion that the more persons with dignity who are saved, the better.\*

#### 1. Calculation is inevitable – you must avoid the worst

David Campbell, Prof. IR @ U of Newcastle, ’99 (Moral Spaces, ed. Campbell & Shapiro, p. 45-46)

In this context, justice enables the law, but the law is that which “is never exercised without a decision that cuts, that divides.” The law works from the unrepresentable and seeks to represent; it takes from the impossible and conceives the possible; it is embedded in the undecidable but nevertheless decides. Nonetheless, “the undecidable remains caught, lodged, at least as a ghost—but an essential ghost—in every decision, in every event of decision. Its ghostliness deconstructs from within any assurance of presence, any certitude or any supposed criteriology that would assure us of the justice of the decision, in truth of the very event of a decision.” The undecidable within the decision does not, however, prevent the decision or avoid its urgency. As Derrida observes, “a just decision is always required immediately, ‘right away.’” This necessary haste has unavoidable consequences because the pursuit of “infinite information and the unlimited knowledge of conditions, rules or hypothetical imperatives that could justify it” are unavailable in the crush of time. Nor can the crush of time be avoided, even by unlimited time, “because the moment of decision, as such, always remains a finite moment of urgency and precipitation.” The decision is always “structurally finite,” it “always marks the interruption of the juridico- or ethico- or politico-cognitive deliberation that precedes it, that must precede it.” This is why, invoking Kierkegaard, Derrida declares that “the instant of decision is a madness.” The finite nature of the decision may be a “madness” in the way it renders possible the impossible, the infinite character of justice, but Derrida argues for the necessity of this madness. Most importantly, although Derrida’s argument concerning the decision has, to this point, been concerned with an account of the procedure by which a decision is possible, it is with respect to the necessity of the decision that Derrida begins to formulate an account of the decision that bears upon the content of the decision. In so doing, Derrida’s argument addresses more directly—more directly, I would argue, than is acknowledged by Critchley— the concern that for politics (at least for a progressive politics) one must provide an account of the decision to combat domination. That undecidability resides within the decision, Derrida argues, “that justice exceeds law and calculation, that the unpresentable exceeds the determinable cannot and should not serve as alibi for staying out of juridico-political battles, within an institution or a state, or between institutions or states and others.’” Indeed, “incalculable justice requires us to calculate:” From where does this insistence come? What is behind, what is animating, these imperatives? It is both the character of infinite justice as a heteronomic relationship to the other, a relationship that because of its undecidability multiplies responsibility, and the fact that “left to itself, the incalculable and giving (donatrice) idea of justice is always very close to the bad, even to the worst, for it can always be re-appropriated by the most perverse calculation.”,’ The necessity of calculating the incalculable thus responds to a duty, a duty that inhabits the instant of madness and compels the decision to avoid “the bad,” the “perverse calculation,” even “the worst:” This is the duty that also dwells with deconstruction and makes it the starting point, the “at least necessary condition,” for the organization of resistance to totalitarianism in all its forms.

#### 2. Calculations key to prevent mass slaughter

Ira Chernus, Prof. Religious Studies @ UColorado, 4/1/’3 (<http://www.commondreams.org/views03/0401-12.htm>)

True, the body count turned human beings into abstract numbers. But it required soldiers to say to the world, "Look everyone. I killed human beings today. This is exactly how many I killed. I am obliged to count each and every one." It demanded that the killers look at what they had done, think about it (however briefly), and acknowledge their deed. It was a way of taking responsibility. Today's killers avoid that responsibility. They perpetuate the fiction so many Americans want to believe-that no real people die in war, that it's just an exciting video game. It's not merely the dead who disappear; it's the act of killing itself. When the victim's family holds up a picture, U.S. soldiers or journalists can simply reply "Who's that? We have no record of such a person. In fact, we have no records at all. We kill and move on. No time to keep records. No inclination. No reason." This is not just a matter of new technology. There was plenty of long-distance impersonal killing in Vietnam too. But back then, the U.S. military at least went through the motions of going in to see what they had done. True, the investigations were often cursory and the numbers often fictional. No matter how inaccurate the numbers were, though, the message to the public every day was that each body should be counted. At some level, at least, each individual life seemed to matter. The difference between Vietnam and Iraq lies partly in overall strategy. In Vietnam, there was no territory to be conquered and occupied. If U.S. forces seized an area, they knew that sooner or later the Viet Cong would take it back. The only way to measure "victory" was by killing more of them than they killed of us. In Iraq, the goal is control of place. U.S. forces can "take" Basra or Nassiriya and call it a victory, without ever thinking about how many Iraqis had to be killed in the process. So the body count matters less. However, the end of body counts can not be explained simply by the difference in strategy. The old-fashioned body counts disappeared during the first war against Iraq, when the goal was still defined by territory: pushing Iraqi forces out of Kuwait. So It's much more likely that "we don't do body counts" because Vietnam proved how embarrassing they could be. As the U.S. public turned against that war, the body count became a symbol of everything that was inhumane and irrational about that war. The Pentagon fears that the same might happen if the Iraq war bogs down. How much simpler to deny the inhumanity and irrationality of war by denying the obvious fact of slaughter. What I fear is a world where thousands can be killed and no one is responsible, where deaths are erased from history as soon as they happen. The body count was more than an act of responsibility. It was a permanent record. It made each death a historical fact. You can go back and graph those Vietnam deaths from day to day, month to month, year to year. That turns the victims into nameless, faceless abstractions. But it least it confirms for ever and ever that they lived and died, because someone took the time to kill and count them. In Iraq, it is as if the killing never happened. When a human being's death is erased from history, so is their life. Life and death together vanish without a trace. The body count has one other virtue. It is enemy soldiers, not civilians, who are officially counted. Antiwar activists rightly warn about civilian slaughter and watch the toll rise at www.iraqbodycount.org. It is easy to forget that the vast majority of Iraqi dead and wounded will be soldiers. Most of them were pressed into service, either by brute force or economic necessity. As the whole world has been telling us for months, there is no good reason for this war, no good reason for those hapless Iraqi foot-soldiers to die. They are victims of brutality-inflicted by their own government and by ours-just as much as the civilians. They deserve just as much to be counted So let us bring back the body count. If we must kill, let us kill as one human being to another, recognizing the full humanity of our victims. Without a body count, our nation becomes more of a robotic killing machine. As we dehumanize Iraqis, we slip even further into our own dehumanization. Let us bring back the body count. if only to recover our own sense of responsibility to the world's people, to history, to our own humanity.

**Preventing nuclear war key to positive peace.**

**Folk 78** - Professor of Religious and Peace Studies at Bethany College, 78 [Jerry, “Peace Educations – Peace Studies : Towards an Integrated Approach,” Peace & Change, volume V, number 1, Spring, p. 58]

Those proponents of the positive peace approach who reject out of hand the work of researchers and educators coming to the field from the perspective of negative peace too easily forget that the **prevention of a nuclear confrontation** of global dimensions **is the prerequisite for all other peace** research, education, and action. Unless such a confrontation can be avoided **there will be no world left** in which **to build positive peace**. Moreover, the blanket condemnation of all such negative peace oriented research, education or action as a reactionary attempt to support and reinforce the status quo is doctrinaire. **Conflict theory and** resolution, **disarmament studies**, studies of the international system and of international organizations, and integration studies **are** in themselves **neutral. They do not intrinsically support** either **the** **status quo** or revolutionary efforts to change or overthrow it. Rather they offer a body of knowledge which can be used for either purpose or for some purpose in between. It is much more logical for those who understand peace as positive peace to integrate this knowledge into their own framework and to utilize it in achieving their own purposes. A balanced peace studies program should therefore offer the student exposure to the questions and concerns which occupy those who view the field essentially from the point of view of negative peace.

#### Turn- plan’s focus on state agency reinscribes patriarchal power structures

Brian **Martin**, professor of social sciences at the University of Wollongong (Australia), 19**90**

[“Uprooting War”, London Freedom Press, 1984, Revised 1990, available online at http://www.uow.edu.au/~bmartin/pubs/90uw/uw10.html, accessed July 7, 2010//Thur]

The connection between patriarchy and bureaucracy can be seen as one of mutual mobilisation. In short, men use bureaucracy to sustain their power over women, while elite bureaucrats use patriarchy to sustain the bureaucratic hierarchy. The first part of this dynamic is men using bureaucracy to sustain their power over women. In a typical bureaucracy, whether a state agency, a corporation, or a trade union, most of the top positions are occupied by men. Women are concentrated in lower positions such as typists, process workers or cleaners. In addition, top male bureaucrats usually have wives who do most of the work of child-rearing and housework and who provide emotional and career support. The power, prestige and privileges of the top bureaucrats thus depend on the subordinate position of women both on the job and at home. To maintain this power, the top bureaucrats can use their power in the bureaucracy to keep women in their subordinate place. This can take place in several ways: \* formal exclusion of women from top positions; \* discrimination against women in hiring and promotion; \* promoting conformity to the bureaucratic values of emotional aloofness and technical rationality as a means of deterring or restraining women who operate best in an environment providing emotional support and opportunities for cooperative work; \* creation and maintenance of gender-linked job categories, which tie women into lower-level positions; \* maintenance of male career patterns which require mobility, full-time work and no interruptions (for child-bearing); \* maintenance of on-the-job work

organisation which excludes integration of child-rearing and work, and opposition to alternatives such as independent work at home, or neighbourhood-based decentralised office arrangements; \* supporting other elite groups with similar practices, such as when trade union elites do not protest against corporate sexism; \* lobbying and applying political pressure to maintain policies that keep women in subordinate positions. In these and other ways, the power that men have as top bureaucrats is used to keep men collectively in a dominant position over women. In this way, bureaucracy is mobilised by men to support patriarchy. The domination of men over women does not occur in the abstract. In this case it operates via the unequal power distribution within bureaucracies.

#### Turn-

#### A. THE AFF’S REPRESENTATIONS OF PATRIARCHY AS THE ROOT CAUSE OF OPPRESSION AND GLOBAL ANNIHILATION ASSUMES A MONOLITHIC UNDERSTANDING OF GENDER OPPRESSION.

**Crenshaw**, director of debate @ university of alabama, **93** (carrie, dominant form and marginalized voices: argumentation about feminism(s), ceda yearbook, 14, p. 73-74)

Substantive debates about feminism usually take one of two forms. First, on the affirmative, debaters argue that some aspect of the resolution is a manifestation of patriarchy. For example, given the spring 1992 resolution, “[r]esolved: That advertising degrades the quality of life,” many affirmatives argued that the portrayal of women as beautiful objects for men’s consumption is a manifestation of patriarchy that results in tangible harms to women such as rising rates of eating disorders. The fall 1992 topic, “[r]esolved: That the welfare system exacerbates the problems of the urban poor in the United States,” also had its share of patriarchy cases. Affirmatives typically argued that women’s dependence upon a patriarchal welfare system results in increasing rates of women’s poverty. **In addition to** these **concrete harms to individual women, most affirmatives** on both topics, **desiring “big impacts,” argued that the effects of patriarchy include** nightmarish **totalitarianism and/or nuclear annihilation**. On the negative, many debaters countered with arguments that the same aspect of the resolution in some way sustains or energizes the feminist movement in resistance to patriarchal harms. For example, some negatives argued that sexist advertising provides an impetus for the reinvigoration of the feminist movement and/or feminist consciousness, ultimately solving the threat of patriarchal nuclear annihilation. Likewise, debaters negating the welfare topic argued that the state of the welfare system is the key issue around which the feminist movement is mobilizing or that the consequence of the welfare system – breakup of the patriarchal nuclear family – undermines patriarchy as a whole. **Such arguments seem to have two assumptions in common**. **First**, there is a single feminism. As a result, feminism*s* are transformed into *feminism*. Debaters speak of **feminism as a single, monolithic**, theoretical, and pragmatic **entity** and feminists as women with identical motivations, methods, and goals. **Second**, these arguments assume that **patriarchy is the** single and **root cause of all** forms of **oppression**. Patriarchy not only is responsible for sexism and the consequent oppression of women, it is also the cause of totalitarianism, environmental degradation, nuclear war, racism, and capitalist exploitation. **These reductionist arguments reflect an unwillingness to debate about the complexities of human motivation and explanation**. They betray a reliance upon a framework of proof that can explain only material conditions and physical realities through empirical quantification.

#### B. THIS FRAME MYSTIFIES THE INTERSECTIONAL NATURE OF OPPRESSION. THIS DERAILS FEMINIST STRUGGLE AND PERPETUATES RACE AND CLASS PRIVILEGE.

**Crenshaw**, director of debate @ university of alabama, **93** (carrie, dominant form and marginalized voices: argumentation about feminism(s), ceda yearbook, 14, p. 76-77)

Debate arguments that assume a singular conception of feminism include and empower the voices of race- and class-privileged women while excluding and silencing the voices of feminists marginalized by race and class status. This position becomes clearer when we examine the second assumption of arguments about feminism in intercollegiate debate – patriarchy is the *sole* cause of oppression. Important feminist thought has resisted this assumption for good reason. **Designating patriarchy as the sole cause of oppression allows the subjugation of resistance to other** forms of **oppression like racism and classism to the struggle against sexism**. Such subjugation has the effect of denigrating the legitimacy of resistance to racism and classism as struggles of equal importance. “Within feminist movement in the West, this has lead to the assumption that resisting patriarchal domination is a more legitimate feminist action that resisting racism and other forms of domination” (hooks, *Talking Back* 19). The relegation of struggles against racism and class exploitation to offspring status is not the only implication of the “sole cause” argument. In addition, **identifying patriarchy as the single source of oppression obscures women’s perpetration of other forms of** subjugation and **domination**. bell hooks argues that we “should not obscure the reality that women can and do participate in politics of domination, as perpetrators as well as victims – that we dominate, that we are dominated. **If focus on patriarchal domination masks this reality** or becomes the means by which women deflect attention from the real conditions and circumstances of our lives, **the women cooperate in** suppressing and **promoting false consciousness, inhibiting our capacity to assume responsibility for transforming ourselves and society** (hooks, *Talking Back* 20). Characterizing patriarchy as the sole cause of oppression allows mainstream feminists to abdicate responsibility for the exercise of class and race privilege. It casts the struggle against class exploitation and racism as secondary concerns.

# 2NC

## Politics

#### We control global impact uniqueness – the status quo solves their impacts but decline undermines crucial forms of restraint

Griswold 5

Director of the Center for Trade Policy Studies at the Cato Institute (Daniel, “Peace on earth? Try free trade among men,” 12-29-2005, http://www.freetrade.org/node/282)

Buried beneath the daily stories about car bombs and insurgents is an underappreciated but comforting fact during this Christmas season: The world has somehow become a more peaceful place.¶ As one little-noticed headline on an Associated Press story recently reported, "War declining worldwide, studies say." According to the Stockholm International Peace Research Institute, the number of armed conflicts around the world has been in decline for the past half century. In just the past 15 years, ongoing conflicts have dropped from 33 to 18, with all of them now civil conflicts within countries. As 2005 draws to an end, no two nations in the world are at war with each other. The death toll from war has also been falling. According to the AP story, "The number killed in battle has fallen to its lowest point in the post-World War II period, dipping below 20,000 a year by one measure. Peacemaking missions, meanwhile, are growing in number." Those estimates are down sharply from annual tolls ranging from 40,000 to 100,000 in the 1990s, and from a peak of 700,000 in 1951 during the Korean War. Many causes lie behind the good news -- the end of the Cold War and the spread of democracy, among them -- but expanding trade and globalization appear to be playing a major role. Far from stoking a "World on Fire," as one misguided American author has argued, growing commercial ties between nations have had a dampening effect on armed conflict and war, for three main reasons. First, trade and globalization have reinforced the trend toward democracy, and democracies don't pick fights with each other. Freedom to trade nurtures democracy by expanding the middle class in globalizing countries and equipping people with tools of communication such as cell phones, satellite TV, and the Internet. With trade comes more travel, more contact with people in other countries, and more exposure to new ideas. Thanks in part to globalization, almost two thirds of the world's countries today are democracies -- a record high. Second, as national economies become more integrated with each other, those nations have more to lose should war break out. War in a globalized world not only means human casualties and bigger government, but also ruptured trade and investment ties that impose lasting damage on the economy. In short, globalization has dramatically raised the economic cost of war. Third, globalization allows nations to acquire wealth through production and trade rather than conquest of territory and resources. Increasingly, wealth is measured in terms of intellectual property, financial assets, and human capital. Those are assets that cannot be seized by armies. If people need resources outside their national borders, say oil or timber or farm products, they can acquire them peacefully by trading away what they can produce best at home. Of course, free trade and globalization do not guarantee peace. Hot-blooded nationalism and ideological fervor can overwhelm cold economic calculations. But deep trade and investment ties among nations make war less attractive. Trade wars in the 1930s deepened the economic depression, exacerbated global tensions, and helped to usher in a world war. Out of the ashes of that experience, the United States urged Germany, France and other Western European nations to form a common market that has become the European Union. In large part because of their intertwined economies, a general war in Europe is now unthinkable. In East Asia, the extensive and growing economic ties among Mainland China, Japan, South Korea, and Taiwan is helping to keep the peace. China's communist rulers may yet decide to go to war over its "renegade province," but the economic cost to their economy would be staggering and could provoke a backlash among its citizens. In contrast, poor and isolated North Korea is all the more dangerous because it has nothing to lose economically should it provoke a war. In Central America, countries that were racked by guerrilla wars and death squads two decades ago have turned not only to democracy but to expanding trade, culminating in the Central American Free Trade Agreement with the United States. As the Stockholm institute reports in its 2005 Yearbook, "Since the 1980s, the introduction of a more open economic model in most states of the Latin American and Caribbean region has been accompanied by the growth of new regional structures, the dying out of interstate conflicts and a reduction in intra-state conflicts." Much of the political violence that remains in the world today is concentrated in the Middle East and Sub-Saharan Africa -- the two regions of the world that are the least integrated into the global economy. Efforts to bring peace to those regions must include lowering their high barriers to trade, foreign investment, and domestic entrepreneurship. Advocates of free trade and globalization have long argued that trade expansion means more efficiency, higher incomes, and reduced poverty. The welcome decline of armed conflicts in the past few decades indicates that free trade also comes with its own peace dividend.

