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#### **aff’s use of the law is a militaristic tactic that creates legal legitimacy to propel more frequent, more deadly violent interventions that ensure infrastructural violence that maims civilians – they actively displace moral questions in favor of a pathologically detached question of legality**

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(Thomas, *International Studies Quarterly* 46, The New Law of War: Legitimizing Hi-Tech and Infrastructural Violence)

The role of military lawyers in all this has, according to one study, “changed irrevocably” ~Keeva, 1991:59!. Although liberal theorists point to the broad normative contours that law lends to international relations, the Pentagon wields law with technical precision. During the Gulf War and the Kosovo campaign, JAGs opined on the legal status of multinational forces, the U.S. War Powers Resolution, rules of engagement and targeting, country fly-overs, maritime interceptions, treatment of prisoners, hostages and “human shields,” and methods used to gather intelligence. Long before the bombing began, lawyers had joined in the development and acquisition of weapons systems, tactical planning, and troop training. In the Gulf War, the U.S. deployed approximately 430 military lawyers, the allies far fewer, leading to some amusing but perhaps apposite observations about the legalistic culture of America ~Garratt, 1993!. Many lawyers reviewed daily Air Tasking Orders as well as land tactics. Others found themselves on the ground and at the front. According to Colonel Rup- pert, the idea was to “put the lawyer as far forward as possible” ~Myrow, 1996–97!. During the Kosovo campaign, lawyers based at the Combined Allied Operations Center in Vicenza, Italy, and at NATO headquarters in Brussels approved every single targeting decision. We do not know precisely how decisions were taken in either Iraq or Kosovo or the extent to which the lawyers reined in their masters. Some “corrections and adjustments” to the target lists were made ~Shot- well, 1993:26!, but by all accounts the lawyers—and the law—were extremely accommodating. The exigencies of war invite professional hazards as military lawyers seek to “find the law” and to determine their own responsibilities as legal counselors. A 1990 article in Military Law Review admonished judge advocates not to neglect their duty to point out breaches of the law, but not to become military ombuds- men either. The article acknowledged that the JAG faces pressure to demonstrate that he can be a “force multiplier” who can “show the tactical and political soundness of his interpretation of the law” ~Winter, 1990:8–9!. Some tension between law and necessity is inevitable, but over the past decade the focus has shifted visibly from restraining violence to legitimizing it. The Vietnam-era perception that law was a drag on operations has been replaced by a zealous “client culture” among judge advocates. Commanding officers “have come to realize that, as in the relationship of corporate counsel to CEO, the JAG’s role is not to create obstacles, but to find legal ways to achieve his client’s goals—even when those goals are to blow things up and kill people” ~Keeva, 1991:59!. Lt. Col. Tony Montgomery, the JAG who approved the bombing of the Belgrade television studios, said recently that “judges don’t lay down the law. We take guidance from our government on how much of the consequences they are willing to accept” ~The Guardian, 2001!. Military necessity is undeterred. In a permissive legal atmosphere, hi-tech states can meet their goals and remain within the letter of the law. As noted, humanitarian law is firmest in areas of marginal military utility. When opera- tional demands intrude, however, even fundamental rules begin to erode. The Defense Department’s final report to Congress on the Gulf War ~DOD, 1992! found nothing in the principle of noncombatant immunity to curb necessity. Heartened by the knowledge that civilian discrimination is “one of the least codified portions” of the law of war ~p. 611!, the authors argued that “to the degree possible and consistent with allowable risk to aircraft and aircrews,” muni- tions and delivery systems were chosen to reduce collateral damage ~p. 612!. “An attacker must exercise reasonable precautions to minimize incidental or collat- eral injury to the civilian population or damage to civilian objects, consistent with mission accomplishments and allowable risk to the attacking forces” ~p. 615!. The report notes that planners targeted “specific military objects in populated areas which the law of war permits” and acknowledges the “commingling” of civilian and military objects, yet the authors maintain that “at no time were civilian areas as such attacked” ~p. 613!. The report carefully constructed a precedent for future conflicts in which human shields might be deployed, noting “the presence of civilians will not render a target immune from attack” ~p. 615!. The report insisted ~pp. 606–607! that Protocol I as well as the 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons “were not legally applicable” to the Gulf War because Iraq as well as some Coalition members had not ratified them. More to the point that law follows practice, the report claimed that certain provisions of Protocol I “are not a codification of the customary practice of nations,” and thus “ignore the realities of war” ~p. 616!. Nor can there be any doubt that a more elaborate legal regime has kept pace with evolving strategy and technology. Michael Ignatieff details in Virtual War ~2000! how targets were “developed” in 72-hour cycles that involved collecting and reviewing aerial reconnaissance, gauging military necessity, and coding antici- pated collateral damage down to the directional spray of bomb debris. A judge advocate then vetted each target in light of the Geneva Conventions and calcu- lated whether or not the overall advantage to be gained outweighed any expected civilian spillover. Ignatieff argues ~2000:198–199! that this elaborate symbiosis of law and technology has given birth to a “veritable casuistry of war.” Legal fine print, hand-in-hand with new technology, replaced deeper deliberation about the use of violence in war. The law provided “harried decision-makers with a critical guarantee of legal coverage, turning complex issues of morality into technical issues of legality.” Astonishingly fine discrimination also meant that unintentional civilian casualties were assumed to have been unintentional, not foreseen tragedies to be justified under the rule of double effect or the fog of war. The crowning irony is that NATO went to such lengths to justify its targets and limit collateral damage, even as it assured long-term civilian harm by destroying the country’s infrastructure. Perhaps the most powerful justification was provided by law itself. War is often dressed up in patriotic abstractions—Periclean oratory, jingoistic newsreels, or heroic memorials. Bellum Americanum is cloaked in the stylized language of law. The DOD report is padded with references to treaty law, some of it obscure, that was “applicable” to the Gulf War, as if a surfeit of legal citation would convince skeptics of the propriety of the war. Instances of humane restraint invariably were presented as the rule of law in action. Thus the Allies did not gas Iraqi troops, torture POWs, or commit acts of perfidy. Most striking is the use of legal language to justify the erosion of noncombatant immunity. Hewing to the legal- isms of double effect, the Allies never intentionally targeted civilians as such. As noted, by codifying double effect the law artificially bifurcates intentions. Har- vard theologian Bryan Hehir ~1996:7! marveled at the Coalition’s legalistic word- play, noting that the “briefers out of Riyadh sounded like Jesuits as they sought to defend the policy from any charge of attempting to directly attack civilians.” The Pentagon’s legal narrative is certainly detached from the carnage on the ground, but it also oversimplifies and even actively obscures the moral choices involved in aerial bombing. Lawyers and tacticians made very deliberate decisions about aircraft, flight altitudes, time of day, ordnance dropped, confidence in intelligence, and so forth. By expanding military necessity to encompass an extremely prudential reading of “force protection,” these choices were calculated to protect pilots and planes at the expense of civilians on the ground, departing from the just war tradition that combatants assume greater risks than civilians. While it is tempting to blame collateral damage on the fog of war, much of that uncertainty has been lifted by technology and precision law. Similarly, in Iraq and in Yugoslavia the focus was on “degrading” military capabilities, yet a loose view of dual use spelled the destruction of what were essentially social, economic, and political targets. Coalition and NATO officials were quick to apologize for accidental civilian casualties, but in hi-tech war most noncombatant suffering is by design. Does the law of war reduce death and destruction? International law certainly has helped to delegitimize, and in rare cases effectively criminalize, direct attacks on civilians. But in general humanitarian law has mirrored wartime practice. On the ad bellum side, the erosion of right authority and just cause has eased the path toward war. Today, foreign offices rarely even bother with formal declarations of war. Under the United Nations system it is the responsibility of the Security Council to denounce illegal war, but for a number of reasons its members have been extremely reluctant to brand states as aggressors. If the law were less accommodating, greater effort might be devoted to diplomacy and war might be averted. On the in bello side the ban on direct civilian strikes remains intact, but double effect and military demands have been contrived to justify unnecessary civilian deaths. Dual use law has been stretched to sanction new forms of violence against civilians. Though not as spectacular as the obliteration bombing to which it so often is favorably compared, infrastructural war is far deadlier than the rhetoric of a “clean and legal” conflict suggests. It is true that rough estimates of the ratio of bomb tonnage to civilian deaths in air attacks show remarkable reductions in immediate collateral damage. There were some 40.83 deaths per ton in the bombing of Guernica in 1937 and 50.33 deaths per ton in the bombing of Tokyo in 1945. In the Kosovo campaign, by contrast, there were between .077 and .084 deaths per ton. In Iraq there were a mere .034 ~Thomas, 2001:169!. According to the classical definition of collateral damage, civilian protection has improved dramatically, but if one takes into account the staggering long-term effects of the war in Iraq, for example, aerial bombing looks anything but humane. For aerial bombers themselves modern war does live up to its clean and legal image. While war and intervention have few steadfast constituents, the myth of immaculate warfare has eased fears that intervening soldiers may come to harm, which polls in the U.S., at least, rank as being of great public concern, and even greater military concern. A new survey of U.S. civilian and military attitudes found that soldiers were two to four times more casualty-averse than civilians thought they should be ~Feaver and Kohn, 2001!. By removing what is perhaps the greatest restraint on the use of force—the possibility of soldiers dying—law and technology have given rise to the novel moral hazards of a “postmodern, risk-free, painless war” ~Woollacott, 1999!. “We’ve come to expect the immacu- late,” notes Martin Cook, who teaches ethics at the U.S. Army War College in Carlisle, PA. “Precision-guided munitions make it very much easier to go to war than it ever has been historically.” Albert Pierce, director of the Center for the Study of Professional Military Ethics at the U.S. Naval Academy argues, “standoff precision weapons give you the option to lower costs and risks . . . but you might be tempted to do things that you might otherwise not do” ~Belsie, 1999!. Conclusion The utility of law to legitimize modern warfare should not be underestimated. Even in the midst of war, legal arguments retain an aura of legitimacy that is missing in “political” justifications. The aspirations of humanitarian law are sound. Rather, it is the instrumental use of law that has oiled the skids of hi-tech violence. Not only does the law defer to military necessity, even when very broadly defined, but more importantly it bestows on those same military demands all the moral and psychological trappings of legality. The result has been to legalize and thus to justify in the public mind “inhumane military methods and their consequences,” as violence against civilians is carried out “behind the protective veil of justice” ~af Jochnick and Normand, 1994a:50!. Hi-tech states can defend hugely destructive, essentially unopposed, aerial bombardment by citing the authority of seemingly secular and universal legal standards. The growing gap between hi- and low-tech means may exacerbate inequalities in moral capital as well, as the sheer barbarism of “premodern” violence committed by ethnic cleansers or atavistic warlords makes the methods employed by hi-tech warriors seem all the more clean and legal by contrast. This fusion of law and technology is likely to propel future American interventions. Despite assurances that the campaign against terrorism would differ from past conflicts, the allied air war in Afghanistan, marked by record numbers of unmanned drones and bomber flights at up to 35,000 feet, or nearly 7 miles aloft, rarely strayed from the hi-tech and legalistic script. While the attack on the World Trade Center confirmed a thousand times over the illegality and inhu- manity of terrorism, the U.S. response has raised further issues of legality and inhumanity in conventional warfare. Civilian deaths in the campaign have been substantial because “military objects” have been targeted on the basis of extremely low-confidence intelligence. In several cases targets appear to have been chosen based on misinformation and even rank rumor. A liberal reading of dual use and the authorization of bombers to strike unvetted “targets of opportunity” also increased collateral damage. Although 10,000 of the 18,000 bombs, missiles, and other ordnance used in Afghanistan were precision-guided munitions, the war resulted in roughly 1000 to 4000 direct civilian deaths, and, according to the UNHCR, produced 900,000 new refugees and displaced persons. The Pentagon has nevertheless viewed the campaign as “a more antiseptic air war even than the one waged in Kosovo” ~Dao, 2001!. General Tommy Franks, who commanded the campaign, called it “the most accurate war ever fought in this nation’s history” ~Schmitt, 2002!.9 No fundamental change is in sight. Governments continue to justify collateral damage by citing the marvels of technology and the authority of international law. One does see a widening rift between governments and independent human rights and humanitarian relief groups over the interpretation of targeting and dual-use law. But these disputes have only underscored the ambiguities of human- itarian law. As long as interventionist states dominate the way that the rules of war are crafted and construed, hopes of rescuing law from politics will be dim indeed.