#### Timeframe – the US only has till October 17th – we’re on the brink - default immediately destroys confidence and causes financial volatility throughout the economy – default to timeframe – you can only die once

CCTV 10-1

(CCTV, “U.S. gov't shutdown, debt default threaten to weigh on economy: expert” 10-01-2013, <http://english.cntv.cn/20131002/100740.shtml>, KB)

The ongoing partial federal government shutdown and fiscal uncertainties are dampening American economic recovery, and a default on U.S. debt payments would have "immediate and substantial" negative effects on the country's economy that would be difficult to quickly reverse, said David Stockton, a senior fellow at the Peterson Institute for International Economics (PIIE).¶ "A brief shutdown is disruptive, but not likely a systemic macro event," Stockton said Tuesday at an event on the first day of the partial shutdown of the U.S. federal government agencies.¶ U.S. lawmakers failed to agree to a spending bill for keeping the federal government running beyond midnight of Sept. 30, which finally forced the U.S. federal government to a partial shutdown starting Tuesday for the first time in 17 years. Tuesday also coincided with the first day of the U.S. 2014 fiscal year.¶ The federal government shutdown each week will cost the United States about 0.15 percent of the growth in the fourth-quarter gross domestic product (GDP), predicted Stockton, also former chief economist at the U.S. Federal Reserve.¶ However, if U.S. Congress fails to meet a mid-October deadline to raise the country's debt ceiling, it will be "a major macro systemic event" and will lead to financial volatility and depressed household and business confidence, he stressed.¶ A partial government shutdown for several weeks or a month would not have a significant impact on weakening the U.S. dollar or delaying the Fed's decision of tapering off its third round of quantitative easing (QE3), compared with the potential impact of a debt default crisis, he said in answering questions posed by Xinhua.

#### Literally turns the entire aff - Congress will give Obama unfettered power in the event of an emergency

Brooks 13

(Rosa Brooks, “Mission Creep in the War on Terror” March 14, 2013, <http://www.foreignpolicy.com/articles/2013/03/14/mission_creep_in_the_war_on_terror>, KB)

AUMF or no AUMF, if the United States finds credible evidence of an imminent and grave terrorist attack -- of the 9/11 variety -- no one's going to give the president a hard time if he kills the bad guys before they have a chance to attack us. And trust me: If the president has solid evidence of such an impending attack, it won't matter if the terrorists are an al Qaeda offshoot or a rogue group of Canadian girl scouts.¶ And if, despite our best efforts at prevention, another serious terrorist attack occurs in the future, Congress will undoubtedly be quick to give the president any additional authorities he needs -- with the same speed with which Congress passed its 2001 authorization to use force.¶ In the end, it's not that complicated. If we can't shoehorn drone strikes against every "associate of an associate" of al Qaeda into the 2001 AUMF, we should stop trying to stretch or change the law. Instead, we should scale back the targeted killings.¶ It's past time for a serious overhaul of U.S. counterterrorism strategy. This needs to include a rigorous cost-benefit analysis of U.S. drone strikes, one that takes into account issues both of domestic legality and international legitimacy, and evaluates the impact of targeted killings on regional stability, terrorist recruiting, extremist sentiment, and the future behavior of powerful states such as Russia and China. If we undertake such a rigorous cost-benefit analysis, I suspect we'll come to see scaling back drone strikes less as an inconvenience than as a strategic necessity -- and we may come to a new appreciation of counterterrorism measures that don't involve missiles raining from the sky.¶ This doesn't mean we should never use armed drones -- drones, like any other weapons-delivery mechanism, will at times be justifiable and useful. But it does mean we should rediscover a long-standing American tradition: reserving the use of exceptional authorities for rare and exceptional circumstances.

#### War increases the risk of sexual violence

Amanda Lea Victoor. 2011. “An ‘Other’ Woman’s Rape” http://130.15.126.37/jspui/bitstream/1974/6343/1/Victoor\_Amanda\_L\_201103\_MA.pdf The inherent focus on the commonality between peacetime and wartime rape has sparked a debate within the literature about the ability of peacetime theories of sexual violence to be transferrable to the unique nature of war rape. For instance, Carine Mardorossian (2002) has critiqued feminist academics for their severe lack of original theorizing about sexual violence in armed conflict and their unawareness of the fundamental differences between peace and wartime rape. For example, it has been found that instances of rape are higher during times of war and armed conflict (Stiglmayer 1994), and women are often violated in public spaces to ensure that the co munity witnesses rape‐‐a situation that blurs important distinctions between “public and private” (Kelly 2000: 56). Impunity is often cited as another fundamental difference between the experiences of rape in peaceful times versus during the chaos of war (IRIN 2004). A lack of legal protections during war equate to a veritable free‐for‐all on enemy women and children, while the tolerance of sexual violence in peacetime is replaced by a culture of violence that condones or even produces a policy of rape (Kelly 2000). These examples highlight the unique nature of war rape that some feminist constructions of sexual violence have overlooked.

#### Obama would fight to retain authority, even if he supported the plan’s practice

Silverstein 9

Gordon Silverstein, UC Berkeley Assistant Professor, December 2009, Bush, Cheney, and the Separation of Powers: A Lasting Legal Legacy?, http://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=1161&context=schmooze\_papers

Less than six months into the new administration, many of Obama’s staunch supporters have been surprised—even appalled—that the new president not only had failed to fully repudiate many of the Bush-Cheney legal policies, but in some instances, actually seems to be embracing and extending those policy choices (Gerstein 2009; Goldsmith 2009a, 2009b; Greenwald 2009a, 2009b; Herbert 2009; Savage 2009a). In areas ranging from the assertion of the state secrets privilege in efforts to shut down lawsuits over warrantless wiretapping (Al-Haramain v. Obama; Jewel v. NSA) and extraordinary rendition (Mohamed v. Jeppesen Dataplan) to those concerning lawsuits over detention and treatment at Guantánamo (Bostan v. Obama) and the reach of habeas corpus to Bagram Air Force Base in Afghanistan (Al Maqaleh v. Gates), as well as the continuing use of signing statements, the new Obama administration’s policies in a number of areas that were of intense interest during the campaign certainly do appear less dramatically different than one might have expected. Does this suggest that Obama actually will salvage and enhance the Bush-Cheney legal legacy?¶ Early evidence suggests the answer is no. There is a critical difference between policy and the legal foundation on which that policy is constructed. The policies may be quite similar, at least in the first few months of the new administration, but the legal legacy will turn on the underlying legal arguments, the legal foundation on which these policies are built. Here we find a dramatic difference between Obama and Bush. Both are clearly interested in maintaining strong executive power, but whereas Bush built his claims on broad constitutional arguments, insisting that the executive could act largely unhampered by the other branches of government, the Obama administration has made clear that its claims to power are built on statutes passed by Congress, along with interpretations and applications of existing judicial doctrines. It may be the case, as one of the Bush administration’s leading Office of Legal Counsel attorneys argued, that far from reversing Bush-era policies, the new administration “has copied most of the Bush program, has expanded some of it, and has narrowed only a bit” (Goldsmith 2009a). But what is profoundly different are the constitutional and legal default foundations on which these policies, and the assertions of executive power to enforce them, are built.¶ Obama, like virtually every chief executive in American History, seems committed to building and holding executive power. But unlike Bush, Obama is developing a far more traditional approach to this task, building his claims not on constitutional assertions of inherent power, but rather interpreting and applying existing statutes and judicial doctrines or, where needed, seeking fresh and expansive legislative support for his claims.

#### Disagreements over authority trigger constitutional showdowns – even if the executive wants the plan – it’s about who decides, not the decision itself

Posner and Vermeule, 10

\*professor of law at the University of Chicago AND \*\*professor of law at Harvard (Eric and Adrian, The Executive Unbound, p. 75-77)

Showdowns occur when the location of constitutional authority for making an important policy decision is ambiguous, and multiple political agents (branches, parties, sections, governments) have a strong interest in establishing that the authority lies with them. Although agents often have an interest in negotiating a settlement, asymmetric information about the interests and bargaining power of opposing parties will sometimes prevent such a settlement from being achieved. That is when a showdown occurs. Ultimately, however, someone must yield; this yielding to or acquiescence in the claimed authority of another agent helps clarify constitutional lines of authority, so that next time the issue arises, a constitutional impasse can be avoided. From a normative standpoint, constitutional showdowns thus have an important benefit, but they are certainly not costless. As long as the showdown lasts, the government may be paralyzed, unable to make important policy decisions, at least with respect to the issue under dispute. We begin by examining a simplified version of our problem, one involving just two agents—Congress and the executive. We assume for now that each agent is a unitary actor with a specific set of interests and capacities. We also assume that each agent has a slightly different utility function, reflecting their distinct constituencies. If we take the median voter as a baseline, we might assume that Congress is a bit to the left (or right) of the median voter, while the president is a bit to the right (or left). We will assume that the two agents are at an equal distance from the median, and that the preferences of the population are symmetrically distributed, so that the median voter will be indifferent between whether the president or Congress makes a particular decision, assuming that they have equal information.39 But we also will assume that the president has better information about some types of problems, and Congress has better information about other types of problems, so that, from the median voter’s standpoint, it is best for the president to make decisions about the first type of problem and for Congress to make decisions about the second type ofproblem.40 Suppose, for example, that the nation is at war and the government must decide whether to terminate it soon or allow it to continue. Congress and the president may agree about what to do, of course. But if they disagree, their disagreement may arise from one or both of two sources. First, Congress and the president have different information. For example, the executive may have better information about the foreign policy ramifications of a premature withdrawal, while Congress has better information about home-front morale. These different sources of information lead the executive to believe that the war should continue, while Congress believes the war should be ended soon. Second, Congress and the president have different preferences because of electoral pressures of their different constituents. Suppose, for example, that the president depends heavily on the continued support of arms suppliers, while crucial members of Congress come from districts dominated by war protestors. Thus, although the median voter might want the war to continue for a moderate time, the president prefers an indefinite extension, while Congress prefers an immediate termination. So far, we have explained why the president and Congress might disagree about when to terminate the war, but mere policy disagreement does not result in a showdown. Showdowns arise only when there is a disagreement about authority. If Congress believes that the president has the sole authority to terminate the war, then his view will prevail. Congress may try to pressure him or influence him by offering support for other programs desired by the president, or by trying to rile up the public, but these activities are part of normal politics, and do not provoke a constitutional showdown. Similarly, if the president believes that Congress has the sole authority to terminate the war, then Congress’s view will prevail. This outcome is shown in cell 3 in table 2.1. Similarly, no showdown occurs when the two branches agree both about authority and policy—for example, that the president decides, and Congress agrees with his decision (cell 1). The first column represents the domain of normal politics. Showdowns can arise only when Congress and the president disagree about who decides. Here, there are two further possibilities. First, Congress and the president disagree about who decides but agree about the correct policy outcome (cell 2). In these situations, which arise with some frequency, the two branches are often tempted to paper over their differences because an immediate policy choice is not at stake. But sometimes a showdown will occur. We will discuss this special case later. Second, Congress and the president disagree about the policy outcome and about authority (cell 4). In this case, showdowns are likely, because a policy decision must be made, and if the parties cannot agree about what it should be, then they cannot avoid resolving the question of authority. We focus on this case for now.

#### Past actions are terrible indicators

Hendrickson 10

Ryan Hendrickson, Ph.D., Eastern Illinois University Professor, 2010, War Powers in the Obama Administration, http://thekeep.eiu.edu/cgi/viewcontent.cgi?article=1001&context=polisci\_fac

Although it is early in the Obama administration, these first military actions indicate that despite Obama’s and Biden’s records in the Senate of supporting meaningful congressional checks on the commander in chief, that old patterns are difficult to break; the commander in chief is leading, with limited engagement from Congress. Obama’s and Biden’s past actions in the Senate do not appear to be good indicators of their current practices in the White House. Their previous views on congressional war powers are not, at least from these first military decisions, the guiding constitutional principles that shape their relationship with the Congress. Much as for previous presidents, assertiveness as commander in chief is an institutional pattern in the conduct of the executive branch. Moreover, Congress generally continues to defer to the commander in chief, and partisan politics do not capture this element of executive legislative relations. In the era following the Second World War, American presidents have increasingly asserted wide military powers, as Congress has ceded much of its war powers authority to the president, which the American public seems to often accept and is evident again in the Obama presidency. These patterns comport with most literature on presidential war powers, and also indicate that similar to the Bush presidency, the centre of decisionmaking for American military policy is the White House and not the American Congress.

#### Ceiling will be raised now but the plan delays it – causes a default

Hirsh 10-1

Michael is Chief Correspondent at National Journal, “We Negotiate with Terrorists, so Why not the GOP,” <http://www.nationaljournal.com/white-house/we-negotiate-with-terrorists-so-why-not-with-the-gop-20131001?mrefid=LeadStoryTiles_normal>

As the shutdown drags on, the most popular meme among Democrats is to portray the House Republicans as political terrorists with whom one cannot bargain as a matter of principle. President Obama himself drove home the harsh analogy in remarks in the Rose Garden on Tuesday that revealed his apparent contempt for his opponents and appeared to slam the door on further talks. The Republicans, the president said, were demanding "ransom just for doing their jobs" and "don't get to hold the entire government hostage." As White House advisor Dan Pfeiffer put it on CNN, Obama is not going to negotiate "with people with a bomb strapped to their chest."¶ But if the administration's approach is to cast the House GOP members as jihadists wielding ballots instead of bullets, then perhaps it should adopt the same policy it applies to real terrorists: Don't negotiate at all in public, but meanwhile search for every back channel you can. Even among Republican jihadists, there are interlocutors to be found and not unreasonable inducements -- like a repeal of the medical-device tax -- to offer up.¶ The real danger of the current standoff, after all, is not how long the shutdown extends over the GOP's desperate and futile effort to halt or slow the implementation of Obamacare, painful though this is for the nearly 800,000 government workers already furloughed. The shutdown is likely to be resolved sooner rather than later. The risk is that there will be so little resolution of the underlying issues that by the time the more important debt-limit issue comes around in a couple of weeks, the U.S. risks an economic disaster by defaulting on its debt.

**Even if we lose the fight-back link, reducing Obama’s war powers causes republicans to put up a more concerted fight on the debt ceiling**

**Seeking Alpha 9-10**

[“Syria Could Upend Debt Ceiling Fight” http://seekingalpha.com/article/1684082-syria-could-upend-debt-ceiling-fight]

Unless President Obama can totally change a reluctant public's perception of another Middle-Eastern conflict, it seems unlikely that he can get 218 votes in the House, though he can probably still squeak out 60 votes in the Senate. This defeat would be totally unprecedented as a President has never lost a military authorization vote in American history. **To forbid the Commander-in-Chief of ~~his~~ primary power renders him all but impotent**. At this point, a rebuff from the House is a 67%-75% probability. I reach this probability by looking within the whip count. I assume the 164 declared "no" votes will stay in the "no" column. To get to 218, Obama needs to win over 193 of the 244 undecided, a gargantuan task. Within the "no" column, there are 137 Republicans. Under a best case scenario, Boehner could corral 50 "yes" votes, which would require Obama to pick up 168 of the 200 Democrats, 84%. Many of these Democrats rode to power because of their opposition to Iraq, which makes it difficult for them to support military conflict. The only way to generate near unanimity among the undecided Democrats is if they choose to support the President (recognizing the political ramifications of a defeat) despite personal misgivings. The idea that all undecided Democrats can be convinced of this argument is relatively slim, especially as there are few votes to lose. In the best case scenario, the House could reach 223-225 votes, barely enough to get it through. Under the worst case, there are only 150 votes. Given the lopsided nature of the breakdown, the chance of House passage is about one in four. **While a failure in the House would put action against Syria in limbo, I have felt that the market has overstated the impact of a strike there**, which would be limited in nature. Rather, **investors should focus on the profound ripple through the power structure in Washington, which would greatly impact impending battles over** spending and **the debt ceiling**. Currently, **the government** loses spending authority on September 30 while it **hits the debt ceiling by the middle of October. Markets have generally felt that Washington will once again strike a last-minute deal and avert total catastrophe**. Failure in the Syrian vote could change this**. For the Republicans to beat Obama on a President's strength (foreign military action), they will likely be emboldened that they can beat him on domestic spending issues.** **Until now, consensus has been that the two sides would compromise** to fund the government at sequester levels while **passing a $1 trillion stand-alone debt ceiling increase**. However, the right wing of Boehner's caucus has been pushing for more, including another $1 trillion in spending cuts, defunding of Obamacare, and a one year delay of the individual mandate. Already, Conservative PACs have begun airing advertisements, urging a debt ceiling fight over Obamacare. **With the President rendered hapless** on Syria, **they will become even more vocal about their hardline resolution, setting us up for a showdown that will rival 2011's debt ceiling fight**. **I currently believe the two sides will** pass a short-term continuing resolution to keep the government open, and then the GOP will **wage a massive fight over the debt ceiling**. While Obama will be weakened, he will be unwilling to undermine his major achievement, his healthcare law. **In all likelihood, both sides will dig in their respective trenches, unwilling to strike a deal, essentially in a game of chicken**. If the House blocks Syrian action, it will take America as close to a default as it did in 2011. **Based on the market action then, we can expect massive volatility in the final days of the showdown with the Dow** falling 500 points **in one session in 2011.** **As markets panicked over the potential for a U.S. default, we saw a massive risk-off trade, moving from equities into Treasuries. I think there is a significant chance we see something similar this late September into October. The Syrian vote has major implications on the power of Obama and the far-right when it comes to their willingness to fight over the debt ceiling. If the Syrian resolution fails, the debt ceiling fight will be even worse, which will send equities** lower **by upwards of** 10%. **Investors must be prepared for this "black swan" event.**  Looking back to August 2011, stocks that performed the best were dividend paying, less-cyclical companies like Verizon (VZ), Wal-Mart (WMT), Coca-Cola (KO) and McDonald's (MCD) while high beta names like Netflix (NFLX) and Boeing (BA) were crushed. Investors also flocked into treasuries despite default risk while dumping lower quality bonds as spreads widened. The flight to safety helped treasuries despite U.S. government issues. I think we are likely to see a similar move this time. Assuming there is a Syrian "no" vote, I would begin to roll back my long exposure in the stock market and reallocate funds into treasuries as I believe yields could drop back towards 2.50%. Within the stock market, I think the less-cyclical names should outperform, making utilities and consumer staples more attractive. For more tactical traders, I would consider buying puts against the S&P 500 and look toward shorting higher-beta and defense stocks like Boeing and Lockheed Martin (LMT). I also think lower quality bonds would suffer as spreads widen, making funds like JNK vulnerable. Conversely, gold (GLD) should benefit from the fear trade. I would also like to address the potential that Congress does not vote down the Syrian resolution. First, **news has broken that Russia has proposed Syria turn over its chemical stockpile. If Syria were to agree** (Syria said it was willing to consider), **the U.S. would not have to strike, canceling the congressional vote.** The proposal can be found here. I strongly believe this is a delaying tactic rather than a serious effort. In 2005, Libya began to turn over chemical weapons; it has yet to complete the hand-off. Removing and destroying chemical weapons is an exceptionally challenging and dangerous task that would take years, not weeks, making this deal seem unrealistic, especially because a cease-fire would be required around all chemical facilities. The idea that a cease-fire could be maintained for months, essentially allowing Assad to stay in office, is hard to take seriously. I believe this is a delaying tactic, and Congress will have to vote within the next two weeks. The final possibility is that Democrats back their President and barely ram the Syria resolution through. I think the extreme risk of a full-blown debt stand-off to dissipate. However, **Boehner has promised a strong fight over the debt limit that the market has largely ignored. I do believe the fight would still be worse than the market anticipates but not outright disastrous.** As such, I would not initiate short positions, but I would trim some longs and move into less cyclical stocks as the risk would still be the debt ceiling fight leading to some drama not no drama. Remember, in politics everything is connected. **Syria is not a stand-alone issue. Its resolution will impact the power structure in Washington. A failed vote in Congress is likely to make the debt ceiling fight even worse, spooking markets, and threatening default on U.S. obligations** unless another last minute deal can be struck.

#### Decline and war are linked – default to the best studies

Royal 10

Jedediah Royal, Director of Cooperative Threat Reduction at the U.S. Department of Defense, 2010, “Economic Integration, Economic Signaling and the Problem of Economic Crises,” in Economics of War and Peace: Economic, Legal and Political Perspectives, ed. Goldsmith and Brauer, p. 213-214

Less intuitive is how periods of economic decline may increase the likelihood of external conflict**.** Political science literature has contributed a moderate degree of attention to the impact of economic decline and the security and defence behaviour of interdependent states. Research in this vein has been considered at systemic, dyadic and national levels. Several notable contributions follow. First, on the systemic level, Pollins (2008) advances Modelski and Thompson's (1996) work on leadership cycle theory, finding that **rhythms in the** global **economy are associated with the** rise and **fall of a** pre-eminent **power and** the often **bloody transition** from one pre-eminent leader to the next. As such, exogenous shocks such as economic crises could usher in a redistribution of relative power (see also Gilpin. 1981) that leads to uncertainty about power balances, **increasing** the **risk of miscalculation** (Feaver, 1995). Alternatively, even a relatively certain redistribution of power could lead to a permissive environment for conflict as a rising power may seek to challenge a declining power (Werner. 1999). Separately, Pollins (1996) also shows that global economic cycles combined with parallel leadership cycles impact the likelihood of conflict among major, medium and small powers, although he suggests that the causes and connections between global economic conditions and security conditions remain unknown. Second, on a dyadic level, Copeland's (1996, 2000) theory of trade expectations suggests that 'future expectation of trade' is a significant variable in understanding economic conditions and security behaviour of states. He argues that interdependent states are likely to gain pacific benefits from trade so long as they have an optimistic view of future trade relations. However, if the expectations of future trade decline, particularly for difficult to replace items such as energy resources, the **likelihood for conflict increases,** as **states will be inclined to use force to gain** access to those **resources.** Crises could potentially be the trigger for decreased trade expectations either on its own or because it triggers protectionist moves by interdependent states.4 Third, others have considered the link between economic decline and external armed conflict at a national level. Blomberg and Hess (2002) **find a strong correlation between internal** conflict **and external conflict**, particularly **during periods of** economic **downturn**. They write: The linkages between internal and external conflict and prosperity are strong and mutually reinforcing. Economic conflict tends to spawn internal conflict, which in turn returns the favour. Moreover, the presence of a recession tends to **amplify the extent** to which international and external conflicts self-reinforce each other. (Blomberg & Hess, 2002. p. 89) Economic decline has also been linked with an increase in the likelihood of terrorism (Blomberg, Hess, & Weerapana, 2004), which has the capacity to spill across borders and lead to external tensions. Furthermore, crises generally reduce the popularity of a sitting government. "Diversionary theory" suggests that, when facing unpopularity arising from economic decline**,** sitting **governments have increased incentives to fabricate** external military **conflicts to create a 'rally** around the flag' **effect.** Wang (1996), DeRouen (1995). and Blomberg, Hess, and Thacker (2006) find supporting evidence showing that economic decline and use of force are at least indirectly correlated. Gelpi (1997), Miller (1999), and Kisangani and Pickering (2009) suggest that the tendency towards diversionary tactics are greater for democratic states than autocratic states, due to the fact that democratic leaders are generally more susceptible to being removed from office due to lack of domestic support. DeRouen (2000) has provided evidence showing that periods of weak economic performance in the United States, and thus weak Presidential popularity, are statistically linked to an increase in the use of force. In summary, recent economic scholarship positively correlates economic integration with an increase in the frequency of economic crises, whereas political science **scholarship links** economic **decline with** external **conflict** at systemic, dyadic and national levels.5 This implied connection between integration, crises and armed conflict has not featured prominently in the economic-security debate and deserves more attention.

#### 2AC conceded that decline causes research shortages – that was in the overview – not reading a new impact so no new 1ar defense – their terminal impact defense doesn’t resource wars – they’re uniquely likely to escalate

Jervis 11

(Robert Jervis, yeah, their damn author, “Force in Our Times” Saltzman Working Paper No. 15, July 2011, <http://www.siwps.com/programs/SWP.attachment/saltzmanworkingpaper15-1816/SaltzmanWorkingPaper15.PDF>, KB)

Global climate change is also the product of technology, and the implications for the use of force ¶ are speculative but worrisome. Although it is possible that overall warming would take fewer lives than it ¶ would save through aiding agriculture in some areas and reducing deaths caused by cold, even leaving ¶ aside rising sea levels the disruption of existing patterns would create countless opportunities for conflict ¶ that could reverse the benign trends we have been discussing, even if it did not destroy the security ¶ community. There is some chance that the response to such a challenge would be greatly enhanced ¶ cooperation and dispute-resolution, but it is hard to see convincing grounds for such optimism. Of course, ¶ force cannot prevent climate change, but it can help shift more of the costs on to others. If the scientific consensus is correct, even controls on greenhouse gases much greater than those that can be reasonably ¶ expected will not prevent major disruptions, and how we cope with them may test us as much as wars did ¶ in the past. Shortages of food and water, loss of income, migration flows, and a general sense that the ¶ future is bleak would not guarantee wars, but hardly are conducive to peace. Although the competition for ¶ scarce resources has not been a major cause of war in the past, unless there are technological ¶ breakthroughs the future could bring unprecedented pressures. One does not have to be an alarmist to ¶ see multiple ways in which fighting could break out and few effective means of coping more cooperatively.

#### Yes passage ---

#### 1) Momentum – the shutdown created it – makes the GOP cave

Klein 9-28

Ezra Klein 9/28/13, writer @ the Washington Post, “The House GOP’s shutdown plan is great news,” Washington Post, <http://www.washingtonpost.com/blogs/wonkblog/wp/2013/09/28/the-house-gops-shutdown-plan-is-great-news/>

House Republicans plan to attach a one-year delay of Obamacare to the continuing resolution. That sharply increases the chances of a government shutdown beginning Monday night.¶ Good.¶ Speaker Boehner's original plan was to pass a clean bill to fund the government and then attach the one-year delay of Obamacare to the debt-ceiling bill. It was a strategy that would minimize the chances of a shutdown but maximize the chances of a default.¶ Boehner wanted that strategy because he thought Republicans had more leverage on the debt limit than they do on the shutdown. A shutdown, after all, is just bad for the economy. A default is catastrophic for it. You'd have to be insanely reckless to permit the federal government to default on its debts. And Boehner believes that House Republicans are insanely reckless and that President Obama isn't.¶ But that strategy failed. Boehner's members refused to wait for the debt ceiling. They want their showdown now. And that's all for the better.¶ Moving the one-year delay of Obamacare to the CR maximizes the chances of a shutdown but makes a default at least somewhat less likely. If a shutdown begins Monday night, Republicans and Democrats will have more than two weeks to resolve it before hitting the debt ceiling.¶ As Alec Phillips put it in a research note for Goldman Sachs, "If a shutdown is avoided, it is likely to be because congressional Republicans have opted to wait and push for policy concessions on the debt limit instead. By contrast, if a shutdown occurs, we would be surprised if congressional Republicans would want to risk another difficult situation only a couple of weeks later. The upshot is that while a shutdown would be unnecessarily disruptive, it might actually ease passage of a debt limit increase."¶ One way a shutdown makes the passage of a debt limit increase easier is that it can persuade outside actors to come off the sidelines and begin pressuring the Republican Party to cut a deal. One problem in the politics of the fiscal fight so far is that business leaders, Wall Street, voters and even many pundits have been assuming that Republicans and Democrats will argue and carp and complain but work all this out before the government closes down or defaults. A shutdown will prove that comforting notion wrong, and those groups will begin exerting real political pressure to force a resolution before a default happens.

#### 2) We control the direction – their ev doesn’t assume PC – Obama won’t budge – that’s key to a deal

Parnes 9-30

(Amie Parnes, White House correspondent at The Hill, “Not giving an inch is seen as best strategy for win at White House” 09/30/13, http://thehill.com/homenews/administration/325663-not-giving-an-inch-is-seen-as-best-strategy-for-win-at-white-house,%20accessed%2010-1-13, KB)

There was no shadow of doubt at the White House as the clocked ticked down to midnight Monday.¶ Officials suggested that a refusal to negotiate over funding the government was the winning strategy.¶ White House officials expressed confidence they wouldn’t have to back down in the slightest, while aides close to Obama, former administration officials and top Democratic strategists who confer with the White House say the chances of them negotiating with Republicans are slim to none.¶ Sources said the White House believes GOP divisions, and polls showing more people would blame Republicans in Congress for a shutdown, mean Obama — who has been blamed for giving in too much in previous bargaining sessions — won’t have to give an inch.¶ White House officials were even more emboldened by support from Senate Republicans, including Sen. Susan Collins of Maine, who said publicly that she disagreed with the House Republican strategy of linking the Affordable Care Act with “the continuing functioning of government.”¶ Some Republicans in the House on Monday also expressed public support for moving a clean funding measure, something the White House will see as giving it more leverage.¶ Those close to the White House say Republicans have backed themselves into a corner with few options remaining.¶ “This is truly [Speaker] John Boehner’s [R-Ohio] worst nightmare,” one former senior administration official said. “This is Republican on Republican violence right now. This has absolutely nothing to do with Democrats or the president. So all Obama has to do now is sit back.”¶ The battle isn’t about “lack of engagement,” the former official added.¶ “The president could go to the Capitol and give the speech of his life on why we shouldn’t shut down the government. But you have this Tea Party base that will never be placated, and they’re itching for a fight. But I have news for them: They won’t win it,” the official said.¶ Another former administration official added, “The question isn’t, should he negotiate. It’s who does he negotiate with. Who up there is actually empowered to cut a deal. It’s not clear. They can’t make up their minds amongst themselves, so who can he negotiate with to reach a deal that sticks?”¶ White House senior adviser Dan Pfeiffer backed that sentiment in an interview on CNN.¶ “What the Republicans want is to extract some ideological concession in order to save face for the Tea Party that funds the government for two months,” Pfeiffer said. “What happens two months from now? What are they going to want then? Full repeal of ObamaCare? Overturn of Roe v. Wade? An installment of [Mitt] Romney as president? At some point, we have to bring this cycle of hostage taking and brinksmanship to an end.”¶ In the lead-up to the shutdown, Obama sent strong signals that he felt he was on the right side of the fight. On Saturday, with the House in session and voting on legislation to avoid the shutdown, the president played a round of golf. ¶ Likewise, Senate Majority Leader Harry Reid (D-Nev.) — who has been coordinating closely with the White House — was in no rush to convene the upper chamber on Sunday.¶ The first former senior administration official credited Reid with stepping up his role in the fight. “Harry Reid is basically saying, ‘No way, not again,’ ” the former official said.¶ Some Republicans accused the White House of over-confidence Monday and said Obama risked getting plenty of blame for a shutdown by not negotiating with Republicans.¶ “If we’re unable to avoid a crisis in the next few weeks, the president will have to explain why he sat at home and did nothing to help find a solution,” said Brendan Buck, a spokesman for Boehner.¶ “Obama is the president, and his job is to lead,” said Kirsten Kukowski, a spokeswoman at the Republican National Committee. “The longer he refuses to come to the table, the more Americans will realize he’s the typical politician he promised he wouldn’t be.”¶ With cable news networks displaying countdown clocks until the deadline Monday, Obama did telegraph a willingness to at least talk to congressional leaders.¶ “I suspect I will be speaking to the leaders today, tomorrow and the next day,” Obama told reporters earlier in the day.¶ Later in the day, however, he signaled a tougher line, stating that “one faction of one party in one house of Congress in one branch of government doesn’t get to shut down the entire government just to refight an election.”¶ “You don’t get to extract a ransom for doing your job,” Obama said. ¶ Those close to the White House predicted that a deal would eventually be reached, even after the deadline. But they reaffirmed the confidence that it would be Republicans who would suffer the consequences.¶ In the meantime, as the debt-ceiling fight heats up, they said Obama would ramp up the rhetoric and use the bully pulpit to drive home that point. In addition, one former senior official said Obama has to get the business community and Wall Street to say, “What the f--- is happening here?”¶ “As people realize what this will do to the stock market, they’ll ask Boehner and the Tea Party, ‘Is this what you really want?’” the official added.¶ “The more he can remain a bit above the fray and say, ‘I’m not going to get on your level’, the better. ”

#### 4) Holding the line – it gives Obama leverage over the GOP

Epstein 10-1

(Reid Epstein, writer for POLITICO, “Government shutdown: President Obama holds the line,” 10-1-13, http://www.politico.com/story/2013/10/government-shutdown-president-obama-holds-the-line-97646.html?hp=l4, KB)