#### **militarism is a fundamentally unsustainable system that is the root cause of all extinction threats and ensures mass structural violence – non-violence is the only possible response**

Kovel 2

(Joel, “The United States Military Machine”, http://www.joelkovel.org/americanmilitary.htm; Jacob)

I want to talk to you this evening about war - not the immediate threat of us war against Iraq, but about how this conflict is an instance of a larger tendency toward war-making endemic to our society. In other words, the phrase from the folksong, “I ain’t gonna study war no more,” should be rethought. I think we do have to study war. Not to make war but to understand more deeply how it is put together and about the awful choices that are now being thrust upon us. These remarks have been stimulated by recent events, which have ancient roots, but have taken on a new shape since the collapse of the Soviet Union, the rise of the second Bush administration, and the inception of the so-called “War on Terror.” The shape is that of permanent warfare- war-making that has no particular strategic goal except total us dominance over global society. Hence, a war without end and whose internal logic is to perpetuate itself. We are, in other words, well into World War III, which will go on whether or not any other state such as Iraq is involved. It is quite probable that this administration will go to war in Iraq, inasmuch as certain very powerful people crave it. But it is not necessarily the case, given the fact that the war against Iraq is such a lunatic proposal that many other people in high places are against it and too many people are marching against it. And while war against Iraq is a very serious matter that needs to be checked by massive popular resistance, equally serious are the structures now in place in the United States dictating that whether or not the war in Iraq takes place, there will be another war to replace it, and others after that, unless some very basic changes take place. America Has Become a War-Making Machine The United States has always been a bellicose and expansive country, built on violent conquest and expropriation of native peoples. Since the forming of the American republic, military interventions have occurred at the rate of about once a year. Consider the case of Nicaragua, a country utterly incapable of being any kind of a threat to its giant northern neighbor. Yet prior to the Sandinista revolution in 1979 (which was eventually crushed by us proxy forces a decade later), our country had invaded Nicaragua no fewer than 14 times in the pursuit of its imperial interests. A considerable number of contemporary states, such as Britain, South Africa, Russia, and Israel, have been formed in just such a way. But one of the special conditions of the formation of America, despite its aggressivity, was an inhibition against a military machine as such. If you remember, no less a figure than George Washington warned us against having a standing army, and indeed the great bulk of us interventions prior to World War II were done without very much in the way of fixed military institutions. However, after WWII a basic change set in. War-weary America longed for demobilization, yet after a brief beginning in this direction, the process was halted and the permanent warfare state started to take shape. In part, this was because policy planners knew quite well that massive wartime mobilization had been the one measure that finally lifted America out of the Great Depression of the 1930s. One of the lessons of that time was that propounded by the British economist John Maynard Keynes, to the effect that capitalist societies could ameliorate chronic [economic] crises by infusions of government spending. The Great War had certified this wisdom, and permanent military expenditure readily became the received wisdom. This was greatly reinforced by the drastic realignment of capitalist power as a result of the war. America was essentially the only capitalist power in 1945 that did not lay in ruins and/or have its empire shattered. The world had been realigned and the United States had assumed a global imperial role. Policy planners like George Kennan lucidly realized that this meant safeguarding extreme inequalities in wealth, which implied a permanent garrison to preserve the order of things. The notion was especially compelling given that one other state, the Soviet Union, had emerged a great power from the war and was the bellwether of those forces that sought to break down the prevailing distribution of wealth. The final foundation stone for the new military order was the emergence of frightful weapons of mass destruction, dominance over which became an essential element for world hegemony. The Iron Triangle These factors crystallized into the Cold War, the nuclear arms race, and, domestically, into those structures that gave institutional stability and permanence to the system: the military-industrial complex (mic). Previously the us had used militarism to secure economic advantage. Now, two developments greatly transformed our militarism: the exigencies of global hegemony and the fact that militarism became a direct source of economic advantage, through the triangular relations of the mic with the great armament industries comprising one leg, the military establishment another, and the state apparatus the third, profits, power, and personnel could flow through the system and from the system. Clearly, this arrangement had the potential to greatly undermine American democracy. It was a “national security state” within the state but also extended beyond it into the economy and society at large, virtually insulated from popular input, and had the power to direct events and generate threats. Another conservative war hero-become-president, Dwight Eisenhower, warned the nation in a speech in 1961 against the emerging permanent war machine, but this time, the admonitions were not heeded.\* The machine made a kind of war against the Soviet system for 35 years. Although actual guns were not fired between the two adversaries, as many as 10 million people died in its varied peripheral conflicts, from Korea to Vietnam, Angola, El Salvador, Nicaragua, and Guatemala. The Cold War divided the world into bipolar imperial camps, directed by gigantic superpowers that lived off each other’s hostility. It was a terrible war whose immense suffering took place largely outside the view of the American people, but it also brought about an uneasy kind of stability in the world order, in part through the standoff in nuclear weapons. During the Ford and Carter administrations, another great crisis seized the world capitalist economy. Having matured past the rebuilding that followed the world war, a period of stagnation set in, which still has the global economy in its grip despite episodic flashes of vigor. Predictably, a spate of militarism was central to the response. A “Second Cold War” took place under Reagan, featuring an accelerated nuclear arms race, which was deliberately waged so as to encourage Soviet countermeasures in the hope that this would cause breakdown in the much weaker, bloated, and corrupt Russian system. The plan worked splendidly: by 1989-91, the mighty Soviet empire collapsed, and the bipolar world order became unipolar, setting a stage for the current phase. The fall of the Soviet Union was widely expected to bring a ìpeace dividend.î This would have been the case according to the official us line, parroted throughout the media and academe, that our military apparatus was purely defensive (after all, we have no Department of War, only one of "Defense") and reactive to Soviet expansionism and military/nuclear threat. As this was no longer a factor, so the reasoning wentóindeed, as the us now stood bestride the world militarily as had no power since the Roman Empireóconventional logic predicted a general diminution in American militarism after 1991, with corresponding benefits to society. The last decade has at least settled this question, for the effect on us aggression, interventionism, and the militarization of society has been precisely the opposite. In other words, instead of braking, the machine accelerated. Removal of Soviet power did not diminish Americaís imperial appetite: it removed inhibitions on its internally driven expansiveness. As a result, enhanced war-making has replaced the peace dividend. The object of this machine has passed from dealing with Soviet Communism to a more complex and dispersed set of oil wars (Iraq I and now II), police actions against international miscreants (Kosovo), and now the ubiquitous War Against Terror, aimed variously at Islamic fundamentalists, Islam as a whole, or anybody irritated enough with the ruling order to take up some kind of arms against it. The comparison with the Roman Empire is here very exact. As the eminent economist and sociologist Joseph Schumpeter described Rome in 1919: “There was no corner of the known world where some interest was not alleged to be in danger or under actual attack. If the interests were not Roman, they were those of Rome’s allies. And if Rome had no allies existed, the allies would be invented. The fight was always invested with the order of legality. Rome was always being attacked by evil-minded neighbors.” The logic of constant threat meshes with that of ruthless expansion, which we see everywhere in this epoch of unipolar world dominion. Currently, the military budget of the us is 334 billion dollars. The budget for the next fiscal year is 379 billion dollars- an increase of more than 10 percent. By 2007, the projected military budget of the us is to be an astounding 451 billion dollars: almost half a trillion dollars, without the presence of anything resembling a conventional war. The present military budget is greater than the sum of all other military budgets. In fact, it is greater than the entire federal budget of Russia, once America's immortal adversary, and comprises more than half - 52 percent of all discretionary spending by the us government. (By comparison, education accounts for 8 percent of the federal budget.) A considerable portion of this is given over to "military Keynesianism," according to the well-established paths of the mic. Thus, although in the first years after the fall of the ussr certain firms like General Dynamics, which had played a large role in the nuclear arms race, suffered setbacks, that problem has been largely reversed for the entire class of firms fattening at the trough of militarism. It is fair to say, though, that the largesse is distributed over a wider scale, in accordance with the changing pattern of armaments. us Armies Taking Root Everywhere From having scarcely any standing army in 1940, American armies now stand everywhere. One feature of us military policy since WWII is to make war and then stay where war was made, rooting itself in foreign territory. Currently, the us has military bases in 113 countries, with 11 new ones formed since the beginning of the War Against Terror. The us now has bases in Kazakhstan, Uzbekistan, and Kurdistan, encircling China and creating new sources of military tension. On these bases, the us military has erected some 800,000 buildings. Imagine that: 800,000 buildings in foreign countries that are now occupied by us military establishments. And America still maintains large forces in Germany, Japan, and Korea, with tens of thousands of troops permanently on duty (and making mischief, as two us servicemen recently ran over and killed two Korean girls, provoking massive demonstrations). After the first Gulf War the us military became installed in Saudi Arabia and Kuwait, in which latter place it currently occupies one quarter of the country - 750 square miles devoted to military activity. This huge investment is no doubt determined by proximity to Iraq. Again, after going to war in Kosovo, the us left behind an enormous base in a place called Bondsteel. These self-expanding sites of militarism are permanent goads to terrorist organizations. Recall that one of Osama bin Laden's professed motivations for al-Qaeda's attacks on American facilities was the presence of us bases in his home country of Saudi Arabia. The bases are also permanent hazards to the environment - indeed, the us, with some 800,000 buildings on these military sites, is the world's largest polluter and the largest consumer of fossil fuels. With territorial expansion of the us military apparatus, there is a corresponding expansion of mission. For instance, in Colombia, where billions of us dollars are spent in the "War on Drugs," us troops are now being asked to take care of pipelines through which vital oil reserves are passing. In addition, the War on Drugs is now subsumed into the War Against Terror. The signifier of Terror has virtually unlimited elasticity, for once an apparatus reaches the size of the us military machine, threats can be seen anywhere. With the inauguration of the new hard-line president of Colombia, Alvaro Uribe, the us authorized the use of 1.7 billion dollars in military aid hitherto limited to anti-drug operations for direct attacks on deeply entrenched farc guerrillas. This redirection of aid came after Colombian officials and their American supporters in the Congress and Bush administration argued that the change was needed as part of the global campaign against terrorism. Within this overall picture, American armed forces are undergoing a qualitative shift of enormous proportion. In words read by President Bush: “Our forces in the next century must be agile, lethal, readily deployable, and must require a minimum of logistical support. We must be able to project our power over long distances in days or weeks rather than months. On land our heavy forces must be lighter, our light forces must be more lethal. All must be easier to deploy.” Crossing Weapons Boundaries - Both Nuclear and Conventional As a result, many boundaries and limits of the bipolar era have been breached. For example, the distinction between nuclear and conventional weapons had always constituted a radical barrier. The standoff between the us and the ussr was epitomized by mind-numbing hydrogen bomb-missiles facing each other in a scenario called “Mutual Assured Destruction.