President Barack Obama started September in an agonizing, extended display of how little sway he had in Congress. He ended the month with a display of resolve and strength that could redefine his presidency.¶ All it took was a government shutdown.¶ This was less a White House strategy than simply staying in the corner the House GOP had painted them into — to the White House’s surprise, Obama was forced to do what he so rarely has as president: he said no, and he didn’t stop saying no.¶ For two weeks ahead of Monday night’s deadline, Obama and aides rebuffed the efforts to kill Obamacare with the kind of firm, narrow sales pitch they struggled with in three years of trying to convince people the law should exist in the first place. There was no litany of doomsday scenarios that didn’t quite come true, like in the run-up to the fiscal cliff and the sequester. No leaked plans or musings in front of the cameras about Democratic priorities he might sacrifice to score a deal.¶ After five years of what’s often seen as Obama’s desperation to negotiate — to the fury of his liberal base and the frustration of party leaders who argue that he negotiates against himself. Even his signature health care law came with significant compromises in Congress.¶ Instead, over and over and over again, Obama delivered the simple line: Republicans want to repeal a law that was passed and upheld by the Supreme Court — to give people health insurance — or they’ll do something that everyone outside the GOP caucus meetings, including Wall Street bankers, seems to agree would be a ridiculous risk.¶ “If we lock these Americans out of affordable health care for one more year,” Obama said Monday afternoon as he listed examples of people who would enjoy better treatment under Obamacare, “if we sacrifice the health care of millions of Americans — then they’ll fund the government for a couple more months. Does anybody truly believe that we won’t have this fight again in a couple more months? Even at Christmas?”¶ The president and his advisers weren’t expecting this level of Republican melee, a White House official said. Only during Sen. Ted Cruz’s (R-Texas) 21-hour floor speech last week did the realization roll through the West Wing that they wouldn’t be negotiating because they couldn’t figure out anymore whom to negotiate with. And even then, they didn’t believe the shutdown was really going to happen until Saturday night, when the House voted again to strip Obamacare funding.¶ This wasn’t a credible position, Obama said again Monday afternoon, but rather, bowing to “extraneous and controversial demands” which are “all to save face after making some impossible promises to the extreme right wing of their political party.”¶ Obama and aides have said repeatedly that they’re not thinking about the shutdown in terms of political gain, but the situation’s is taking shape for them. Congress’s approval on dealing with the shutdown was at 10 percent even before the shutters started coming down on Monday according to a new CNN/ORC poll, with 69 percent of people saying the House Republicans are acting like “spoiled children.”¶ “The Republicans are making themselves so radioactive that the president and Democrats can win this debate in the court of public opinion” by waiting them out, said Jim Manley, a Democratic strategist and former aide to Senate Majority Leader Harry Reid who has previously been critical of Obama’s tactics.¶ Democratic pollster Stan Greenberg said the Obama White House learned from the 2011 debt ceiling standoff, when it demoralized fellow Democrats, deflated Obama’s approval ratings and got nothing substantive from the negotiations.¶ “They didn’t gain anything from that approach,” Greenberg said. “I think that there’s a lot they learned from what happened the last time they ran up against the debt ceiling.”¶ While the Republicans have been at war with each other, the White House has proceeded calmly — a breakthrough phone call with Iranian President Hassan Rouhani Friday that showed him getting things done (with the conveniently implied juxtaposition that Tehran is easier to negotiate with than the GOP conference), his regular golf game Saturday and a cordial meeting Monday with his old sparring partner Israeli Prime Minister Benjamin Netanyahu.¶ White House press secretary Jay Carney said Monday that the shutdown wasn’t really affecting much of anything.¶ “It’s busy, but it’s always busy here,” Carney said. “It’s busy for most of you covering this White House, any White House. We’re very much focused on making sure that the implementation of the Affordable Care Act continues.”¶ Obama called all four congressional leaders Monday evening — including Boehner, whose staff spent Friday needling reporters to point out that the president hadn’t called for a week. According to both the White House and Boehner’s office, the call was an exchange of well-worn talking points, and changed nothing.¶ Manley advised Obama to make sure people continue to see Boehner and the House Republicans as the problem and not rush into any more negotiations until public outrage forces them to bend.¶ “He may want to do a little outreach, but not until the House drives the country over the cliff,” Manley said Monday, before the shutdown. “Once the House has driven the country over the cliff and failed to fund the government, then it might be time to make a move.”¶ The White House believes Obama will take less than half the blame for a shutdown – with the rest heaped on congressional Republicans.¶ The divide is clear in a Gallup poll also out Monday: over 70 percent of self-identifying Republicans and Democrats each say their guys are the ones acting responsibly, while just 9 percent for both say the other side is.¶ If Obama is able to turn public opinion against Republicans, the GOP won’t be able to turn the blame back on Obama, Greenberg said. “Things only get worse once things begin to move in a particular direction,” he said. “They don’t suddenly start going the other way as people rethink this.”

#### 4) Boehner - He’ll cave

Schroeder 10-3

(Robert Schroeder, “NYT: Boehner indicates flexibility on debt limit” Oct. 3, 2013, http://www.marketwatch.com/story/nyt-boehner-indicates-flexibilty-on-debt-limit-2013-10-03?reflink=MW\_news\_stmp, KB)

House Speaker John Boehner has told colleagues he's determined to prevent a federal default and is willing to pass a bill raising the debt limit with both Republican and Democratic votes, the New York Times is reporting. A House Republican who didn't want to be named told the Times that Boehner indicated he is willing to violate the so-called Hastert rule if necessary. That rule refers to a policy of not bringing to the House floor a bill that doesn't have a majority of Republican votes. The Treasury Department warned anew on Thursday of the consequences of a default by the U.S.

#### Constant pressure on the GOP is key – the plan trades-off

Milbank, 9/27

Washington Post Opinion Writer (Dana, “Obama should pivot to Dubya’s playbook” Washington Post, <http://www.washingtonpost.com/opinions/dana-milbank-obama-should-try-pivoting-to-george-bushs-playbook/2013/09/27/c72469f0-278a-11e3-ad0d-b7c8d2a594b9_story.html>)

If President Obama can stick to his guns, he will win his October standoff with Republicans. That’s an awfully big “if.” This president has been consistently inconsistent, predictably unpredictable and reliably erratic. Consider the events of Thursday morning: Obama gave a rousing speech in suburban Washington, in defense of Obamacare, on the eve of its implementation. “We’re now only five days away from finishing the job,” he told the crowd. But before he had even left the room, his administration let slip that it was delaying by a month the sign-up for the health-care exchanges for small businesses. It wasn’t a huge deal, but it was enough to trample on the message the president had just delivered. Throughout his presidency, Obama has had great difficulty delivering a consistent message. Supporters plead for him to take a position — any position — and stick with it. His shifting policy on confronting Syria was the most prominent of his vacillations, but his allies have seen a similar approach to the Guantanamo Bay prison, counterterrorism and climate change. Even on issues such as gun control and immigration where his views have been consistent, Obama has been inconsistent in promoting his message. Allies are reluctant to take risky stands, because they fear that Obama will change his mind and leave them standing alone. Now come the budget showdowns, which could define the rest of his presidency. Republican leaders are trying to shift the party’s emphasis from the fight over a government shutdown to the fight over the debt-limit increase, where they have more support. A new Bloomberg poll found that Americans, by a 2-to-1 margin, disagree with Obama’s view that Congress should raise the debt limit without any conditions. But Obama has a path to victory. That poll also found that Americans think lawmakers should stop trying to repeal Obamacare. And that was before House Republicans dramatically overplayed their hand by suggesting that they’ll allow the nation to default if Obama doesn’t agree to their laundry list of demands, including suspending Obamacare, repealing banking reforms, building a new oil pipeline, easing environmental regulations, limiting malpractice lawsuits and restricting access to Medicare. To beat the Republicans, Obama might follow the example of a Republican, George W. Bush. Whatever you think of what he did, he knew how to get it done: by simplifying his message and repeating it, ad nauseam, until he got the result he was after. Obama instead tends to give a speech and move along to the next topic. This is why he is forever making “pivots” back to the economy, or to health care. But the way to pressure Congress is to be President One Note. In the debt-limit fight, Obama already has his note: He will not negotiate over the full faith and credit of the United States. That’s as good a theme as any; it matters less what the message is than that he delivers it consistently. The idea, White House officials explained to me, is to avoid getting into a back-and-forth over taxes, spending and entitlement programs. “We’re right on the merits, but I don’t think we want to argue on the merits,” one said. “Our argument is not that our argument is better than theirs; it’s that theirs is stupid.” This is a clean message: Republicans are threatening to tank the economy — through a shutdown or, more likely, through a default on the debt — and Obama isn’t going to negotiate with these hostage-takers. Happily for Obama, Republicans are helping him to make the case by being publicly belligerent. After this week’s 21-hour speech on the Senate floor by Sen. Ted Cruz (R-Tex.), the publicity-seeking Texan and Sen. Mike Lee (R-Utah) objected to a bipartisan request to move a vote from Friday to Thursday to give House Republicans more time to craft legislation avoiding a shutdown. On the Senate floor, Sen. Bob Corker (R-Tenn.) accused them of objecting because they had sent out e-mails encouraging their supporters to tune in to the vote on Friday. The Post’s Ed O’Keefe caught Cruz “appearing to snicker” as his colleague spoke — more smug teenager than legislator. Even if his opponents are making things easier for him, Obama still needs to stick to his message. As in Syria, the president has drawn a “red line” by saying he won’t negotiate with those who would put the United States into default. If he retreats, he will embolden his opponents and demoralize his supporters.

#### Yes collapse ---

#### 1) Business confidence – default wrecks it

Davis, 9/23

(Susan, USA Today, “Clock ticking on shutdown, with 'Obamacare' center stage;

GOP ties health care law to two budget deadlines” lexis)

However the stopgap spending bill is resolved, soon after it lurks a fiscal fight that holds greater consequences to the U.S. and global economies. "Shutting down the government is one bad thing, but you shut it down, you open it up again," said Minority Leader Nancy Pelosi, D-Calif., "Not lifting the debt limit is unleashing a torrent, a river of no return. It is beyond cataclysmic." The nation has never defaulted. Though the exact impacts are unclear, there is broad consensus among economists, financial markets and most lawmakers that it would upend the markets. "If you don't raise the debt limit in time, you will be opening an economic Pandora's Box. It will be devastating to the economy," Moody's economist Mark Zandi testified before a congressional panel last week. He explained the consequences: "Consumer confidence will sharply decline, investor confidence, business confidence. Businesses will stop hiring, consumers will stop spending, the stock market will fall significantly in value, borrowing costs for businesses and households will rise."

#### That’s key to the economy

Goldmark, 9/22

Former budget director of New York State and publisher of the International Herald Tribune, Goldmark headed the climate program at the Environmental Defense Fund (Peter, Newsday (New York), lexis)

Apparently our closest ally couldn't quite figure out what they wanted to do either, and voted against supporting the president in his proposed military strike on Syria. The lifetime of the proposal for a military strike was briefer than expected - though long enough both to ask Congress to approve it and to allow the Syrians to move their chemical weapons. But before Congress could get around to debating the question, the Russians came up with a plan under which the Syrians would hand over their chemical weapons to an international force supervised, in part, by the Russians. After having said that you can't trust the Russians on Syria, the U.S. government leaped into their arms - even though their plan was dependent for both approval and enforcement on a UN Security Council where both Russia and China have a veto. And in the middle of all this, a group of influential senators from the president's own party attacked Obama's putative nominee to head the Federal Reserve before the choice was even announced. Yes, indeed, many of the weaknesses of the Obama administration have been on display over the past few months. They include not thinking clearly through the consequences of decisions and not communicating with the American people or world leaders in terms compelling and coherent enough to command support. And this is the government we are counting on to lead us through a difficult confrontation over approving a spending plan and raising the debt ceiling next month - a crisis with enormous potential to disrupt the economy and harm American families. What's at stake here? The financial system depends on confidence - confidence that debts will be paid, that governments will support their currencies, that large financial institutions will not fail, and that all the millions of retail financial payments and transactions on which families and businesses depend will continue. A failure or even a significant delay in agreeing on a financing and spending plan for the U.S. government could cause that web of trust and transactions to unravel in several places. And the very prospect of damage to that web could itself trigger a cascade of breaks in the system. The financial markets are skittish cats, as we have had painful reason to be reminded over the past several years. Consider, for example, the consequences of the inability of the U.S. government to assure an orderly market in the face of low or no demand for U.S. Treasury notes. Consider the impact on the U.S. economy and global confidence if the government were unable to fully meet its obligations under Social Security or Medicare and Medicaid in October or November, or had to stretch out payments to its contractors and vendors. What have the Republicans in the House said about this prospect? At least some have said they don't care. And this summer has taught us that under great pressure and against tough deadlines, this administration is not at its best. It would be a cruel outcome for Americans struggling to find work and make ends meet in a fragile recovery if a divided and incompetent government threw us back into a deeper recession. Fasten your seat belts, please. We are about to experience some turbulence.

#### 2) Stock Market – default collapses it, causing a global financial crisis – economists agree

Lowrey 9-30

(ANNIE LOWREY, covers economic policy for the Washington bureau of The New York Times, “How a Debt-Ceiling Crisis Could Become a Financial Crisis” September 30, 2013, <http://economix.blogs.nytimes.com/2013/09/30/how-a-debt-ceiling-crisis-could-become-a-financial-crisis/>, KB)

Come mid-October, the United States will have only $30 billion of cash on hand. On any given day, its net payments can reach as high as $60 billion. That means that unless Congress raises the debt ceiling, allowing the Treasury to issue new debt, the United States may find itself unable to make all of its payments — stiffing government contractors, or state and local governments, or even its bondholders.¶ Economists widely agree that such an unprecedented event would have profound effects for the markets, likely precipitating a stock-market sell-off and setting off a round of global financial turbulence. But it has always been a little unclear just how it may play out. The Treasury might announce it would be forced to delay some payments, promising to do what it could to make sure bondholders were made whole. But then what?

#### 3) Sectors - every key sector will implode – takes out resiliency

McAuliff 9/18

Michael McAuliff, HuffPo, 9/18/13, Debt Limit Showdown Could Be Catastrophic For Economy: Analysts , www.huffingtonpost.com/2013/09/18/debt-limit-showdown\_n\_3950890.html

The House Republican plan to have showdowns over both funding the government and raising the nation's debt limit could have severe consequences for the overall U.S. economy, non-partisan analysts said Wednesday.¶ The concern surrounding a potential political fight over the country's borrowing cap next month was highlighted prominently by Moody's economist Mark Zandi, a former adviser to Sen. John McCain (R-Ariz.) who testified at a joint congressional hearing Wednesday on "The Economic Costs of Debt-Ceiling Brinkmanship.”¶ The debt limit, which stands at $16.7 trillion, authorizes the Treasury Department to pay for the spending that has already been authorized by Congress. Treasury officials warned in the spring that they had begun taking extraordinary measures to keep the government's bills paid, and would likely have to default on some payments in mid-October if Congress did not grant borrowing authority that equals the spending it has written into law.¶ Such a default would be devastating, Zandi warned.¶ "You need to raise the debt limit. There's no other option," he told lawmakers. "Otherwise, it's disastrous. It's counterproductive to your own goals because it's going to result in a recession, bigger deficits and raise the debt."¶ House Speaker John Boehner (R-Ohio) argued earlier on Wednesday that the debt limit is often used as a negotiating lever for politicians, and Rep. Sean Duffy (R-Wis.) made the same point during the hearing, asking why Democrats shouldn't be more willing to talk over Republican demands.¶ Much like Democrats who released their own report on the topic, Zandi noted, however, that in the last showdown over the debt ceiling two years ago, the U.S. government's credit rating was downgraded and the stock market tanked.¶ "You can only put the gun to your head so many times before someone's going to make a mistake and pull the trigger, and it's to everyone's detriment," Zandi told Duffy.¶ He gave a crushing summary of the potential impacts of a default.¶ "If you don't raise the debt limit in time, you will be opening an economic Pandora's box. It will be devastating to the economy," he predicted. "If you don't do it in time, confidence will evaporate, consumer confidence will sharply decline, [as well as] investor confidence, business confidence. Businesses will stop hiring, consumers will stop spending, the stock market will fall significantly in value, borrowing costs for businesses and households will rise."¶ "We'll be in the middle of a very, very severe recession, and I don't see how we get out of it," he added.

#### Politics DA’s are intrinsic

Saideman 11

associate professor of political science - McGill University, 7/25 (Steve, “Key Constraint on Policy Relevance,” http://duckofminerva.blogspot.com/2011/07/key-constraint-on-policy-relevance.html)

Dan Drezner has a great post today about how the foreign policy smart set (his phrase) gets so frustrated by domestic politics that they tend to recommend domestic political changes that are never going to happen. I would go one step further and suggest that one of the key problems for scholars who want to be relevant for policy debates is that we tend to make recommendations that are "incentive incompatible." I love that phrase. What is best for policy may not be what is best for politics, and so we may think we have a good idea about what to recommend but get frustrated when our ideas do not get that far. Lots of folks talking about early warning about genocide, intervention into civil wars and the like blame "political will." That countries lack, for whatever reason, the compulsion to act. Well, that is another way of saying that domestic politics matters, but we don't want to think about it. Dan's piece contains an implication which is often false--that IR folks have little grasp of domestic politics. Many IR folks do tend to ignore or simplify the domestic side too much, but there is plenty of scholarship on the domestic determinants of foreign policy/grand strategy/war/trade/etc. Plenty of folks look at how domestic institutions and dynamics can cause countries to engage in sub-optimal foreign policies (hence the tradeoff implied in my second book--For Kin or Country). The challenge, then, is to figure out what would be a cool policy and how that cool policy could resonate with those who are relevant domestically. That is not easy, but it is what is necessary. To be policy relevant requires both parts--articulating a policy alternative that would improve things and some thought about how the alternative could be politically appealing. Otherwise, we can just dream about the right policy and gnash our teeth when it never happens.

#### Prefer our issue specific evidence

Jacobs and King 10

University of Minnesota, Nuffield College, (Lawrence and Desmond, “Varieties of Obamaism: Structure, Agency, and the Obama Presidency,” Perspectives on Politics (2010), 8: 793-802)

Yet if presidential personality and leadership style come up short as primary explanations for presidential success and failure, this does not render them irrelevant. There is no need to accept the false choice between volition and structure—between explanations that reduce politics to personality and those that focus only on system imperatives and contradictions. The most satisfying explanations lie at the intersection of agency and structure—what we describe as structured agency. Presidents have opportunities to lead, but not under the circumstances they choose or control. These circumstances both restrict the parameters of presidential impact and highlight the significance of presidential skill in accurately identifying and exploiting opportunities. Indeed, Obama himself talks about walking this tightrope—exercising “ruthless pragmatism” in seizing opportunities for reform while accepting the limits and seeking to “bridge that gap between the status quo and what we know we have to do for our future”.12

#### Political capital is real – academic work confirms

Casey 8

Kimberly L. Casey 8, Visiting Assistant Professor of Political Science at William Jewel College, 2008, “Defining Political Capital: A Reconsideration of Bourdieu’s Interconvertibility Theory,” <http://lilt.ilstu.edu/critique/spring%202008/casey.pdf>

Abstract: This article examines the concept “political capital” (PC) and its context in American politics. Political capital is ill-defined, little understood, yet an important concept for understanding political exchange and relationships in the political arena. I establish a definition based upon Pierre Bourdieu’s interconvertibility theory, which indicates that capital types, such as economic, social, and symbolic forms, interact and can be exchanged for one another. Since the material and non-material components of capital variations are transposable, it can be argued that no capital form is essentially “pure”—every type of capital contains elements of other varieties. Political capital, therefore, is an amalgamation of capital types combined in various ways for specific political markets. It is market demand that shapes capital formation. Capital elements from other capital types inherent in the candidacy market are identified as an example. An index for measuring this variant of political capital is created, demonstrating its conceptual viability. Introduction: After the 2004 U.S. presidential election, George W. Bush publicized his intent to utilize “political capital” for future projects garnered as a result of his victory. But what exactly is political capital? However much the term is bandied about by politicians or the press, political capital has no established definition in political science literature. Although it remains ill-defined and unmeasured, it is an important concept for understanding political exchange and relationships in the political arena despite the reservations some political scientists have expressed about its applicability because of its complex material and nonmaterial associations. An analysis of sociologist Pierre Bourdieu’s interconvertibility theory allows for conceptualization of material and non-material of interactions among capital forms making it possible to define political capital and design an index to measure it based upon previous capital literature. To develop an empirical basis for political capital, this article first examines the associations it connotes in the popular press today. In contrast, a definition of political capital based upon capitalization literature and Bourdieu’s interconvertibility theory is presented. Then, a theory of political capital functions and markets are suggested. Theorizing leads to proposals for objective means of identification and measurement. To illustrate the market association between capital and politics, an index associated with the resources associated with the candidacy market is offered. The paper concludes with directions that studying the concept of political capital may take towards theory-building and framework creation. Defining Political Capital It is erroneous to refer a “body” of PC literature when seeking a definition. Most writers and concerned actors who invoke the term political capital assume that its meaning is understood. It is inferred to be an entity which political actors possess, build up and spend. 1 However, a definition of “political capital” is typically never stated—the reader or observer is left to determine their own definition based upon the politician’s or journalist’s usage of the term (Suellentrop 2004; Kennicott 2004; “A Year of Setbacks” 2005; and Froomkin 2004). The subjectivity is not reflective of what political capital conceptually means in and to the political arena. Without a sound definition that accurately portrays the elements of political capital as it works within a political marketplaces, such as the electoral arena, and among office holders (executive, legislative, and judicial), bureaucracy, and in society in general, the concept is meaningless. Defining and utilizing PC as a viable political variable can evolve from the proliferation of capital theories in various fields of study. Political capital can and should be associated with a wide variety of previous “capital” interpretations. The key to explicating political capital is within capital literatures and how they address materialism, non-materialism, and combining the two elements.2 The theory of capital is traditionally associated with economics. There is no clear consensus in defining capital as an ideological function applicable beyond material exchange as expounded in economic capital theory, however. Yet nonmaterial forms of capital are well established in scholarly literature. Most of the “capital type” definitions hover around the meaning and terminology of economic capital. Certain theorists believe that all capital forms, regardless of their composition or purpose, connect in some way with economic capital. 3 Pierre Bourdieu’s work is invaluable in understanding capital as conceptually distinguishable from its individual aberrations as a material phenomenon. Bourdieu extends the ideas and metaphor of economic interest (material or physical pursuits) to include non-economic goods and services (symbolic or nonmaterial pursuits). Within this conceptualization, Bourdieu constructs a science of practices that “analyzed all human functions as ‘oriented towards the maximization of material or symbolic profit.’” 4 His theory of capital has limitations, however. He relies on ideal types and lacks the empirical research needed to support much theory. It is impossible to refer to capital-types and not acknowledge Bourdieu’s contributions to multiple capital species (Bourdieu1986; Kane 2001; Putnam 2001; Becker 1993); Fitz-Enz 2000; Davenport 1999; Marr 2005).

## Case

#### Ethics are inherently situational. The aff’s way of dealing with uncomfortable questions of policy is by finessing the problem and pretending that actual costs can be papered over. That’s not how decisions work. We are constantly forced to make hard choices because we have finite resources and political capabilities, but ethical discourse pretends these problems don’t exist. When faced with our own inadequacies and inability to help people, we push the blame onto others to maintain the purity of our intentions.

Chandler, 1 – Policy Research Institute @ Leeds Metropolitan University

(David, Human Rights Quarterly 23, “The Road to Military Humanitarianism”)

When intervening for ethical ends there is little pressure to account for final policy outcomes. Whatever happens in the targeted states, under international sanctions or military action, it can be alleged to be better than non-intervention. As both Tony Blair and The Guardian argued in response to the ‘collateral’ deaths of ethnic Albanian refugees from the high altitude Nato bombing campaign in Kosovo: ‘Milosevic is determined to wipe a people from the face of this country. Nato is determined to stop him’(The Guardian, 15 May 1999). The House of Commons Foreign Affairs Committee, although dismissing the idea that there was a Serb policy of genocide, still concluded that ‘The issue in Kosovo was ... whether in the absence of Nato intervention, the Serb campaign would have continued over many years, eventually resulting in more deaths and instability in the region than if Nato had not intervened. We believe that it would’ (UKFAC 2000, para.123). The belief that it would have been even worse without international action provides a hypothetical post facto justification that is difficult to disprove. The discourse of ethical foreign policy establishes a framework of western intervention which inevitably encourages a positive view of intervention in the face of exaggerated fears of non-intervention.

#### The impact is genocide

Mohawk, Associate Professor of History @ SUNY Buffalo, ‘2K

(John C, Utopian Legacies, p. 4-5)

People who believe that they are acting on a plan to solve all of the humankind’s problems think they are on a kind of sacred mission, even when the origin of their inspiration is secular in nature and makes no claim to intervention by a higher power. Although adherents may have only a vague idea about how the utopia will come about or what it will be like when it arrives, utopian movements often stimulate high levels of enthusiasm and a widely shared sense of being a “chosen people” with a special destiny. People caught up in such movements tend to be intolerant of others who are not part of this projected destiny, who do not believe in the same things, and are not expected to share in the future benefits. One reason for the popularity of these movements is that they exalt the importance of the group, praise their imagined superior qualities and future prospects, and urge that, relative to other peoples, they are special and more deserving. This pattern of self-aggrandizement has often proven popular and energizing. It contains a message that others who are not special or chosen are without significant value and may be treated accordingly. This kind of intolerance can result in the denial of rights, including the right to live, to hold property, to vote, or to hold professional licenses, if the inspired group has the power to do these things. A scornful indifference to these unbelieving and unentitled others can manifest as racism and/or ethnocentrism. Such intolerance has been known to lead to crimes against humanity, including systematic acts of genocide.

#### Moral absolutism is counterproductive – it undermines coalitions and causes exclusion

Isaac, 2 – Professor of Poli Sci @ U Indiana, Bloomington

(Jeffrey, Ends, Means and Politics, Dissent, Vol 49, Iss. 2, Spring)

As writers such as Niccolo Machiavelli, Max Weber, Reinhold Niebuhr, and Hannah Arendt have taught, an unyielding concern with moral goodness undercuts political responsibility. The concern may be morally laudable, reflecting a kind of personal integrity, but it suffers from three fatal flaws: (1) It fails to see that the purity of one’s intention does not ensure the achievement of what one intends. Abjuring violence or refusing to make common cause with morally compromised parties may seem like the right thing; but if such tactics entail impotence, then it is hard to view them as serving any moral good beyond the clean conscience of their supporters; (2) it fails to see that in a world of real violence and injustice, moral purity is not simply a form of powerlessness; it is often a form of complicity in injustice. This is why, from the standpoint of politics--as opposed to religion--pacifism is always a potentially immoral stand. In categorically repudiating violence, it refuses in principle to oppose certain violent injustices with any effect; and (3) it fails to see that politics is as much about unintended consequences as it is about intentions; it is the effects of action, rather than the motives of action, that is most significant. Just as the alignment with “good” may engender impotence, it is often the pursuit of “good” that generates evil. This is the lesson of communism in the twentieth century: it is not enough that one’s goals be sincere or idealistic; it is equally important, always, to ask about the effects of pursuing these goals and to judge these effects in pragmatic and historically contextualized ways. Moral absolutism inhibits this judgment. It alienates those who are not true believers. It promotes arrogance. And it undermines political effectiveness.

#### They wipe out entire populations from political meaning – the claim that they’re not responsible for the people they accidentally hurt is a way of devaluing people who fall outside their political project.

Chandler, 1 – Policy Research Institute @ Leeds Metropolitan University

(David, Human Rights Quarterly 23, “The Road to Military Humanitarianism”)

The search for victims has dominated media coverage of humanitarian crises. The Kosovo crisis, for example, saw journalists “impatient to find a ‘good’ story—i.e. a mass atrocity.”57 Many Western journalists were dispatched to Macedonia and Albania with the sole purpose of finding a rape victim. Benedicte Giaever of the Organization for Security and Cooperation in Europe (OSCE) was angered that “almost every journalist who came to see her asked one thing: could she give them a rape victim to interview?”58 This approach, which takes the humanitarian crisis out of a political context to tell a “fairy tale” or moral story, has been termed the “journalism of attachment.” This style of journalism has been forcefully critiqued:

[F]ar from raising public understanding of the horrors of war, their reports mystify what conflicts are really about. By abstracting acts of violence from any wider conflict over political aims, they remove any possibility of people seeing what caused the war. The result of imposing a ready-made Good v Evil framework on every situation is that conflicts can only be understood as the consequence of man’s atavistic, bestial urges. Instead of “humanising” a war, this approach ultimately dehumanises all those involved.59

Alex de Waal terms the outlook of the international humanitarian agencies, and media promotion of their cause, “disaster tourism”; in humanitarian crises they selectively saw the worst and assumed the worst.60 The lack of knowledge of the severity of the famine, drought, or civil conflict led to exaggerated predictions of the death toll, and, of course, the need for support for the agency’s declared rights-based humanitarian aims. The predominant approach of humanitarian interventionists to the conflicts in former Yugoslavia and Rwanda demonstrates the dangers inherent in this perspective. The humanitarian NGOs have explained the civil conflicts as events in and of themselves, from which it can only be concluded that the people of these regions are uncivilized, prone to violent and savage ethnic passions, or at the very least easily manipulated by government propaganda because they lack independent critical faculties.61

The campaigning human rights-based NGOs did much to denigrate the non-Western state and legitimize Western activism through the creation of the incapable human rights victim. As Pierre Krähenbuhl notes:

[T]he legitimacy of the humanitarian gesture is intimately connected with the ability to consider the “other”, the person in need, as a human being, something which the repeated use of the expression “victim” tends to make more difficult. It strips of all human dignity the man, woman or child whom it is supposed to define.62

While Cold War power politics tarnished the idea of “human-centered” state-led human rights activism, the campaigning and aid NGOs revived the concept of “ethical” Western involvement in humanitarian issues. As the late John Vincent noted: “[t]here is one sense, however, in which the arrival of the issue of human rights in international society may be regarded as wholly progressive. It is the sense in which the idea of human rights is borne by non-governmental organizations who act in defense of no sectional interest.”63

With the end of the Cold War the geopolitical straitjacket was removed and humanitarian agencies and human rights advocacy groups seized the opportunity to influence the international agenda.64 The agencies that were able to do this most successfully were those that clearly pursued rightsbased “new humanitarianism” and rejected the post-1945 humanitarian aid framework of ICRC neutrality and needs-based emergency relief, which was tied to respect for state sovereignty rather than human rights protection. The NGOs made the running in the New Order because they were less bound by either official mandates or Cold War orientations than international institutions. The lack of legal mandate and organizational flexibility has made it easy for NGOs to adapt their perspective to be in tune with the times. The major exception to this shift has been the ICRC, the only international relief organization apart from the UN High Commissioner for Refugees (UNHCR) tied to a mandate under international law (the Geneva Convention regulations).

This new sort of humanitarianism, which instead of operating separately from political mechanisms, saw itself as an alternative guide to policy making. Far from being neutral in relation to the aspirations of both Soviet Communism and US-led market economies, both these perspectives were seen to be flawed because they put politics above people. The language of human rights was the perfect foil for advocating an NGO-led approach. Rejecting the political Cold War framework and the narrow strategic concerns of geopolitical strategy, the immediate situation of the victims was held to be all that mattered. Michael Ignatieff quotes the disillusion of Don McCullin, a British war photographer:

[B]ut what are my politics? I certainly take the side of the underprivileged. I could never say I was politically neutral. But whether I’m of the Right or the Left—I can’t say. . . . I feel, in my guts, at one with the victims. And I find there’s integrity in that stance.65

Ignatieff astutely notes that this approach is a “weary world away from the internationalism of the 1960s” when there was a political cause at stake and conflict and interventionism could be supported or opposed on the basis of Left and Right.66 Today, he states “there are no good causes left— only victims of bad causes.”67 Once political change in non-Western states is seen to be a flawed and pointless exercise, the only sympathy is for victims: “the twentieth-century inflection of moral universalism has taken the form of an anti-ideological and antipolitical ethic of siding with the victim; the moral risk entailed by this ethic is misanthropy.”68 This approach risks “misanthropy” because human rights activists find little that is positive in the societies in which they work. Instead, the activists see only passive victims and evil or dangerous abusers.

#### Util best accounts for minorities

Shaw, 99 – Professor of Philosophy @ San Jose State

(William H, Contemporary Ethics, p. 13)

Actions affect people to different degrees. Your playing the stereo loudly might bring slight pleasure to three of your neighbors, cause significant discomfort to two others who do not share your taste in music or are trying to concentrate on something else, and leave a sixth person indifferent The utilitarian theory is not that each individual votes on the basis of his or her happiness or unhappiness with the majority ruling, but that we add up the various pleasures or pains, however large or small, and go with the action that results in the greatest net amount of happiness. Because any action will affect some people more strongly than others, utilitarianism is not the same as majority rule. For example, in the United States today it would probably increase overall happiness to permit homosexuals to marry, even though the thought of their doing so makes many heterosexuals slightly uncomfortable. This is because such a policy would affect the happiness or unhappiness of the majority only slightly, if at all, while it would profoundly enhance the lives of a small percentage of people. Even if banning homosexual marriages makes most people happy, it doesn't bring about the most happiness.As quoted earlier, Bentham famously said that the utilitarian standard is the greatest happiness of the greatest number." Although often repeated, this formulation is misleading. The problem is that it erroneously implies that we should maximize two different things: the amount of happiness produced and the number of people made happy.' Correctly understood, utilitarianism tells us to do only one thing, maximize happiness. Doing what makes the most people happy usually produces the most happiness, but it may not - as the example of homosexual marriages illustrates. For utilitarianism, it is the total amount of happiness, not the number of people whose happiness is increased, that matters.

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#### Util doesn’t compromise any group – no scenario

Shaw, 99 – Professor of Philosophy @ San Jose State

(William H, Contemporary Ethics, p. 233)

Critics of utilitarianism such as Rawls worry that furthering the longrun well-being of society might somehow or other necessitate crushing the life prospects of some group. If no alternative set of institutions would prove as beneficial to society as a whole, then utilitarianism would have to license as just the sacrifice of this group's basic interests. As we saw in Chapter 4, however, this is one of the bogeyman stories that opponents of utilitarianism like to make up. There is no credible or realistic scenario in which a socioeconomic system built on the systematic frustration of the basic interests of some group would maximize net social well-being in the long run. This is, of course, an assertion of fact, not of logic, but it is nevertheless an important truth about the human condition.

#### Attempts to avoid calculation reproduce calculability in its worst forms.

Jaques Derrida, French Philosopher, ’92 (Deconstruction and the Possibility of Justice, ed. Cornell, p. 28-29)

That justice exceeds law and calculation, that the unpresentable exceeds the determinable cannot and should not serve as an alibi for staying out of juridico-political battles, within an institution or state or between institutions or states and others. Left to itself, the incalculable and giving idea of justice is always very close to the bad, even to the worst for it can always be reapportioned by the most perverse calculation. It’s always possible. And so incalculable justice requires us to calculate. And first, closest to what we associate with justice, namely law, the juridicial field that one cannot isolate within sure frontiers, but also in all the fields from which we cannot separate it, which intervene in it and are no longer simply fields: ethics, politics, economics, psycho-sociology, philosophy, literature, etc. Not only must we calculate, negotiate the relation between the calculable and incalculable, and negotiate without the sort of tule that wouldn’t have to reinvented there where we are cast, there where we find ourselves; but we must take it as far as possible, beyond the place where we find ourselves and beyond the already identifiable zones of morality or politics or law, beyond the distinction between national and international, public and private, and so on. This requirement doesn’t properly belong to either justice or law. It only belongs to either of those two domains by exceeding each one in the direction of the other. Politicization, for example, is interminable even if it cannot and should not ever be total. To keep this from being a truism or a triviality, we must recognize in it the following consequence: each advancement in politicization obliges one to reconsider, and so reinterpret, the very foundations of law such as they had been previously calculated or delimited. This was true for example in the Declaration of the Rights of Man, in the abolition of slavery, in all emanicipatory battles that remain and will have to remain in progress, everywhere in the world, for men and for women.