î”In short, a strategic condition of deterrence prevailed, which made nuclear weapons seem unthinkable. With the demise of the ussr, deterrence no longer inhibits us nuclear weaponry, and the weapons themselves have proliferated downward, becoming miniaturized and increasingly tactical rather than strategic. Meanwhile, the genie of the weapons industries has developed ever more destructive “conventional” weapons. These include non-explosive devices of awesome power, such as laser beams, microwaves, and large-scale climate manipulation, along with a new generation of super-powerful explosive devices. Thus the strongest non-nuclear weapons are now considerably more lethal than the least powerful nuclear weapons, making the latter thinkable and eliminating a major barrier against their employment. These so-called conventional bombs have already been used, for example, in Afghanistan, where the us employed a gigantic explosive weapon, called a “Bunker Buster” to root out al-Qaeda combatants in underground bunkers. They are based upon the “daisy cutter,” a giant bomb about the size of a Volkswagen Beetle and capable of destroying everything within a square kilometer. Significantly, the model used in Afghanistan, the B61-11, already employs nuclear technology, the infamous depleted uranium warhead, capable by virtue of its extreme density, of great penetrating power. Depleted uranium (du) is a by-product of the nuclear power industry (chiefly being U-238 created in the extraction of U-235 from naturally occurring uranium ore). Over 500,000 tons of deadly du have accumulated and 4-5,000 more tons are being produced every year. Like all products of the nuclear power industry, du poses immense challenges of disposal. It has this peculiar property of being almost twice as dense as lead and it is radioactive with a half-life of 4.5 billion years. Wherever depleted uranium is used, it has another peculiar property of exploding, vaporizing at 56 degrees centigrade, which is just like a little more than half the way to boiling water. So it is very volatile, it explodes, it forms dust and powders that are inhaled, disburses widely, and produces lethal cancers, birth defects, and so forth for 4.5 billion years. In the case of depleted uranium, the challenge of disposal was met by incorporating the refuse from the “peaceful” branch of nuclear technology into the war-making branch. Already used in anti-tank projectiles in the first Iraq war (approximately 300 tons worth) and again in Yugoslavia (approximately 10-15 tons were used in each of the various Yugoslav wars), it is presumed, although the defense department coyly denies it, that this material was also used in the Afghanistan war. Depleted uranium has spread a plague of radioactivity and further rationalized the use of nuclear weapons as such. Consequently, the B61-11 is about to be replaced with the BLU113, where the bunker buster will now be a small nuclear weapon, almost certainly spear-tipped with du. Pollutants to Earth and Space To the boundaries crossed between nuclear and non-nuclear weapons, and between the peaceful and militaristic uses of atomic technology, we need to add those between earth and its lower atmosphere on the one hand, and space on the other. The administration is poised to realize the crackpot and deadly schemes of the Reagan administration to militarize space and to draw the rest of the world into the scheme, as client and victim. In November 2002, Bush proposed that nato allies build missile defense systems, with components purchased, needless to add, from Boeing, Raytheon, etc, even as Congress was approving a fiscal 2003 defense budget containing $7.8 billion authorization for missile defense research and procurement, as part of the $238 billion set aside for Star Wars over the next 20 years. The administration now is poised to realize the crackpot and deadly schemes of the Reagan administration to militarize space and to draw the rest of the world into the scheme, as client and victim. A new missile defense system bureaucracy has risen. It is currently developing such wild items as something called ìbrilliant pebblesî which involves the release of endless numbers of mini satellites into outer space. All of this was to protect the world against the threat of rogue states such as North Korea. As the Seattle Times reported, the us expects the final declaration to, “express the need to examine options to protect allied forces, territories, and population centers against the full range of missile threats.” As an official put it, "This will establish the framework within which nato allies could work cooperatively toward fielding the required capabilities. With the us withdrawal this year from the anti-ballistic treaty with Russia, it is no longer a question of whether missile defenses will be deployed. The relevant questions are now what, how, and when. The train is about to pull out of the station; we invite our friends, allies, and the Russian Federation to climb on board." The destination of this train is defensive only in the Orwellian sense, as the missiles will be used to defend us troops in the field. In other words, they will be used to defend armies engaged in offensive activities. What is being “defended” by the Strategic Defense Initiative (sdi), therefore, is the initiative to make war everywhere. Space has now become the ultimate battlefield. And not just with use of these missiles. The High Frequency Active Aural Research Program (haarp) is also part of sdi. This amounts to weather warfare: deliberately manipulating climate to harm and destroy adversaries. A very dubious enterprise, to say the least, in an age when global warming and climate instability are already looming as two of the greatest problems facing civilization. The chief feature is a network of powerful antennas capable of creating controlled local modifications of the ionosphere and hence producing weather disturbances and so forth. All of these technical interventions are accompanied by many kinds of institutional and political changes. The National Aeronautics and Space Administration, nasa, for instance, is now a partner in the development of this strategic defense initiative. The very way in which the United Nations was drawn into the resolution in the war against Iraq is a breach and a violation of the original un Charter, which is to never make war, never to threaten to make war on any member state. The un was a peacemaking institution, but now the Super power has forced it into its orbit. The scrapping of the abm and other elements of the treaty structure (non- proliferation, test-ban) that had organized the world of the Cold War is one part of a process of shedding whatever might inhibit the cancerous growth of militarism. It also creates an atmosphere of general lawlessness in the world. This is felt at all levels, from the rise of an ultra-militarist clique in the White House to the formal renunciation of no-first-use nuclear strategy, the flouting of numerous un regulations, the doctrine of pre-emptive war, and, as the logical outcome of all these developments, the condition of Permanent War and its accompaniment of general lawlessness, media slavishness, and a wave of repression for whose parallel we have to go back to the Alien and Sedition acts of the 1790s, or Trumanís loyalty oaths of 1947. Militarism cannot be reduced to politics, economics, technology, culture, or psychology. All these are parts of the machine, make the machine go around, and are themselves produced by the actions of the machine. There is no doubt, in this regard, that the machine runs on natural resources (which have to be secured by economic, political, and military action), and that it is deeply embedded in the ruling corporate order. There is no contradiction here, but a set of meshing parts, driven by an insensate demand for fossil fuel energy. As a man from Amarillo, Texas put it when interviewed by npr as to the correctness of Bush’s plan to go to war in Iraq: “I agree with the president, because how else are we going to get the oil to fly the F-16s?” We go to war, in other words, to get the oil needed to go to war. A Who's Who List of MIC Beneficiaries The fact that our government is front-loaded with oil magnates is another part of the machine. It is of interest, therefore, that Unocal, for example, celebrated Condoleezza Riceís ascendancy to the post of National Security Advisor by naming an oil tanker after her. Or that Dick Cheney, originally a poor boy, became a rich man after the first Gulf War, when he switched from being Secretary of Defense, in charge of destroying the Kuwait oil fields, to ceo of a then-smallish company, Halliburton, in charge of rebuilding the same oil fields. Or that G.W. Bush himself, aside from his failed venture with Harken Oil, is scion of a family and a dynasty that controls the Carlyle Group, founded in 1987 by a former Carter administration official. Carlyle is now worth over $13 billion and its high officials include President Bush I, his Secretary of State (and fixer of the coup that put Bush II in power) James Baker, Reaganís Secretary of Defense Frank Carlucci, former British Prime Minister John Major, and former Phillipine President Fidel Ramos, among others. The Carlyle Group has its fingers everywhere, including ìdefenseî, where it controls firms making vertical missile launch systems currently in use on us Navy ships in the Arabian sea, as well as a range of other weapons delivery systems and combat vehicles. And as a final touch which the worldís people would be much better off for knowing, there are very definite connections between Carlyle and the family of Osama bin Laden - a Saudi power whose fortunes have been fused with those of the United States since the end of World War II. Thus the military-industrial complex lives, breathes, and takes on new dimensions. There is a deep structural reason for the present explosion of us militarism, most clearly traceable in the activities of Vice President Cheney, made clear in the energy report that he introduced with the generous assistance of Enron executives in May 2001. According to the report, American reliance on imported oil will rise by from about 52 percent of total consumption in 2001 to an estimated 66 percent in 2020. The reason for this is that world production, in general, and domestic production in particular are going to remain flat (and, although the report does not discuss this, begin dropping within the next 20 years). Meanwhile consumptionówhich is a direct function of the relentless drive of capitalism to expand commodity productionóis to grow by some two- thirds. Because the usage of oil must rise in the worldview of a Cheney, the us will actually have to import 60 percent more oil in 2020 to keep itself going than it does today. This means that imports will have to rise from their current rate of about 10.4 million barrels per day to about 16.7 million barrels per day. In the words of the report: “The only way to do this is persuade foreign suppliers to increase their production to sell more of their output to the us.” The meaning of these words depends of course on the interpretation of “persuade”, which in the us lexicon is to be read, I should think, as requiring a sufficient military machine to coerce foreign suppliers. At that point they might not even have to sell their output to the us, as it would already be possessed by the superpower. Here we locate the root material fact underlying recent us expansionism. This may seem an extravagant conclusion. However an explicit connection to militarismóand Iraqóhad been supplied the month before, in April 2001, in another report prepared by James Baker and submitted to the Bush cabinet. This document, called “Strategic Energy Policy Challenges for the 21st Century,” concludes with refreshing candor that ìthe us remains a prisoner of its energy dilemma, Iraq remains a destabilizing influence to the flow of oil to international markets from the Middle East, Saddam Hussein has also demonstrated a willingness to threaten to use the oil weapon and to use his own export program to manipulate oil markets, therefore the us should conduct an immediate policy review toward Iraq, including military, energy, economic, and political diplomatic assessments. Note the absence of reference to “weapons of mass destruction,” or aid to terrorism, convenient rationalizations that can be filled in later. Clearly, however things turn out with Iraq, the fundamental structural dilemma driving the military machine pertains to the contradictions of an empire that drives toward the invasion of all social space and the total control over nature. Since the former goal meets up with unending resistance and the latter crashes against the finitude of the material world, there is no recourse except the ever-widening resort to force. But this, the military monster itself, ever seeking threats to feed upon, becomes a fresh source of danger, whether of nuclear war, terror, or ecological breakdown. The situation is plainly unsustainable, a series of disasters waiting to happen. It can only be checked and brought to rationality by a global uprising of people who demand an end to the regime of endless war. This is the only possible path by which we can pull ourselves away from the abyss into which the military machine is about to plunge, dragging us all down with it.