#### We underestimate extinction because we know nothing about it

Eliezer **Yudkowsky**, 8/31/**’6**. Singularity Institute for Artificial Intelligence Palo Alto, CA. “Cognitive biases potentially affecting judgment of global risks, Forthcoming in Global Catastrophic Risks, eds. Nick Bostrom and Milan Cirkovic, [singinst.org/upload/cognitive- biases.pdf](http://singinst.org/upload/cognitive-biases.pdf).

A general principle underlying the heuristics-and-biases program is that human beings use methods of thought - heuristics - which quickly return good approximate answers in many cases; but which also give rise to systematic errors called biases. An example of a heuristic is to judge the frequency or probability of an event by its availability, the ease with which examples of the event come to mind. R appears in the third-letter position of more English words than in the first-letter position, yet it is much easier to recall words that begin with "R" than words whose third letter is "R". Thus, a majority of respondents guess that words beginning with "R" are more frequent, when the reverse is the case. (Tversky and Kahneman 1973.)

Biases implicit in the availability heuristic affect estimates of risk. A pioneering study by Lichtenstein et. al. (1978) examined absolute and relative probability judgments of risk. People know in general terms which risks cause large numbers of deaths and which cause few deaths. However, asked to quantify risks more precisely, people severely overestimate the frequency of rare causes of death, and severely underestimate the frequency of common causes of death. Other repeated errors were also apparent: Accidents were judged to cause as many deaths as disease. (Diseases cause about 16 times as many deaths as accidents.) Homicide was incorrectly judged a more frequent cause of death than diabetes, or stomach cancer. A followup study by Combs and Slovic (1979) tallied reporting of deaths in two newspapers, and found that errors in probability judgments correlated strongly (.85 and .89) with selective reporting in newspapers.

People refuse to buy flood insurance even when it is heavily subsidized and priced far below an actuarially fair value. Kates (1962) suggests underreaction to threats of flooding may arise from "the inability of individuals to conceptualize floods that have never occurred... Men on flood plains appear to be very much prisoners of their experience... Recently experienced floods appear to set an upward bound to the size of loss with which managers believe they ought to be concerned." Burton et. al. (1978) report that when dams and levees are built, they reduce the frequency of floods, and thus apparently create a false sense of security, leading to reduced precautions. While building dams decreases the frequency of floods, damage per flood is so much greater afterward that the average yearly damage increases.

It seems that people do not extrapolate from experienced small hazards to a possibility of large risks; rather, the past experience of small hazards sets a perceived upper bound on risks. A society well-protected against minor hazards will take no action against major risks

(building on flood plains once the regular minor floods are eliminated). A society subject to regular minor hazards will treat those minor hazards as an upper bound on the size of the risks (guarding against regular minor floods but not occasional major floods). Risks of human extinction may tend to be underestimated since, obviously, humanity has never yet encountered an extinction event

**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.

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## Courts CP

#### No congress key warrants- Court action induces legislative change.

Devins, ‘92

(William and Mary Associate Poli Sci Prof, July, 80 Calif. L. Rev. 1027)

**Courts matter. They matter a lot.** Sometimes **their orders set in motion market mechanisms which guarantee their effectiveness**. n199 Sometimes the threat of **judicial action prompts** either settlement or **legislative initiative.** n200 **Their opinions influence legislative deliberations** n201 **and change the status quo**. n202 Occasionally, **they trump agencies and interpose their normative views into the law**. It may be that these influences sometimes result in unwise policy decisions and sometimes exceed the proper judicial role in our system of separated powers, but they are judicial influences nonetheless

#### Solve social change-

#### Courts act independent of political backlash to create social change

Lemieux 05

(Scott Lemieux, Assistant Professor of Political Science at Hunter College, "Why Roe was Not Counterproductive: A Reply" 3-2-2005)

The key argument at the heart of our theoretical disagreement, I think, is Nathan's claim that "[t]he case against Roe is that the result of judicial activism was a particularly toxic form of counter-reaction that fused normal political disagreement into a mode of rightwing conspiracy thinking that fused social conservatives into a much broader New Right alliance." These kinds of qualitative arguments are hard to prove either way, and Nathan may be right, but I strongly believe that this is incorrect. First of all, I just don't think that the many scholarly proponents of this thesis have made the case; **abortion rhetoric was quite toxic prior to 1973.** More importantly, **I think that the anti-elitist rhetoric of the New Right can (and is) deployed against any and all institutions they perceive as being against them**. Allow me to return to Romer v. Evans. Again, this case arose out of an Amendment that resulted as a response to the protection of gay rights by democratically elected city councils. In his dissent, Scalia fulminated against the legislative success of a "geographically concentrated and politically powerful minority." **Affirmative action is another classic example; conservatives are able to mine fury against courts who refuse to overturn the policies of democratically accountable officials. It seems to me that arguments against "judicial activism" are equally applicable against "elites" and "Congress" and "those bureaucrats do=n at the state capitol.**" **Cultural reactionaries, angry at the disappearance of a past that in many cases never existed, can be a bottomless well of anger and resentment, and as the mobilization against** state **liberalization o**f abortion laws (as well as **any number of** other **issues) makes clear. I simply don't believe that most conservative activists have a principled democratic theory that will cause them to react more positively to political losses that don't occur in the courts.**

#### Court action is necessary for social change – it links movement politics to political power.

Burstein ‘91

Paul Burstein, pub. date: 1991, Professor of sociology and political science at the University of Washington, “Legal Mobilization as a Social Movement Tactic: The Struggle for Equal Employment Opportunity”, JSTOR

What types of actions should we examine? For most sociologists, and for many political scientists studying social movements, the distinction between political action "inside the system" and that taking place "outside” is critical. They see groups resorting to a "politics of protest" when they are not allowed to use institutionalized channels to express their political demands or when such channels prove ineffective. Those interested in social movements see themselves as examining political behavior not directed into "proper channels"-that is, demonstrations, strikes and boycotts, as opposed to election campaigns, lobbying, or legal proceedings. This distinction is often useful, but at times it impedes progress in understanding political change. Those using outsider tactics are often trying, first, to gain access to power holders and, then, to influence their decisions. By defining their interests in terms of particular tactics, those studying social movements virtually force themselves to abandon the field of inquiry when the groups they are interested in begin to have influence-when they gain access to proper channels. I suggest that successful movements generally utilize proper channels as well as outsider tactics and that an adequate understanding of move- ments must therefore consider both. In fact, social movement analysts seem to recognize this, even if only implicitly. This implicit recognition takes two forms: in definitions of social movement and in analyses of particular movements. As for definitions, consider one of Tilly's recent attempts to define social movement (1984, p. 305; italics in original): "The term social movement applies most usefully to a sustained interac-tion between a specific set of authorities and various spokespersons for a given challenge to these authorities. The interaction is a coherent, bounded unit in roughly the same sense that a war or political campaign is a unit." Tilly struggles to limit the definition to outsider groups, but nothing in it excludes the legal tactics often employed by the civil rights movement, even though such tactics involved going through proper channels In fact, analysts of American social movements frequently ascribe im- portance to court cases. McAdam, for example, shows that a Supreme Court decision on segregation had a critical effect on the bus boycotts (1983, p. 741), while Harding (1984, pp. 3 93-95) argues that the decisions of a federal judge undermined the hegemony of white-supremacist ideol- ogy in Mississippi (also see Jenkins and Eckert 1986, p. 827). The role of the courts is seldom the subject of theorizing because so much emphasis is placed on demonstrating the importance of outsider tactics. Yet deep historical knowledge of particular movements consistently forces social movement analysts to report how critical court decisions are.

#### Yes compliance--- respect for the judiciary overwhelms, specific evidence

Manget ‘06

(Fred Manget, a member of the Senior Intelligence Service and a former Deputy General Counsel of the Central Intelligence Agency, “Intelligence and The Rise of Judicial Intervention,” National Security Law, <http://www.nationalsecuritylaw.org/files/pubs/Manget.pdf>)

The developing history of judicial review of intelligence activities shows that it ¶ occurs in those areas where government secrecy and the need for swift executive action ¶ conflict with well-established legal principles of individual rights: an accused’s right to a ¶ fair criminal trial; freedom from unreasonable searches and seizures; rights of privacy; ¶ freedom of speech and the press. Judges thus get involved where an informed citizenry ¶ would instinctively want judicial review of secret intelligence activities. The involvement ¶ of the federal judiciary is limited but salutary in its effect on executive branch actions. ¶ Nothing concentrates the mind and dampens excess so wonderfully as the imminent ¶ prospect of explaining one’s actions to a federal judge. ¶ The Constitution’s great genius in this area is a system of government that ¶ reconciles the nation’s needs for order and defense from foreign aggression with ¶ fundamental individual rights that are directly affected by intelligence activities. Nations ¶ devising statutory charters and legislative oversight of their foreign intelligence services ¶ might well include an independent judiciary in their blueprints. Federal judges are the ¶ essential third part of the oversight system in the United States, matching requirements of ¶ the laws to intelligence activities and watching the watchers.

#### Internal link turn--- Citizens United proves tempered criticism can actually increase the legitimacy of the court and ensure compliance

Ross ‘10   
(William G. Ross, professor of law at the Cumberland School of Law of Samford University; his publications include several studies of political controversies involving the U.S. Supreme Court, Jurist, “Constructive Criticism: Presidential Opposition to Supreme Court Rulings” February 2,)

Roosevelt did not make these remarks in front of any judges because State of the Union addresses were not delivered in person between 1801 and 1913. Much of the criticism of Obama’s remarks last week are based not on what he said but on where he said it. Many critics of Obama’s remarks about Citizens United complain that Obama was unfair to the Court to the extent that the justices had no immediate way to respond, other than in the ill-advised manner used by Alito. But while extrajudicial comments by judges about their own decisions are inappropriate, there are plenty of lawyers, journalists, scholars, and pundits who can defend the Court’s opinions. Although a president naturally should be careful to avoid demonstrating any disrespect for the Court, particularly when the justices are present, Obama’s remarks in his State of the Union address were limited to only one case and did not in any way derogate judicial independence or encourage any defiance of the Court’s decision. Indeed, such measured criticism of the Court can actually enhance public respect for the judiciary. As Theodore Roosevelt observed in his 1906 State of the Union address, “just and temperate criticism” of the judiciary helps to prevent “that intemperate antagonism towards the judiciary which...if it became widespread among the people...would constitute a dire menace to the Republic.

**Politically unpopular court decisions allow politicians to posture in opposition to the Court’s ruling—the perm fiats away this ability to politically profit from the CP---means only the CP boosts PC**

**Whittington 7**

Keith E. Whittington, politics at Princeton University, 2007 (Political Foundations of Judicial Supremacy, p. 137-39)

Independent and active judicial review generates **position-taking opportunities** by **reducing the policy responsibility** of the elected officials. They may vote in favor of a bill that they personally dislike secure in the knowledge that it will never be implemented. State statutes regulating abortion after the *Roe* decision, for example, were often pure symbolism, though they could also play a more productive role in pressing the Court to refine its doctrine or in filling in the lacuna left by judicial decisions. More subtly, the judicial backstop allows legislators to focus on some dimensions of the proposed policy (the most optimistic and politically popular) while downplaying others (the constitutionally subversive and treacherous). Legislators even **gain a political windfall** when the courts actually act to strike down the popular law. The visibility of the exercise of judicial review creates another opportunity for legislators to publicize their position on the issue, this time by **bewailing the Court’s actions**. ¶ [continues]¶ On the other hand, by allowing elected politicians to **shift political blame to judges** for unpopular actions judicial review may also **stiffen the spine of politicians** to act on their central ideological commitments. As we saw in chapter 2, for example, the Court’s decisions on abortion allowed some politicians, such as Jimmy Carter, to try to have it both ways with voters, by simultaneously proclaiming their pro-life private opinions and their judicially imposed pro-choice public responsibilities. Similarly, as the first Catholic president, John F. Kennedy was acutely conscious of the need to demonstrate his independence from the church while still holding the political support of his fellow Catholics. Before and during his campaign for the presidency, Kennedy emphasized how the Constitution, and the Court’s interpretation of it, tied the hands of individual officeholders---to the consternation of religious critics who found him “spiritually rootless and politically almost disturbingly secular.” The Constitution and all its parts---including the First Amendment and the strict separation of church and state,” he avowed, necessarily trumped “one’s religion in private life.” For example, “the First Amendment as interpreted by the Supreme Court” left no question of federal funds being used for support of parochial or private schools.” In office he bristled at criticism fro Catholic officials of his proposal for federal aid to public schools but not private schools, criticisms that he did not recall being made during the Eisenhower administration. Though he was “extremely sympathetic” to the financial burdens borne by families sending children to parochial school, a close “reading [of] the cases” raised “serious constitution questions” that the president could not be expected to ignore. “It is prohibited by the Constitution, and the Supreme Court has made that very clear.” ¶ Regardless of whether legislators would be more constitutionally responsible if judicial review did not exist, they can certainly recognize the political opportunities created by the empirical reality of judicial review. The consequence is that the actual exercise of judicial review may not be as unwelcome and hostile to congressional interests as is often assumed, and affiliated leaders have further reason to support the judicial authority to determine congressional meaning. Some legislative votes are “politically compelling,” in that “legislators feel compelled to support certain policy options because their intended effects are popular, irrespective of whether the proposed means will really achieve those ends” or are even necessary. Once a bill that professes to stop violence against women, keep guns out of schools, protect the flag from desecration, or prevent child pornography reaches the floor, legislatures are “practically forced to support it.” Although legislators may harbor doubts about the policy and constitutional wisdom of such proposals, clear electoral imperatives are likely to drive legislative decision-making. Enhancing the judicial authority to define and enforce constitutional meaning can ease the legislative policy conscience, while allowing legislators to reap the electoral gains of position taking**.**

**Perm forces the court to rule on a moot issue – this makes the decision meaningless and means the CP can’t shield from politics because congress is perceived as acting first**

**King 02**

(Matthew T. King, “COMMENT: TOWARDS A PRACTICAL CONVERGENCE: THE DYNAMIC USES OF JUDICIAL ADVICE IN UNITED STATES FEDERAL COURTS AND THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES,” Spring, 63 U. Pitt. L. Rev. 703)

**The Court conceded that it would hear cases "when actual litigation brings to the court the question of the constitutionality of such legislation," but it will never simply test Congress's law-making savvy without an actual case or controversy**. [n39](http://www.lexisnexis.com:80/lnacui2api/frame.do?reloadEntirePage=true&rand=1294956963753&returnToKey=20_T11002820393&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.868317.8009671276#n39) Harking back to Taney, the Court relied on the execution of a [\*710] timely, meaningful judgment as a primary factor in determining whether the case was legitimate. [n40](http://www.lexisnexis.com:80/lnacui2api/frame.do?reloadEntirePage=true&rand=1294956963753&returnToKey=20_T11002820393&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.868317.8009671276#n40) Over time, **the Court has molded the cases and controversies requirement of Article III into a doctrine of justiciability**. The central guideline and **goal of this doctrine is the ability of a court to provide a meaningful decision**. While courts reserve the right to declare cases non-justiciable for general reasons, time has honed **this jurisprudence into three specific arenas: ripeness, mootness, and standing**. 1. The Issue Must Be Ripe **Ripeness means the case and facts at hand must be fully and actually developed.** [n41](http://www.lexisnexis.com:80/lnacui2api/frame.do?reloadEntirePage=true&rand=1294956963753&returnToKey=20_T11002820393&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.868317.8009671276#n41) **If not, no real case or controversy exists and the matter is to be dismissed**. In his full summation of rules against advisory opinions, Justice Brandeis stated that the "Court will not 'anticipate a question of constitutional law in advance of the necessity of deciding it.'" [n42](http://www.lexisnexis.com:80/lnacui2api/frame.do?reloadEntirePage=true&rand=1294956963753&returnToKey=20_T11002820393&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.868317.8009671276#n42) The next year, Anniston Manufacturing Co. called into question the constitutionality of numerous vital provisions of the 1936 Revenue Act. [n43](http://www.lexisnexis.com:80/lnacui2api/frame.do?reloadEntirePage=true&rand=1294956963753&returnToKey=20_T11002820393&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.868317.8009671276#n43) Only the cotton taxes and procedures for recovery of monies under the Agricultural Adjustment Act pertained to Anniston, yet it challenged the Act generally. [n44](http://www.lexisnexis.com:80/lnacui2api/frame.do?reloadEntirePage=true&rand=1294956963753&returnToKey=20_T11002820393&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.868317.8009671276#n44) In dismissing the case the Court specifically declined to rule on matters that had not yet created (and might never create) an aggrieved party. [n45](http://www.lexisnexis.com:80/lnacui2api/frame.do?reloadEntirePage=true&rand=1294956963753&returnToKey=20_T11002820393&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.868317.8009671276#n45) The Court bolstered Anniston with Electric Bond & Share Co. v. S.E.C. [n46](http://www.lexisnexis.com:80/lnacui2api/frame.do?reloadEntirePage=true&rand=1294956963753&returnToKey=20_T11002820393&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.868317.8009671276#n46) There, the Court refused to assess the validity of the entire Public Utility Holding Company Act when only three provisions applied to the companies bringing suit: [n47](http://www.lexisnexis.com:80/lnacui2api/frame.do?reloadEntirePage=true&rand=1294956963753&returnToKey=20_T11002820393&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.868317.8009671276#n47) "defendants seek a judgment that each and every provision of the Act is unconstitutional. It presents a variety of hypothetical controversies which may never become [\*711] real." [n48](http://www.lexisnexis.com:80/lnacui2api/frame.do?reloadEntirePage=true&rand=1294956963753&returnToKey=20_T11002820393&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.868317.8009671276#n48) The Court would not decide the issues until they had ripened into a concrete set of facts and parties. [n49](http://www.lexisnexis.com:80/lnacui2api/frame.do?reloadEntirePage=true&rand=1294956963753&returnToKey=20_T11002820393&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.868317.8009671276#n49) 2. The Issue Must Not Be Moot **Second is mootness, which requires that the case or facts have not yet run their course.** [n50](http://www.lexisnexis.com:80/lnacui2api/frame.do?reloadEntirePage=true&rand=1294956963753&returnToKey=20_T11002820393&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.868317.8009671276#n50) **A moot case is essentially the opposite of an unripe case**. [n51](http://www.lexisnexis.com:80/lnacui2api/frame.do?reloadEntirePage=true&rand=1294956963753&returnToKey=20_T11002820393&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.868317.8009671276#n51) In United States v. Alaska Steamship Co., [n52](http://www.lexisnexis.com:80/lnacui2api/frame.do?reloadEntirePage=true&rand=1294956963753&returnToKey=20_T11002820393&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.868317.8009671276#n52) steamship companies contested the Interstate Commerce Commission's authority to require two different forms for bills of lading for domestic and export transportation. [n53](http://www.lexisnexis.com:80/lnacui2api/frame.do?reloadEntirePage=true&rand=1294956963753&returnToKey=20_T11002820393&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.868317.8009671276#n53) After the suit was filed, Congress passed an act amending federal power to regulate commerce and requiring a change in format for both types of bills. [n54](http://www.lexisnexis.com:80/lnacui2api/frame.do?reloadEntirePage=true&rand=1294956963753&returnToKey=20_T11002820393&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.868317.8009671276#n54) Under the new circumstances, the issue became moot. [n55](http://www.lexisnexis.com:80/lnacui2api/frame.do?reloadEntirePage=true&rand=1294956963753&returnToKey=20_T11002820393&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.868317.8009671276#n55) The Court described what a moot case is, and what it must do with one: **Where by an act of the parties, or a subsequent law, the existing controversy has come to an end, the case becomes moot and should be treated accordingly**. However convenient it might be to have decided the question of the power of the Commission to require the carries to comply with an order prescribing bills of lading, **this court "is not empowered to decide moot questions or abstract propositions, or to declare, for the government of future cases, principles or rules of law which cannot affect the result** as to the thing in issue in the case before it. **No stipulation of parties or counsel, whether in the case before the court or in any other case, can enlarge the power, or affect the duty, of the court in this regard**." [n56](http://www.lexisnexis.com:80/lnacui2api/frame.do?reloadEntirePage=true&rand=1294956963753&returnToKey=20_T11002820393&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.868317.8009671276#n56)

**Mootness Doctrine**

**A. Perm breaks it**

**Watson ‘91**

(Corey Watson, Associate @ Kirkland and Ellis LLP, 1991, “Mootness and the Constitution,” 86 Nw. U.L. Rev. 143, l/n)

**A case becomes "moot" when "its factual or legal context changes in such a way that a justiciable question no longer is before the court."** n32 [\*147] Defining mootness as the absence of a justiciable issue, however, merely raises the question of what is meant by the term "justiciability." n33 The Supreme Court has distinguished a justiciable controversy "from one that is academic or moot." n34 Accordingly, **a justiciable controversy is one that is "definite and concrete, touching the legal relations of parties having adverse legal interests**." n35 **The controversy must be "real and substantial**[,] . . . **admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts**." n36 **The rule that a court will not decide a moot case is recognized in virtually every American jurisdiction. n37**

**B. Links to the disad and dissolves the Constitution**

**Watson ‘91**

(Corey Watson, Associate @ Kirkland and Ellis LLP, 1991, “Mootness and the Constitution,” 86 Nw. U.L. Rev. 143, l/n)

From this core meaning, according to the model, have sprung various interpretative doctrines which, when taken together, flesh out the meaning of the case and controversy clause. These doctrines are incorporated under the broad label of "justiciability." **The doctrine of mootness**, a species of justiciability, **is umbilically attached to** the case and controversy clause and is thus subservient to **article III of the Constitution**. n113 Hence, **the relationship between the mootness doctrine and the Constitution is symbiotic:** **the Constitution gave birth to the doctrine of mootness while the doctrine itself illuminates the limitation of federal judicial power**. Although courts are permitted to entertain prudential considerations when deciding questions of jurisdiction, n114 **the model forbids courts from allowing prudential concerns to compromise** the **fundamental principles** of article III. n115 Consequently, whether a case is justiciable is a threshold question throughout the judicial proceeding which must be answered affirmatively for a court to assume jurisdiction. n116 [\*158] The textual constitutional model, therefore, contends that the language chosen to formulate the Constitution has particular significance. **Attempts to manipulate this language by superimposing specific value systems n117 or by tossing prudential factors into the constitutional calculus n118** **dissolve the integrity of the Constitution itself**. The Constitution retains flexibility by establishing procedures for its amendment, and judicial or scholarly glosses which essentially rewrite the Constitution circumvent the amendment process. **Such circumvention**, the model asserts, **is violent to democratic and representative ideals.**

**C. Constitutional violations are an absolute side-constraint – as a policymaker you cannot vote for the perm**

**Levinson ‘00**

<Daryl Levinson, Associate Professor, University of Virginia, 2K, University of Chicago Law Review Spring 2000>

Extending a majority rule analysis of optimal deterrence to constitutional torts requires some explanation, for we do not usually think of **violations** of constitutional rights in terms of cost-benefit analysis and efficiency. Quite the opposite, constitutional rights **are** most commonly conceived as **deontological side-constraints that trump even utility-maximizing government action**. n69 Alternatively, constitutional rights might be understood as serving rule-utilitarian purposes. **If the disutility to victims of constitutional violations often exceeds the social benefits derived from the rights-violating activity**, or if rights violations create long-term costs that outweigh short-term social benefits, then constitutional rights can be justified as tending to maximize global utility, even though this requires local utility-decreasing steps. **Both the deontological and rule-utilitarian descriptions imply that the optimal level of constitutional violations is zero**; that is, society would be better off, by whatever measure, if constitutional rights were never violated.

#### No court stripping -- 4 reasons.

Devins, '6

(Law Prof -- William & Mary, May, 90 Minn. L. Rev. 1337)

Unlike the Warren era (where a potent coalition of lawmakers was truly upset with Court decision making), today's Congress is not at all disappointed with Rehnquist Court decision making. Its anticourt rhetoric, for reasons detailed in Part II, is tied to lawmaker incentives to strengthen ties with their political base. 118 Unless and until the goals of social conservatives are also acceptable to majorities in both houses of Congress and the White House, the current wave of attacks against the judiciary **should be seen as symbolic** politics. Indeed, even if the social conservative agenda becomes the dominant agenda in Congress and the White House, there is good reason to think that elected officials would steer away from jurisdiction-stripping measures. 119 First, median voters [\*1359] have historically backed judicial independence. For example, although most Americans are disappointed with individual Supreme Court decisions, there is a "reservoir of support" for the power of the Court to independently interpret the Constitution. 120 Consequently, even though some Supreme Court decisions trigger a backlash by those who disagree with the Court's rulings, the American people nonetheless support judicial review and an independent judiciary. 121 Indeed, even President George W. Bush and Senate majority leader Bill Frist backed "judicial independence" after the federal courts refused to challenge state court factfinding in the Terri Schiavo case. 122 Second, there is an additional cost to lawmakers who want to countermand the courts through coercive court-curbing measures. Specifically, powerful interest groups sometimes see an independent judiciary as a way to protect the legislative deals they make. 123 In particular, interest groups who invest in the legislative process by securing legislation that favors their preferences may be at odds with the current legislature or executive (who may prefer judicial interpretations that undermine the original intent of the law). Court-curbing measures "that impair the functioning of the judiciary" are therefore disfavored because they "impose costs on all who use the courts, including various politically effective groups and indeed the beneficiaries of whatever legislation the current legislature has enacted." 124 Third (and correspondingly), lawmakers who disapprove of court decision making can usually express that disapproval without pursuing court-curbing legislation. This is especially true of federalism rulings. Rather than foreclose democratic outlets, federalism rulings can be circumvented by both Congress [\*1360] and the states. 125 Congress can advance the same legislative agenda by making use of another source of federal power and/or enacting a scaled-down version of the bill. 126 Interest groups, moreover, need not rely exclusively on Congress. They can also turn to the states to enact state versions of the very law that Congress could not enact. 127 Rights-based rulings, in contrast, severely limit lawmaker responses. Consider, for example, abortion rights. After Roe, neither federal nor state lawmakers could regulate abortion in the first trimester. 128 Likewise, Supreme Court decisions on school busing and school prayer could not be nullified through legislation. 129 At the same time, rights-based rulings do not completely foreclose democratic outlets. Congress can eliminate federal funding and otherwise express its disapproval of the Supreme Court. 130 Fourth, jurisdiction-stripping measures do not nullify Supreme Court rulings (or, for that matter, any court ruling). Consequently, since proponents of court-stripping cannot count on state courts to back their policy agenda, these bills may not accomplish all that much. 131 Accordingly, interest groups may be better off pursuing their substantive agenda through funding bans, constitutional amendments, the enactment of related legislation, and the appointment of judges and Justices. Court-curbing measures, in contrast, seem more a rhetorical rallying call than a roadmap for change.

#### Justices will stay one step behind legislatures---cooperative action doesn’t let Congress tie their hands

Helmke & Rosenbluth 9

Gretchen Helmke is Associate Professor of Political Science at the University of Rochester, AND Frances Rosenbluth is professor of political science, Yale University, “Regimes and the Rule of Law: Judicial Independence in Comparative Perspective,” Annual Review of Political ScienceVol. 12: 345-366 (Volume publication date June 2009, EBSCO

A second set of explanations for judicial independence assumes that legislators make a deliberate choice to delegate judicial authority to courts, building intentional institutional walls against political intervention in judicial decisions. For these models, legislatures can create judicial independence by means of a supermajority-protected set of rules ensuring long judicial tenure, wide jurisdiction, budgetary autonomy, and the like. Delegative models supply a range of possible motivations for why politicians may want to restrict themselves in this way. Landes & Posner (1975) suggest that legislators have an interest to create an independent judiciary that can enforce the deals struck by enacting legislatures, thereby increasing the value of campaign contributions that legislators can extract from contributors on whose behalf they made those deals. The judiciary solves politicians' time inconsistency problem, namely that their short-run interest to sell new deals to the highest bidder undermines the price they are able to get for these deals in the longer run. This model implausibly denies the possibility that courts, like legislators, are strategic actors. Unless we can be sure that courts will rule in support of (their understanding of) the enacting legislation rather than in strategic anticipation of the preferences of the incumbent legislature, this argument breaks down. Judges may instead try to achieve outcomes as close as possible to their own preferences by taking into account the possibility that the incumbent legislature can write new legislation if it is sufficiently unhappy with the court's ruling. If this is true, and we see no reason why it should not be, the court's value in prolonging the life of legislation—and hence its value for legislators extracting rents—is significantly hampered. Another delegative account of judicial insulation points to politicians' desire to duck blame for unpopular policies. Graber (1993), Salzberger (1993), Holmes (1996), and Wittington (1999) argue that a legislative majority might want to delegate politically divisive issues to the court, echoing Fiorina's (1981) blame-avoidance explanation for why politicians might want to delegate to bureaucrats. But it is not clear that it is possible for legislatures to tie their hands in this way, both because of the problem with cooperative delegation arguments we have already discussed and because politically strategic courts may have an interest in throwing the matter back rather provoking public wrath themselves. [Stephenson (2004) articulates an alternative critique of the blame-avoidance argument.] In Hungary, for example, the courts deliberately dodge issues such as abortion that th**e**y consider to be “political questions” (Pogany 1993). U.S. courts also display a tendency to keep one or two steps behind state and federal legislatures on contentious issues such as abortion or gay rights. Harvey & Friedman (2006) argue that the Supreme Court is systematically more likely to deny certiorari to cases on which the political branches are likely to have the votes to oppose the court. In addition, we expect, courts protect their future range of maneuver by staying within the broad bands of public support.

#### Politicians can deflect blame

Martens 7

Alison M. Martens, political science at University of Louisville, 2007 (Perspectives on Politics 5.3)

The outline of this revised research agenda, begins by looking at a 1993 article written by Mark Graber challenging the countermajoritarian difficulty paradigm. Graber's observations point to the importance of studying systemic transformations, such as the evolution of judicial supremacy. Using historical case studies on abortion, the *Dred Scott* controversy, and anti-trust issues to study perceived incidents of judicial independence, he contends that scholars who seek to justify independent judicial policymaking, even in the face of believed democratic deficiencies, misunderstand and inaccurately represent the relationships between justices and elected officials. By looking at the dialogues between these parties it becomes apparent that **judicial independence,** when it actually occurs, **is often exercised** at the invitation of elected officials**, and in the absence of any expressed majoritarian choice, in order to** resolve political controversies **that elected officials cannot or do not want to resolve themselves. Hence the counter-majoritarian difficulty can be more appropriately characterized as the “non-majoritarian difficulty**.” [33](http://journals.cambridge.org.ezp-prod1.hul.harvard.edu/action/displayFulltext?type=6&fid=1300748&jid=PPS&volumeId=5&issueId=03&aid=1300740&fulltextType=RA&fileId=S1537592707071484#fn33#fn33) ¶ According to Graber, **where crosscutting issues divide a lawmaking majority an invitation is often** tacitly but consciously **issued to the Court by political elites to** resolve the political controversy **that they themselves are** unwilling or **unable to address, thereby “foisting disruptive political debates off on the Supreme Court**.” [34](http://journals.cambridge.org.ezp-prod1.hul.harvard.edu/action/displayFulltext?type=6&fid=1300748&jid=PPS&volumeId=5&issueId=03&aid=1300740&fulltextType=RA&fileId=S1537592707071484#fn34#fn34) Graber writes that “**elected officials** encourage or tacitly **support judicial policymaking both as a means of** avoiding political responsibility **for making tough decisions and as a means of pursuing controversial policy goals that they** cannot publicly advance **through open legislative** and electoral **politics**.” [35](http://journals.cambridge.org.ezp-prod1.hul.harvard.edu/action/displayFulltext?type=6&fid=1300748&jid=PPS&volumeId=5&issueId=03&aid=1300740&fulltextType=RA&fileId=S1537592707071484#fn35#fn35) Furthermore, **political and electoral advantages can accrue by ducking these tough questions and sending them on to be settled by the Court**. Graber explains that elites (including the executive) can benefit from passing the political buck **to the Court** in multiple ways. **Party activists can be redirected to focus on legal action in the courts, thereby reducing pressure on mainstream politicians who wish to maintain a more politically viable moderate stance. Voters can be redirected** to focus any ire they might have over policy outcomes on the Court. **Politicians can take responsive positions on judicial decisions that may make for a good sound bite but really require no politically accountable action** on their part. Finally, political compromise between the legislature and the executive might be had under the table of Court policymaking. [36](http://journals.cambridge.org.ezp-prod1.hul.harvard.edu/action/displayFulltext?type=6&fid=1300748&jid=PPS&volumeId=5&issueId=03&aid=1300740&fulltextType=RA&fileId=S1537592707071484#fn36#fn36) This is an impressive set of political benefits that can stem from a practice of judicial supremacy that creates a Court equipped with the interpretive authority and legitimacy to make controversial public policies. Graber's article, then, highlights the perversion of political accountability that can possibly occur where everyone in the system, the public included, accepts and expects interpretive authority to reside with the courts.