#### **the aff’s certain calculations about war are an impossibly arrogant form of mechanical, sterile analysis that eases the path towards war. their language is coopted to provide rhetorical ammunition for militarists. our alternative is not pure pacifism, but rather a pacifist analysis that injects moral and epistemic doubt into our decisionmaking about war – this is the only way to formulate better policies that address structural causes of war and avoids inevitable cycles of violence**

Neu 13 – prof @ U of Brighton

(Michael, International Relations 27(4), December, The Tragedy of Justified War)

Just war theory is not concerned with millions of starving people who could be saved from death and disease with a fraction of the astronomical amount of money that, every year, goes into the US defence budget alone (a budget that could no longer be justified if the United States ran out of enemies one day). It is not interested in exposing the operat- ing mechanisms of a global economic structure that is suppressive and exploitative and may be conducive to outbreaks of precisely the kind of violence that their theory is con- cerned with. As intellectually impressive as analytical just war accounts are, they do not convey any critical sense of Western moralism. It is as though just war theory were written for a different world than the one we occupy: a world of morally responsible, structurally unconstrained, roughly equal agents, who have non-complex and non-exploitative relationships, relationships that lend themselves to easy epistemic access and binary moral analysis. Theorists write with a degree of confidence that fails to appreciate the moral and epistemic fragility of justified war, the long-term genesis of violent conflict, structural causes of violence and the moralistic attitudes that politicians and the media are capable of adopting. To insist that, in the final analysis, the injustice of wars is completely absorbed by their being justified reflects a way of doing moral philosophy that is frighteningly mechanical and sterile. It does not do justice to individual persons,59 it is nonchalant about suffering of unimaginable proportions and it suffocates a nuanced moral world in a rigid binary structure designed to deliver unambiguous, action-guiding recommendations. According to the tragic conception defended here, justified warfare constitutes a moral evil, not just a physical one – whatever Coates’ aforementioned distinction is supposed to amount to. If we do not recognise the moral evil of justified warfare, we run the risk of speaking the following kind of language when talking to a tortured mother, who has witnessed her child being bombed into pieces, justifiably let us assume, in the course of a ‘just war’: See, we did not bomb your toddler into pieces intentionally. You should also consider that our war was justified and that, in performing this particular act of war, we pursued a valid moral goal of destroying the enemy’s ammunition factory. And be aware that killing your toddler was not instrumental to that pursuit. As you can see, there was nothing wrong with what we did. (OR: As you can see, we only infringed the right of your non-liable child not to be targeted, but we did not violate it.) Needless to say, we regret your loss. This would be a deeply pathological thing to say, but it is precisely what at least some contemporary just war theorists would seem to advise. The monstrosity of some accounts of contemporary just war theory seems to derive from a combination of the degree of certainty with which moral judgments are offered and the ability to regard the moral case as closed once the judgments have been made. One implication of my argument for just theorists is clear enough: they should critically reflect on the one-dimensionality of their dominant agenda of making binary moral judgments about war. If they did, they would become more sympathetic to the pacifist argument, not to the conclusion drawn by pacifists who are also caught in a binary mode of thinking (i.e. never wage war, regardless of the circumstances!) but to the timeless wisdom that forms the essence of the pacifist argument. It is wrong to knowingly kill and maim people, and it does not matter, at least not as much as the adherents of double effect claim, whether the killing is done intentionally or ‘merely’ with foresight. The difference would be psychological, too. Moral philosophers of war would no longer be forced to concede this moral truth; rather, they would be free to embrace it. There is no reason for them to disrespect the essence of pacifism. The just war theorist Larry May implicitly offers precisely such a tragic vision in his sympathetic discussion of ‘Grotius and Contingent Pacifism’. According to May, ‘war can sometimes be justified on the same grounds on which certain forms of pacifism are themselves grounded’.60 If this is correct, just war theorists have good reason to stop calling themselves by their name. They would no longer be just war theorists, but unjust war theorists, confronting politicians with a jus contra bellum, rather than offering them a jus ad bellum. Beyond being that, they would be much ‘humbler in [their] approach to considering the justness of war’ (or, rather, the justifiability), acknowledging that: notions of legitimate violence which appear so vivid and complete to the thinking individual are only moments and snapshots of a wider history concerning the different ways in which humans have ordered their arguments and practices of legitimate violence. Humility in this context does not mean weakness. It involves a concern with the implicit danger of adopting an arrogant approach to the problem of war.61 Binary thinking in just war theory is indeed arrogant, as is the failure to acknowledge the legitimacy of – and need for – ambiguity, agony and doubt in moral thinking about war. Humble philosophers of war, on the contrary, would acknowledge that any talk of justice is highly misleading in the context of war.62 It does not suffice here, in my view, to point out that ‘we’ have always understood what ‘they’ meant (assuming they meant what we think they meant). Fiction aside, there is no such thing as a just war. There is also no such thing as a morally justified war that comes without ambiguity and moral remainders. Any language of justified warfare must therefore be carefully drafted and constantly questioned. It should demonstrate an inherent, acute awareness of the fragility of moral thinking about war, rather than an eagerness to construct unbreakable chains of reasoning. Being uncertain about, and agonised by, the justifiability of waging war does not put a moral philosopher to shame. The uncertainty is not only moral, it is also epistemic. Contemporary just war theorists proceed as if certainty were the rule, and uncertainty the exception. The world to which just war theory applies is one of radical and unavoidable uncertainty though, where politicians, voters and combatants do not always know who their enemies are; whether or not they really exist (and if so, why they exist and how they have come into existence); what weapons the enemies have (if any); whether or not, when, and how they are willing to employ them; why exactly the enemies are fought and what the consequences of fighting or not fighting them will be. Philosophers of war should also become more sensitive to the problem of political moralism. The just war language is dangerous, particularly when spoken by eager, self- righteous, over-confident moralists trying to make a case. It would be a pity if philosophers of war, despite having the smartest of brains and the best of intentions, effectively ended up delivering rhetorical ammunition to political moralists. To avoid being inadvertently complicit in that sense, they could give public lectures on the dangers of political moralism, that is, on thinking about war in terms of black and white, good and evil and them and us. They could warn us against Euro-centrism, missionary zeal and the emperors’ moralistic clothes. They could also investigate the historical genesis and structural conditionality of large-scale aggressive behaviour in the global arena, deconstruct- ing how warriors who claim to be justified are potentially tied into histories and structures, asking them: Who are you to make that claim? A philosopher determined to go beyond the narrow discursive parameters provided by the contemporary just war paradigm would surely embrace something like Marcus’ ‘second-order regulative principle’, which could indeed lead to ‘“better” policy’.63 If justified wars are unjust and if it is true that not all tragedies of war are authentic, then political agents ought to prevent such tragedies from occurring. This demanding principle, however, may require a more fundamental reflection on how we ‘conduct our lives and arrange our institutions’ (Marcus) in this world. It is not enough to adopt a ‘wait and see’ policy, simply waiting for potential aggressions to occur and making sure that we do not go to war unless doing so is a ‘last resort’. Large-scale violence between human beings has causes that go beyond the individual moral failure of those who are potentially aggressing, and if it turns out that some of these causes can be removed ‘through more careful decision-making’ (Lebow), then this is what ought to be done by those who otherwise deprive themselves, today, of the possibility of not wronging tomorrow.

### CP

#### The Executive branch of the United States federal government should prohibit the war powers authority of the president to introduce the United States Armed Forces into hostilities for humanitarian intervention.

#### Including self-binding mechanisms ensures effective constraints and executive credibility

Posner & Vermeule, 6 --- \*Prof of Law at U Chicago, AND \*\* Prof of Law at Harvard (9/19/2006, Eric A. Posner & Adrian Vermeule, “The Credible Executive,” <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=931501)>)

IV. Executive Signaling: Law and Mechanisms¶ We suggest that the executive’s credibility problem can be solved by second-order mechanisms of executive signaling. In the general case, well-motivated executives send credible signals by taking actions that are more costly for ill-motivated actors than for well-motivated ones, thus distinguishing themselves from their ill-motivated mimics. Among the specific mechanisms we discuss, an important subset involve executive self-binding, whereby executives commit themselves to a course of action that would impose higher costs on ill-motivated actors. Commitments themselves have value as signals of benign motivations.¶This departs from the usual approach in legal scholarship. Legal theory has often discussed self-binding by “government” or government officials. In constitutional theory, it is often suggested that constitutions represent an attempt by “the people” to bind “themselves” against their own future decisionmaking pathologies, or relatedly that constitutional prohibitions represent mechanisms by which governments commit themselves not to expropriate investments or to exploit their populations.71 Whether or not this picture is coherent,72 it is not the question we examine here, although some of the relevant considerations are similar.73 We are not concerned with binding the president so that he cannot abuse his powers, but with how he might bind himself or take other actions that enhance his credibility, so that he can generate support from the public and other members of the government.¶ Furthermore, our question is subconstitutional; it is whether a well-motivated executive, acting within an established set of constitutional and statutory rules, can use signaling to generate public trust. Accordingly we proceed by assuming that no constitutional amendments or new statutes will be enacted. Within these constraints, what can a well-motivated executive do to bootstrap himself to credibility? The problem for the well-motivated executive is to credibly signal his benign motivations; in general, the solution is to engage in actions that are less costly for good types than for bad types.¶ We begin with some relevant law; then examine a set of possible mechanisms, emphasizing both the conditions under which they might succeed and the conditions under which they might not; and then examine the costs of credibility.¶ A. A Preliminary Note on Law and Self-Binding¶ Many of our mechanisms are unproblematic from a legal perspective, as they involve presidential actions that are clearly lawful. But a few raise legal questions; in particular, those that involve self-binding.74 Can a president bind himself to respect particular first-order policies? With qualifications, the answer is “yes, at least to the same extent that a legislature can.” Formally, a duly promulgated executive rule or order binds even the executive unless and until it is validly abrogated, thereby establishing a new legal status quo.75 The legal authority to establish a new status quo allows a president to create inertia or political constraints that will affect his own future choices. In a practical sense, presidents, like legislatures, have great de facto power to adopt policies that shape the legal landscape for the future. A president might commit himself to a long-term project of defense procurement or infrastructure or foreign policy, narrowing his own future choices and generating new political coalitions that will act to defend the new rules or policies.¶More schematically, we may speak of formal and informal means of self-binding:¶ (1) The president might use formal means to bind himself. This is possible in the sense that an executive order, if otherwise valid, legally binds the president while it is in effect and may be enforced by the courts. It is not possible in the sense that the president can always repeal the executive order if he can bear the political and reputational costs of doing so.¶ (2) The president might use informal means to bind himself. This is not only possible but frequent and important. Issuing an executive rule providing for the appointment of special prosecutors, as Nixon did, is not a formal self-binding.76 However, there may be large political costs to repealing the order. This effect does not depend on the courts’ willingness to enforce the order, even against Nixon himself. Court enforcement makes the order legally binding while it is in place, but only political and reputational enforcement can protect it from repeal. Just as a dessert addict might announce to his friends that he is going on a no-dessert diet in order to raise the reputational costs of backsliding and thus commit himself, so too the repeal of an executive order may be seen as a breach of faith even if no other institution ever enforces it.¶ In what follows, we will invoke both formal and informal mechanisms. For our purposes, the distinction between the authority to engage in de jure self-binding (legally limited and well-defined) and the power to engage in de facto self-binding (broad and amorphous) is secondary. So long as policies are deliberately chosen with a view to generating credibility, and do so by constraining the president’s own future choices in ways that impose greater costs on ill-motivated presidents than on well-motivated ones, it does not matter whether the constraint is formal or informal.¶ B. Mechanisms¶ What signaling mechanisms might a well-motivated executive adopt to credibly assure voters, legislators and judges that his policies rest on judgments about the public interest, rather than on power-maximization, partisanship or other nefarious motives? Intrabranch separation of powers. In an interesting treatment of related problems, Neal Katyal suggests that the failure of the Madisonian system counsels “internal separation of powers” within the executive branch.77 Abdication by Congress means that there are few effective checks on executive power; second-best substitutes are necessary. Katyal proposes some mechanisms that would be adopted by Congress, such as oversight hearings by the minority party, but his most creative proposals are for arrangements internal to the executive branch, such as redundancy and competition among agencies, stronger civil-service protections and internal adjudication of executive controversies by insulated “executive” decisionmakers who resemble judges in many ways.78Katyal’s argument is relevant because the mechanisms he discusses might be understood as signaling devices, but his overall approach is conceptually flawed, on two grounds. First, the assumption that second-best constraints on the executive should reproduce the Madisonian separation of powers within the executive branch is never defended. The idea seems to be that this is as close as we can get to the first-best, while holding constant everything else in our constitutional order. But the general theory of second-best states that approaching as closely as possible to the first-best will not necessarily be the preferred strategy;79 the best approach may be to adjust matters on other margins as well, in potentially unpredictable ways. If the Madisonian system has failed in the ways Katyal suggests, the best compensating adjustment might be, for all we know, to switch to a parliamentary system. (We assume that no large-scale changes of this sort are possible, whereas Katyal seemingly assumes that they are, or at least does not make clear his assumptions in this regard). Overall, Katyal’s view has a kind of fractal quality – each branch should reproduce within itself the very same separation of powers structure that also describes the whole system – but it is not explained why the constitutional order should be fractal.¶ Second, Katyal’s proposals for internal separation of powers are self-defeating: the motivations that Katyal ascribes to the executive are inconsistent with the executive adopting or respecting the prescriptions Katyal recommends.80 Katyal never quite says so explicitly, but he clearly envisions the executive as a power-maximizing actor, in the sense that the president seeks to remove all constraints on his current choices.81 Such an executive would not adopt or enforce the internal separation of powers to check himself. Executive signaling is not, even in principle, a solution to the lack of constraints on a power-maximizing executive in the sense Katyal implicitly intends. Although an illmotivated executive might bind himself to enhance his strategic credibility, as explained above, he would not do so in order to restore the balance of powers. Nor is it possible, given Katyal’s premise of legislative passivity or abdication, that Congress would force the internal separation of powers on the executive. In what follows, we limit ourselves to proposals that are consistent with the motivations, beliefs, and political opportunities that we ascribe to the well-motivated executive, to whom the proposals are addressed. This limitation ensures that the proposals are not self-defeating, whatever their costs.¶ The contrast here must not be drawn too simply. A well-motivated executive, in our sense, might well attempt to increase his power. The very point of demonstrating credibility is to encourage voters and legislators to increase the discretionary authority of the executive, where all will be made better off by doing so. Scholars such as Katyal who implicitly distrust the executive, however, do not subscribe to this picture of executive motivations. Rather, they see the executive as an unfaithful agent of the voters; the executive attempts to maximize his power even where fully-informed voters would prefer otherwise. An actor of that sort will have no incentive to adopt proposals intended to constrain that sort of actor.¶ Independent commissions. We now turn to some conceptually coherent mechanisms of executive signaling. Somewhat analogously to Katyal’s idea of the internal separation of powers, a well-motivated executive might establish independent commissions to review policy decisions, either before or after the fact. Presidents do this routinely, especially after a policy has had disastrous outcomes, but sometimes beforehand as well. Independent commissions are typically blue-ribbon and bipartisan.82¶ We add to this familiar process the idea that the President might gain credibility by publicly committing or binding himself to give the commission authority on some dimension. The president might publicly promise to follow the recommendations of such a commission, or to allow the commission to exercise de facto veto power over a policy decision before it is made, or might promise before the policy is chosen that the commission will be given power to review its success after the fact. To be sure, there will always be some wiggle room in the terms of the promise, but that is true of almost all commitments, which raise the costs of wiggling out even if they do not completely prevent it.