#### Court decisions preserve capital—only a risk of a turn

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William Nelson Cromwell Professor of Law @ Harvard University [Mark, “The Obama Presidency and the Roberts Court: Some Hints From Political Science” 25 Const. Commentary 343, Summer, lexis]

What can the courts do for a resilient regime? **Presidents and Congress have limited time and political energy. They will spend them on what they regard as central issues.** But at any time **there will be "outliers"**--geographic regions as yet uncommitted to the regime's constitutional understandings, or substantive areas **that** plainly **require change if those understandings are to become deeply implanted in society, yet politically too touchy** or relatively unimportant **to Congress**. "For the affiliated leader, enhancing judicial authority to define and enforce constitutional meaning provides an efficient mechanism for supervising and correcting those who might fail to adhere to the politically preferred constitutional vision" (pp. 105-06). The courts can serve as a convenient but essentially administrative mechanism for bringing these outliers ¶ into the constitutional order. (16) In addition, the **courts may have rhetorical resources unavailable to presidents**. Their obligation to explain their decisions, and the fact that they make decision after decision, means that **they have an opportunity to develop a reasonably general account of the resilient regime's constitutional understandings**. In Whittington's words, "It is the classic task of judges within the Anglo-American tradition ... to render new decisions and lay down new rules that can be explicated as a mere working out of previously established legal principles" (p. 84). **Presidents, in contrast, only sporadically make speeches illuminating those understandings.** More boldly, **affiliated presidents may try to use the courts to "overcome[el gridlock**" (p. 124) caused by the strategic positions recalcitrant opponents of the new constitutional regime may occupy. **And**, if not "use the courts," at least **rely on the courts to take the initiative, because "[t]he Court can sometimes move forward on the constitutional agenda where other political officials cannot**" (p. 125). "[C]oalition leaders might be constrained by the needs of coalition maintenance," but "judges have a relatively free hand" (p. 125). This "use" of the courts, though, poses risks. The courts may push the regime's constitutional principles further and faster than is politically wise, and the regime's political leaders may find themselves on the defensive. Indeed, in this way the courts can contribute to making a resilient regime vulnerable, which may be part of the story about the Warren Court and the demise of the New Deal/Great Society regime. (17) **Preemptive presidents** face a special strategic problem. Sometimes they take office because they manage to persuade the public that they remain committed to a resilient regime's constitutional vision even if in ¶ their hearts they want to transform the regime. (18) At other times they take office as a regime becomes vulnerable, but do not themselves have the program, vision, or charisma to be reconstructive presidents themselves. (19) They **are likely to face opposition in Congress and** to some ¶ degree in **the courts**. But they can turn divided government to their advantage by seeking judicial confirmation of executive prerogative. The judges in place might be sympathetic to such claims for doctrinal and political reasons. They will have "inherited from affiliated administrations" (p. 169) doctrines supporting executive authority. And, though Whittington doesn't make this point explicitly, they may see the preemptive president as an accident, soon to be replaced by an affiliated one whose exercises of presidential power they will want to endorse. Finally, **preemptive presidents need to get their authority from somewhere when they face congressional opposition**, as they will. They don't have much of their own, but **they can** try "to **borrow from the** authority of the **courts in order to hold off their political adversaries**" (p. 195). One final point before I move to some speculations about the future of judicial supremacy. Whittington emphasizes the growth of judicial supremacy during the twentieth century, both m terms of the judges' self-understanding and, perhaps more importantly, in terms of the degree of political commitment to judicial supremacy (p. 25). He suggests that **politicians have had increasingly strong reasons to support the Supreme Court**. The reconstructive presidency of Ronald Reagan was less ambitious than that of Franklin Roosevelt (p. 232), assuring the American people that Reagan's policies would strengthen rather than destroy the social safety nets that Roosevelt and Lyndon Johnson's regimes had created. **Even a reconstructive president could hope that the Supreme Court would assist in articulating regime principles in the way the Court ordinarily does for affiliated presidents.** Further, drawing again on Skowronek's account of the ways in which regimes leave a residue even after they have been displaced, Whittington describes the doctrinal thickening that occurred during the twentieth century with respect to essentially every possible ideological and political commitment a President could have (p. 283). Doctrinal thickening means that every member of a ruling coalition will have some basis in constitutional law for its assertions that the Constitution requires satisfaction of its policy preferences, and that the Court cannot possibly satisfy all the demands on it. (20) So, for the future, **we might expect Presidents to have increasingly ambivalent views about the Supreme Court**. In the twenty-first century, the Supreme Court will be useful and annoying to every President--useful because **the Court can serve to articulate regime principles and can do some policy work that Presidents would rather not expend time and political capital on**, and annoying because the Court's failure to satisfy all the demands emanating from a President's political supporters will put pressure on the President to do something about the Court.

## Case

**Their conception of violence is reductive and can’t be solved**

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Twelve Friendly Quarrels with Johan Galtung

Author(s): Kenneth E. BouldingReviewed work(s):Source: Journal of Peace Research, Vol. 14, No. 1 (1977), pp. 75-86Published

Kenneth Ewart Boulding (January 18, 1910 – March 18, 1993) was an economist, educator, peace activist, poet, religious mystic, devoted Quaker, systems scientist, and interdisciplinary philosopher.[1][2] He was cofounder of General Systems Theory and founder of numerous ongoing intellectual projects in economics and social science.

He graduated from Oxford University, and was granted United States citizenship in 1948. During the years 1949 to 1967, he was a faculty member of the University of Michigan. In 1967, he joined the faculty of the University of Colorado at Boulder, where he remained until his retirement.

Finally, we come to the great Galtung metaphors of 'structural violence' 'and 'positive peace'. They are metaphors rather than models, and for that very reason are suspect. Metaphors always imply models and metaphors have much more persuasive power than models do, for models tend to be the preserve of the specialist. But when a metaphor implies a bad model it can be very dangerous, for it is both persuasive and wrong. The metaphor of structural violence I would argue falls right into this category. The metaphor is that poverty, deprivation, ill health, low expectations of life, a condition in which more than half the human race lives, is 'like' a thug beating up the victim and 'taking his money away from him in the street, or it is 'like' a conqueror stealing the land of the people and reducing them to slavery. The implication is that poverty and its associated ills are the fault of the thug or the conqueror and the solution is to do away with thugs and conquerors. While there is some truth in the metaphor, in the modern world at least there is not very much. Violence, whether of the streets and the home, or of the guerilla, of the police, or of the armed forces, is a very different phenomenon from poverty. The processes which create and sustain poverty are not at all like the processes which create and sustain violence, although like everything else in 'the world, everything is somewhat related to everything else. There is a very real problem of the structures which lead to violence, but unfortunately Galitung's metaphor of structural violence as he has used it has diverted attention from this problem. Violence in the behavioral sense, that is, somebody actually doing damage to somebody else and trying to make them worse off, is a 'threshold' phenomenon, rather like the boiling over of a pot. The temperature under a pot can rise for a long time without its boiling over, but at some 'threshold boiling over will take place. The study of the structures which underlie violence are a very important and much neglected part of peace research and indeed of social science in general. Threshold phenomena like violence are difficult to study because they represent 'breaks' in the systenm rather than uniformities. Violence, whether between persons or organizations, occurs when the 'strain' on a system is too great for its 'strength'. The metaphor here is that violence is like what happens when we break a piece of chalk. Strength and strain, however, especially in social systems, are so interwoven historically that it is very difficult to separate them. The diminution of violence involves two possible strategies, or a mixture of the two; one is Ithe increase in the strength of the system, 'the other is the diminution of the strain. The strength of systems involves habit, culture, taboos, and sanctions, all these 'things which enable a system to stand lincreasing strain without breaking down into violence. The strains on the system 'are largely dynamic in character, such as arms races, mutually stimulated hostility, changes in relative economic position or political power, which are often hard to identify. Conflicts of interest 'are only part 'of the strain on a system, and not always the most important part. It is very hard for people ito know their interests, and misperceptions of 'interest take place mainly through the dynamic processes, not through the structural ones. It is only perceptions of interest which affect people's behavior, not the 'real' interests, whatever these may be, and the gap between percepti'on and reality can be very large and resistant to change. However, what Galitung calls structural violence (which has been defined 'by one unkind commenltator as anything that Galitung doesn't like) was originally defined as any unnecessarily low expectation of life, on that assumption that anybody who dies before the allotted span has been killed, however unintentionally and unknowingly, by somebody else. The concept has been expanded to include all 'the problems of poverty, destitution, deprivation, and misery. These are enormously real and are a very high priority for research and action, but they belong to systems which are only peripherally related to 'the structures whi'ch produce violence. This is not rto say that the cultures of violence and the cultures of poverty are not sometimes related, though not all poverty cultures are cultures of violence, and certainly not all cultures of violence are poverty cultures. But the dynamics lof poverty and the success or failure to rise out of it are of a complexity far beyond anything which the metaphor of structural violence can offer. While the metaphor of structural violence performed a service in calling attention to a problem, it may have d'one a disservice in preventing us from finding the answer.

**War turns structural violence**

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*Millennium - Journal of International Studies May 2008 vol. 36 no. 3 575-595*

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But the idea that poverty and peace are directly related presupposes that wealth inequalities are – in and of themselves – unjust, and that the solution to the problem of war is to alleviate the injustice that inspires conflict, namely poverty. However, it also suggests that poverty is a legitimate inspiration for violence, otherwise there would be no reason to alleviate it in the interests of peace. It has become such a commonplace to suggest that poverty and conflict are linked that **it rarely suffers any examination**. To suggest that war causes poverty is to utter **an obvious truth,** but to suggest the opposite is – on reflection – quite **hard to believe.** War is an expensive business in the twenty-first century, even asymmetrically. And just to examine Bangladesh for a moment is enough at least to raise the question concerning the actual connection between peace and poverty. The government of Bangladesh is a threat only to itself, and despite 30 years of the Grameen Bank, Bangladesh remains in a state of incipient civil strife. So although Muhammad Yunus should be applauded for his work in demonstrating the efficacy of micro-credit strategies in a context of development, it is not at all clear that this has anything to do with resolving the social and political crisis in Bangladesh, nor is it clear that this has anything to do with resolving the problem of peace and war in our times. It does speak to the Western liberal mindset – as Geir Lundestad acknowledges – but then perhaps this exposes the extent to which the Peace Prize itself has simply become an award that reflects a degree of Western liberal wish-fulfilment. It is perhaps comforting to believe that **poverty causes violence,** as it serves to endorse a particular kind of concern for the developing world that in turn regards all problems as fundamentally economic rather than deeply – and potentially radically – political.

**1. TURNS CASE: FRAMING PATRIARCHY AS A FIXED MONOLITHIC SYSTEM ONTOLOGIZES MALE DOMINATION AND FEMALE VICTIMHOOD. UNDERMINES POSSIBILITIES FOR AGENCY AND RESISTANCE.**

**Bakare-Yusuf**, independent GENDER AND CULTURAL STUDIES scholar, **03** (Bibi, Beyond Determinism: The Phenomenology of African Female Existence, Feminist Africa: Issue 2, http://www.feministafrica.org/fa%202/02-2003/bibi.html)

Despite the contributions to understanding oppressive power relations made by theorists who focus emphatically on patriarchal dominance, there are problems with some of their underlying assumptions. **By equating sexual difference with male domination**, some of these **writers collapse two distinct categories into one**. According to Iris Young, we need to make a distinction between sexual differentiation, as "a phenomenon of individual psychology and experience, as well as of cultural categorisation", and male domination, as "structural relations of genders and institutional forms that determine those structures" (1997: 26). Male domination may require sexual difference; however, sexual difference does not in itself lead to male domination. By collapsing this distinction, **there is a danger of ontologising male power, and assuming that human relationships are inevitably moulded by tyrannical power relations**. Moreover, equating sexual difference with male dominance can also obscure the ways in which both men and women help to reproduce and maintain oppressive gendered institutions. As Young astutely notes, "most institutions relevant to the theory of male domination are productions of interactions between men and women" (1997: 32). As a case in point, we only have to think of the pernicious institution of female genital mutilation, which is both defended and practised by many women. **An emphasis on crushing patriarchal dominance can also lead us to ignore women's power and active roles within particular systems of social organisation**. For example, Llewellyn Hendrix and Zakir Hossain (1988) suggest that writers such as Ogundipe-Leslie can make their claims about women's inevitable economic and political disempowerment within their husbands' lineages only by drawing examples from patrilineal societies. In matrilineal or bilineal societies, women have more complex subject positions, as their productive and reproductive capacity is geared towards their natal clans, despite the fact that they are married to outsiders. Careful investigation could uncover the scope that women in these societies have for negotiating individual economic and political freedoms in relation to different families or lineages. Nevertheless, theorists such as Afonja (1990) claim that matrilineal systems provide little more than organising principles for connecting men across generations and space; any apparent power or authority women may have within matrilineal systems is merely symbolic and tangential to the formal power of men. **If we assume that women are automatically victims and men victimisers, we fall into the trap of confirming the very systems we set out to critique**. We fail to acknowledge how social agents can challenge their ascribed positions and identities in complex ways, and indirectly, we help to reify or totalise oppressive institutions and relationships. **Rather than viewing patriarchy as a fixed and monolithic system, it would be more helpful to show how patriarchy is constantly contested and reconstituted**. As Christine Battersby (1998) suggests, **patriarchy should be viewed as a dissipative system, with no central organising principle or dominant logic**. Viewing patriarchy in this way allows us to appreciate how institutional power structures restrict and limit women's capacity for action and agency without wholly constraining or determining this capacity. By conceptualising patriarchy as a changing and unstable system of power, we can move towards an account of African gendered experience that does not assume fixed positions in inevitable hierarchies, but stresses transformation and productive forms of contestation.

**3. THIS OUTWEIGHS CASE: DESPITE THEIR BEST INTENTIONS, THEIR RHETORICAL STRATEGY ONLY LIBERATES AFFLUENT WESTERN WHITE WOMEN WHILE JUSTIFYING OPPRESSION OF WOMEN WHO DON’T CONFORM TO THEIR HEGEMONIC UNDERSTANDING OF WOMANHOOD.**

**McEwan**, Senior lecturer in dept of geography @ Durham Univ, **01** (Cheryl, Postcolonialism, feminism and development: intersections and dilemmas, Progress in Development Studies 1:2, p. 93-111)

Black feminist and postcolonial critiques have also offered more profound examinations of the racism and ethnocentrism at the heart of (white) western feminisms. As bell hooks (1984: 8–9) argues: **All too frequently** in the women’s movement **it was assumed one could be free of sexist thinking by simply adopting the appropriate feminist rhetoric; it was** further **assumed that identifying oneself as oppressed freed one from being an oppressor**. To a grave extent **such thinking prevented white feminists from understanding** and overcoming **their own sexist-racist attitudes toward black women**. **They** could **pay lip service to** the idea of **sisterhood and solidarity between women but at the same time dismiss black women**. The relationship between (white) western and ‘other’ feminisms has often been adversarial, partly because of the failure of white women to recognize that they stand in a power relationship with black women that is a legacy of imperialism, and partly because the concepts central to feminist theory in the west become problematic when applied to black women (hooks, 1984; Mohanty, 1988). One example is the explanation given for inequalities in gender relations. **Many black and ‘Third World’ activists object to western feminism that depicts men as the primary source of oppression**. This is because **for black women there is no single source of oppression; gender oppression is inextricably bound up with ‘race’ and class**. There is perhaps a tendency in some of this criticism to homogenize ‘western feminism’ – socialist feminists also identify capital as a source of oppression (Delphy, 1984), and lesbian feminists have criticized marginalization on the basis of sexuality (Bell and Klein, 1996). However, this criticism has also forced recognition that assumptions at the heart of white western feminism do not reflect the experience of black women (Carby, 1983; Nain, 1991). Furthermore, in many cultures black women often feel solidarity with black men and do not advocate separatism; they struggle with black men against racism, and against black men over sexism. **These debates have generated theories that attempt to explain the interrelationship of multiple forms of oppression, such as race, class, imperialism and gender, without arguing that all oppression derives ultimately from men’s oppression of women**.

## T

#### **Including C and C powers is a limits disaster**

Heidt 13

Stephen (PhD Candidate, GSU) "A Memorandum on the Topic Area.pdf"

~http://www.cedadebate.org/forum/index.php?topic=4846.0~~

Voting for restrict presidential war power establishes a very narrow topic – commander in chief¶ blows the lid off that restriction. Those of us with gray in our hair may recall the restricting¶ commander in chief power means anything from Congressional control over the president’s¶ medical staff (Kansas) to Congressional control over media pools in wartime (a Bill Newnam¶ Special) and everything in between. Modern versions of the parameters of that type of topic are¶ elaborated in the topic paper when, for example, the authors isolate drones as a core controversy¶ invoking the “president’s legal authority to conduct the war on terror.” This is nonsense for two¶ reasons. First, the AUMF granted the president all the legal authority necessary and, second, the¶ CONDUCT of the war is power reserved for the commander in chief and does not fall under the¶ purview of Congressional war declaration power. There are no constitutional questions related to¶ drone use aside from use on American citizens (without due process). This gross error in the¶ topic paper reflects one of the downsides of using sources like the Idaho Statesman to comment¶ on constitutional issues. The topic paper is correct, however, that Affs could restrict presidential¶ actions to target U.S. citizens, but even that might not be topical if the topic is written as¶ restrict/reduce presidential war power since this goes to a “use” issue and not a “power” issue¶ (and, at best, reflects a violation of the Constitutional order and not an expansion of the¶ Constitutional order – one could argue that ending violations is not a restriction in presidential¶ war power since the president never had the power to act in the first place).¶ Detainees could also be excluded: “Bush, in claiming the right to detain captives from¶ Afghanistan and Iraq without their access to standard legal procedures, invoked his power as¶ commander in chief” (Astor, 18).¶ The bottom line: The topic should either be restrict presidential war power (as was voted for) OR restrict commander in chief power – not both. Blurring that distinction risks creating a gigantic mess under which either there is no effective limit to the topic or the community is forced into voting for a list topic.