¶ Consider whether George W. Bush’s credibility would have been enhanced had he appointed a blue-ribbon commission to examine the evidence for weapons of mass destruction in Iraq before the 2003 invasion, and publicly promised not to invade unless the commission found substantial evidence of their existence. Bush would have retained his preexisting legal authority to order the invasion even if the commission found the evidence inadequate, but the political costs of doing so would have been large. Knowing this, and knowing that Bush shared that knowledge, the public could have inferred that Bush’s professed motive – elimination of weapons of mass destruction – was also his real motive. Public promises that inflict reputational costs on badly motivated behavior help the well-motivated executive to credibly distinguish himself from the ill-motivated one.¶ The more common version of this tactic is to appoint commissions after the relevant event, as George W. Bush did to investigate the faulty reports by intelligence agencies that Iraq possessed weapons of mass destruction.83 If the president appoints after-the-fact commissions, the commissions can enhance his credibility for the next event—by showing that he will be willing, after that event, to subject his statements to scrutiny by public experts. Here, however, the demonstration of credibility is weaker, because there is no commitment to appoint any after-the-fact commissions in the future – merely a plausible inference that the president’s future behavior will track his past behavior.¶ Bipartisan appointments. In examples of the sort just mentioned, the signaling arises from public position-taking. The well-motivated executive might produce similar effects through appointments to office.84 A number of statutes require partisan balance on multimember commissions; although these statutes are outside the scope of our discussion, we note that presidents might approve them because they allow the president to commit to a policy that legislators favor, thus encouraging legislators to increase the scope of the delegation in the first place.85 For similar reasons, presidents may consent to restrictions on the removal of agency officials, because the restriction enables the president to commit to giving the agency some autonomy from the president’s preferences.86¶ Similar mechanisms can work even where no statutes are in the picture. As previously mentioned, during World War II, FDR appointed Republicans to important cabinet positions, making Stimson his Secretary of War. Clinton appointed William Cohen, a moderate Republican, as Secretary of Defense in order to shore up his credibility on security issues. Bipartisanship of this sort might improve the deliberation that precedes decisions, by impeding various forms of herding, cascades and groupthink;87 however, we focus on its credibility-generating effects. By (1) expanding the circle of those who share the president’s privileged access to information, (2) ensuring that policy is partly controlled by officials with preferences that differ from the president’s, and (3) inviting a potential whistleblower into the tent, bipartisanship helps to dispel the suspicion that policy decisions rest on partisan motives or extreme preferences, which in turn encourages broader delegations of discretion from the public and Congress.¶ A commitment to bipartisanship is only one way in which appointments can generate credibility. Presidents might simply appoint a person with a reputation for integrity, as when President Nixon appointed Archibald Cox as special prosecutor (although plausibly Nixon did so because he was forced to do so by political constraints, rather than as a tactic for generating credibility). A person with well-known preferences on a particular issue, even if not of the other party or widely respected for impartiality, can serve as a credible whistleblower on that issue. Thus presidents routinely award cabinet posts to leaders of subsets of the president’s own party, leaders whose preferences are known to diverge from the president’s on the subject; one point of this is to credibly assure the relevant interest groups that the president will not deviate (too far) from their preferences.¶ The Independent Counsel Statute institutionalized the special prosecutor and strengthened it. But the statute proved unpopular and was allowed to lapse in 1999.88 This experience raises two interesting questions. First, why have presidents confined themselves to appointing lawyers to investigate allegations of wrongdoing; why have they not appointed, say, independent policy experts to investigate allegations of policy failure? Second, why did the Independent Counsel Statute fail? Briefly, the statute failed because it was too difficult to control the behavior of the prosecutor, who was not given any incentive to keep his investigation within reasonable bounds.89 Not surprisingly, policy investigators would be even less constrained since they would not be confined by the law, and at the same time, without legal powers they would probably be ignored on partisan grounds. A commission composed of members with diverse viewpoints is harder to ignore, if the members agree with each other.¶ More generally, the decision by presidents to bring into their administrations members of other parties, or persons with a reputation for bipartisanship and integrity, illustrates the formation of domestic coalitions of the willing. Presidents can informally bargain around the formal separation of powers90 by employing subsets of Congress, or of the opposing party, to generate credibility while maintaining a measure of institutional control. FDR was willing to appoint Knox and Stimson, but not to give the Republicans in Congress a veto. Truman was willing to ally with Arthur Vandenbergh but not with all the Republicans; Clinton was willing to appoint William Cohen but not Newt Gingrich. George W. Bush likewise made a gesture towards credibility by briefing members of the Senate Intelligence Committee – including Democrats – on the administration’s secret surveillance program(s), which provided a useful talking point when the existence of the program(s) was revealed to the public.¶ Counter-partisanship. Related to bipartisanship is what might be called counterpartisanship: presidents have greater credibility when they choose policies that cut against the grain of their party’s platform or their own presumed preferences.91 Only Nixon could go to China, and only Clinton could engineer welfare reform. Voters and publics rationally employ a political heuristic: the relevant policy, which voters are incapable of directly assessing, must be highly beneficial if it is chosen by a president who is predisposed against it by convictions or partisan loyalty.92 Accordingly, those who wish to move U.S. terrorism policy towards greater security and less liberty might do well to support the election of a Democrat.93 By the same logic, George W. Bush is widely suspected of nefarious motives when he rounds up alleged enemy combatants, but not when he creates a massive prescription drug benefit.¶ Counter-partisanship can powerfully enhance the president’s credibility, but it depends heavily on a lucky alignment of political stars. A peace-loving president has credibility when he declares a military emergency but not when he appeases; a belligerent president has credibility when he offers peace but not when he advocates military solutions. A lucky nation has a well-motivated president with a belligerent reputation when international tensions diminish (Ronald Reagan) and a president with a pacific reputation when they grow (Abraham Lincoln, who opposed the Mexican War). But a nation is not always lucky.¶ Transparency. The well-motivated executive might commit to transparency, as a way to reduce the costs to outsiders of monitoring his actions.94 The FDR strategy of inviting potential whistleblowers from the opposite party into government is a special case of this; the implicit threat is that the whistleblower will make public any evidence of partisan motivations. The more ambitious case involves actually exposing the executive’s decisionmaking processes to observation. To the extent that an ill-motivated executive cannot publicly acknowledge his motivations or publicly instruct subordinates to take them into account in decisionmaking, transparency will exclude those motivations from the decisionmaking process. The public will know that only a well-motivated executive would promise transparency in the first place, and the public can therefore draw an inference to credibility.¶Credibility is especially enhanced when transparency is effected through journalists with reputations for integrity or with political preferences opposite to those of the president. Thus George W. Bush gave Bob Woodward unprecedented access to White House decisionmaking, and perhaps even to classified intelligence,95 with the expectation that the material would be published. This sort of disclosure to journalists is not real-time transparency – no one expects meetings of the National Security Council to appear on CSPAN – but the anticipation of future disclosure can have a disciplining effect in the present. By inviting this disciplining effect, the administration engages in signaling in the present through (the threat of) future transparency.¶There are complex tradeoffs here, because transparency can have a range of harmful effects. As far as process is concerned, decisionmakers under public scrutiny may posture for the audience, may freeze their views or positions prematurely, and may hesitate to offer proposals or reasons for which they can later be blamed if things go wrong.96 As for substance, transparency can frustrate the achievement of programmatic or policy goals themselves. Where security policy is at stake, secrecy is sometimes necessary to surprise enemies or to keep them guessing. Finally, one must take account of the incentives of the actors who expose the facts—especially journalists who might reward presidents who give them access by portraying their decisionmaking in a favorable light.97¶ We will take up the costs of credibility shortly.98 In general, however, the existence of costs does not mean that the credibility-generating mechanisms are useless. Quite the contrary: where the executive uses such mechanisms, voters and legislators can draw an inference that the executive is well-motivated, precisely because the existence of costs would have given an ill-motivated executive an excuse not to use those mechanisms.

### DA

Politics

### Framing

#### Failing to prevent a horrible outcome is just as bad as causing it – the aff is moral evasion

Nielsen – philosophy prof, Calgary - 93

Kai Nielsen, Professor of Philosophy, University of Calgary, Absolutism and Its Consequentialist Critics, ed. Joram Graf Haber, 1993, p. 170-2

Forget the levity of the example and consider the case of the innocent fat man. If there really is no other way of unsticking our fat man and if plainly, without blasting him out, everyone in the cave will drown, then, innocent or not, he should be blasted out. This indeed overrides the principle that the innocent should never be deliberately killed, but it does not reveal a callousness toward life, for the people involved are caught in a desperate situation in which, if such extreme action is not taken, many lives will be lost and far greater misery will obtain. Moreover, the people who do such a horrible thing or acquiesce in the doing of it are not likely to be rendered more callous about human life and human suffering as a result. Its occurrence will haunt them for the rest of their lives and is as likely as not to make them more rather than less morally sensitive. It is not even correct to say that such a desperate act shows a lack of respect for persons. We are not treating the fat man merely as a means. The fat man's person‑his interests and rights are not ignored. Killing him is something which is undertaken with the greatest reluctance. It is only when it is quite certain that there is no other way to save the lives of the others that such a violent course of action is justifiably undertaken. Alan Donagan, arguing rather as Anscombe argues, maintains that "to use any innocent man ill for the sake of some public good is directly to degrade him to being a mere means" and to do this is of course to violate a principle essential to morality, that is, that human beings should never merely be treated as means but should be treated as ends in themselves (as persons worthy of respect)." But, as my above remarks show, it need not be the case, and in the above situation it is not the case, that in killing such an innocent man we are treating him merely as a means. The action is universalizable, all alternative actions which would save his life are duly considered, the blasting out is done only as a last and desperate resort with the minimum of harshness and indifference to his suffering and the like. It indeed sounds ironical to talk this way, given what is done to him. But if such a terrible situation were to arise, there would always be more or less humane ways of going about one's grim task. And in acting in the more humane ways toward the fat man, as we do what we must do and would have done to ourselves were the roles reversed, we show a respect for his person. In so treating the fat man‑not just to further the public good but to prevent the certain death of a whole group of people (that is to prevent an even greater evil than his being killed in this way)‑the claims of justice are not overriden either, for each individual involved, if he is reasonably correct, should realize that if he were so stuck rather than the fat man, he should in such situations be blasted out. Thus, there is no question of being unfair. Surely we must choose between evils here, but is there anything more reasonable, more morally appropriate, than choosing the lesser evil when doing or allowing some evil cannot be avoided? That is, where there is no avoiding both and where our actions can determine whether a greater or lesser evil obtains, should we not plainly always opt for the lesser evil? And is it not obviously a greater evil that all those other innocent people should suffer and die than that the fat man should suffer and die? Blowing up the fat man is indeed monstrous. But letting him remain stuck while the whole group drowns is still more monstrous. The consequentialist is on strong moral ground here, and, if his reflective moral convictions do not square either with certain unrehearsed or with certain reflective particular moral convictions of human beings, so much the worse for such commonsense moral convictions. One could even usefully and relevantly adapt herethough for a quite different purpose‑an argument of Donagan's. Consequentialism of the kind I have been arguing for provides so persuasive "a theoretical basis for common morality that when it contradicts some moral intuition, it is natural to suspect that intuition, not theory, is corrupt."" Given the comprehensiveness, plausibility, and overall rationality of consequentialism, it is not unreasonable to override even a deeply felt moral conviction if it does not square with such a theory, though, if it made no sense or overrode the bulk of or even a great many of our considered moral convictions, that would be another matter indeed. Anticonsequentialists often point to the inhumanity of people who will sanction such killing of the innocent, but cannot the compliment be returned by speaking of the even greater inhumanity, conjoined with evasiveness, of those who will allow even more death and far greater misery and then excuse themselves on the ground that they did not intend the death and misery but merely forbore to prevent it? In such a context, such reasoning and such forbearing to prevent seems to me to constitute a moral evasion. I say it is evasive because rather than steeling himself to do what in normal circumstances would be a horrible and vile act but in this circumstance is a harsh moral necessity, he allows, when he has the power to prevent it, a situation which is still many times worse. He tries to keep his `moral purity' and avoid `dirty hands' at the price of utter moral failure and what Kierkegaard called `double‑mindedness.' It is understandable that people should act in this morally evasive way but this does not make it right.

#### Moral equality means even a small risk of preventing extinction outweighs structural violence—this answers their probability argument

\*\*\*people shouldn’t be valued more just because they exist close to us in time

Bostrom, 2012 (Mar 6, Nick, director of the Future of Humanity Institute at Oxford, recipient of the 2009 Gannon Award, “We're Underestimating the Risk of Human Extinction,” interview with Ross Andersen, freelance writer in D.C., <http://www.theatlantic.com/technology/archive/2012/03/were-underestimating-the-risk-of-human-extinction/253821/>)

Some have argued that we ought to be directing our resources toward humanity's existing problems, rather than future existential risks, because many of the latter are highly improbable. You have responded by suggesting that existential risk mitigation may in fact be a dominant moral priority over the alleviation of present suffering. Can you explain why? Bostrom: Well suppose you have a moral view that counts future people as being worth as much as present people. You might say that fundamentally it doesn't matter whether someone exists at the current time or at some future time, just as many people think that from a fundamental moral point of view, it doesn't matter where somebody is spatially---somebody isn't automatically worth less because you move them to the moon or to Africa or something. A human life is a human life. If you have that moral point of view that future generations matter in proportion to their population numbers, then you get this very stark implication that existential risk mitigation has a much higher utility than pretty much anything else that you could do. There are so many people that could come into existence in the future if humanity survives this critical period of time---we might live for billions of years, our descendants might colonize billions of solar systems, and there could be billions and billions times more people than exist currently. Therefore, even a very small reduction in the probability of realizing this enormous good will tend to outweigh even immense benefits like eliminating poverty or curing malaria, which would be tremendous under ordinary standards.

#### You should presume life has intrinsic value at all times—existence is always superior

Kateb, Professor of Politics at Princeton University, ‘92 (George, The Inner Ocean, pg. 144)

To sum up the lines of thought that Nietzsche starts, I suggest first that it is epistemologically impossible for humanity to arrive at an estimation of the worth of itself or of the rest of nature: it cannot pretend to see itself from the outside or to see the rest, as it were, from the inside. Second, after allowance is made for this quandary, which is occasioned by the death of God and the birth of truth, humanity, placed in a position in which it is able to extinguish human life and natural life on earth, must simply affirm existence as such. Existence must go on but not because of any particular feature or group of features. The affirmation of existence refuses to say what worth existence has, even from just a human perspective, from any human perspective whatever. It cannot say, because existence is indefinite; it is beyond evaluating; being undesigned it is unencompassable by a defined and definite judgment. (The philosopher Frederick A. Olafson speaks of "the stubbornly unconceptualizable fact of existence.") The worth of the existence passed on to the unborn is not measurable but indefinite. The judgment is minimal: no human purpose or value within existence is worth more than existence and can ever be used to justify the risk of extinction. Third, from the moral point of view, existence seems unjustifiable because of the pain and ugliness in it, and therefore the moral point of view must be chastened if it is not to block attachment to existence as such. The other minimal judgment is that whatever existence is, it is better than nothing. For the first time, in the nuclear age, humanity can fully perceive existence from the perspective of nothing, which in part is the perspective of extinction.

#### No single cause of conflict – be suspicious of their “master variable”, authors exaggerate problems their programs have the best chance of solving

Barnett et al 7

Michael, University Professor of International Affairs and Political Science at George Washington University, Hunjoon Kim, Madalene O’Donnell, Laura Sitea, Global Governance, “Peacebuilding: What is in a Name?”, Questia

Because there are multiple contributing causes of conflict, almost any international assistance effort that addresses any perceived or real grievance can arguably be called "peacebuilding." Moreover, anyone invited to imagine the causes of violent conflict might generate a rather expansive laundry list of issues to be addressed in the postconflict period, including income distribution, land reform, democracy and the rule of law, human security, corruption, gender equality, refugee reintegration, economic development, ethnonational divisions, environmental degradation, transitional justice, and on and on. There are at least two good reasons for such a fertile imagination. One, there is no master variable for explaining either the outbreak of violence or the construction of a positive peace but merely groupings of factors across categories such as greed and grievance, and catalytic events. Variables that might be relatively harmless in some contexts can be a potent cocktail in others. Conversely, we have relatively little knowledge regarding what causes peace or what the paths to peace are. Although democratic states that have reasonably high per capita incomes are at a reduced risk of conflict, being democratic and rich is no guarantor of a positive peace, and illiberal and poor countries, at times, also have had their share of success. Second, organizations are likely to claim that their core competencies and mandates are critical to peacebuilding. They might be right. They also might be opportunistic. After all, if peacebuilding is big business, then there are good bureaucratic reasons for claiming that they are an invaluable partner.

#### Reliance on experts is necessary

Turner, Graduate Research Professor and Chair of the Department of Philosophy at the University of South Florida, ‘1 (Stephen, February “What is the Problem with Experts?” Social Studies of Science, Vol 31 Issue 1, p 123-149, Sage Publications)

The answer to Fish is to treat the liberal principle of neutrality not as an absolute assertion about the nature of beliefs, but as a core rule, whose application varies historically, whose main point is to establish a means of organizing the discussion of political matters, that is to say the discussion of political decisions. We can apply this to the problem of expertise as follows: it is no surprise that, in order for there to be genuine discussion in Schmitt's sense, some things would be temporarily taken for fact, or, alternatively, some things would be left to the experts to settle. 'Politiciz­ing' everything, making everything into the subject of political decision­making (or treating it as an analogue to political decision-making), would lose the advantages of the intellectual division of labour and make reasoned persuasion impossible. Some facts need to be taken for granted in order for there to be genuine political discussion, and some of the work of establish­ing the facts is, properly, delegated to experts. Indeed, to imagine a world in which such delegation did not occur would be to imagine a simpler society, at best a society of Jeffersonian yeomen, in which everyone knew pretty much what everyone else knew that was relevant to public decision­making. To preserve the possibility of political discussion that such societies established, it is essential to delegate to experts and grant them cognitive authority. But granting them cognitive authority is not the same as grant­ing them some sort of absolute and unquestionable power over us. The fact that expertise goes through a process of legitimation also means that legitimacy may be withdrawn and the cognitive authority of experts may collapse, and this suggests something quite different than the idea that liberalism is a kind of self-contradiction, and also something much more interesting. We, the non-experts, decide whether claims to cognitive au­thority, which in political terms are requests to have their conclusions treated as neutral fact, are to be honoured. And we have, historically, changed our minds about who is 'expert', and what is to be treated as neutral fact. This is, so to speak, a 'liberal' argument about expertise. It grants that cognitive authority and the acceptance of expertise, in modern conditions, is a condition of genuine public discourse. Liberalism, in the form of the principle of neutrality, is a means to the end of the creation of the conditions for public discourse. It is a means, however, that is not given by God, or the courts, or 'reason', but lives in the political decisions we make to regard assertions as open to public discussion or not. Historically, liberalism established the space for public discussion by expelling religious sectarian 'expertise'. The challenge of the present is, in part, to deal with the claims of non-religious experts to cognitive authority. There is no formula for meeting this challenge. But there is a process of legitimation and delegitimation. And it should be no surprise that this process has come to occupy more of public discourse than ever before. But the very vigour of discussion, and the ability of the public to make decisions about what claims are legitimate, belies the image of the liberal public as victim. Is this enough? Or is there a higher standard of proper public delibera­tion to which public acceptance of expert claims ought to be held? Anti-liberals, following the arguments of Habermas and Foucault, have gen­erally said that it is not enough. For them, it is precisely the point of the critique of expertise to show how our forms of reasoning in public deliberation are preconditioned by unchallenged and, practically speaking, unchallengeable forming assumptions that derive from experts.7 The kind of social constructionism that has been practised in much of science studies is different in character, and has different implications, for it is concerned not with showing that some forms of discussion involve social construction and others do not, but with showing that even science has this character. As I have suggested, to the extent that it has been concerned with establishing the conventional and mutable character of many of the distinctions that philosophers of science have attempted to absolutize, that is to say to make scientists less immaculate and more like plumbers, social constructionism parallels a moment in liberal theory. The moment is the one at which it was recognized that the history of liberalism is a matter of 'continuation by other means', in which the 'foundations' of actual liberal democracies are conventions, custom, flexibly applied and typically somewhat vague 'principles' rather than rigid doctrines or acts of faith. A corollary recognition to this political realization is that despite being mutable and shifting, conventions have sufficed to preserve what Schmitt ([1926] 1985: 5) characterized as the real possibility of'persuad­ing one's opponents through argument of the truth or justice of something, or allowing oneself to be persuaded of something as true or just'. The parallel claim that what counts as 'expert' is conventional, muta­ble and shifting, and that people are persuaded of claims to expertise through mutable, shifting conventions does not make the decisions to accept or reject the authority of experts less than reasonable in the sense appropriate to liberal discussion. To grant a role to expert knowledge does not require us to accept the immaculate conception of expertise. The lesson of the second kind of social constructionism is that these conditions, the conditions of mutability - and not some sort of analogue to Haber-mas's ideal-speech situation - are the conditions under which scientific consensus itself occurs, and that there is no alternative. This is a negative message, but nevertheless an important one, in that it excludes a certain kind of utopianism about expertise and its 'control' by some sort of higher reason. Excluding this kind of utopianism is a kind of answer to the issues with which we began. Expertise is a deep problem for liberal theory only if we imagine that there is some sort of standard of higher reason against which the banal process of judging experts as plumbers can be held, and if there is not, it is a deep problem for democratic theory only if this banal process is beyond the capacity of ordinary people

#### **Predictions most ethical – failure of preventative action and predictions drives structural violence and inequality, only actions that act to preserve future generations can resolve power relations**

Kurasawa‘4,

(Fuyuki, Assistant Prof. of Sociology @ York University, Cautionary Tales, Constellations Vol. 11, No. 4, Blackwell Synergy)

In the previous section, I described how the capacity to produce, disseminate, and receive warning signals regarding disasters on the world stage has developed in global civil society. Yet the fact remains that audiences may let a recklessness or insouciance toward the future prevail, instead of listening to and acting upon such warnings. There is no doubt that the short-sightedness and presentism are strong dynamics in contemporary society, which is enveloped by a “temporal myopia” that encourages most individuals to live in a state of chronological self-referentiality whereby they screen out anything that is not of the moment.22 The commercial media, advertising, and entertainment industries are major contributors to this “tyranny of real time”23 that feeds a societal addiction to the ‘live’ and the immediate while eroding the principle of farsightedness. The infamous quip attributed to Madame de Pompadour, ‘après nous, le déluge,’ perfectly captures a sense of utter callousness about the future that represents one of presentism’s most acute manifestations. Two closely related notions underlie it: the belief that we should only concern ourselves with whether our actions, or lack thereof, have deleterious consequences visible to us in the short-to medium-term (temporally limited responsibility); and sheer indifference toward the plight of those who will come after us (generational self-centeredness). Substantively, the two are not much different because they shift the costs and risks of present-day decisions onto our descendants. “The crisis of the future is a measure of the deficiency of our societies, incapable as they are of assessing what is involved in relationships with others,” Bindé writes. “This temporal myopia brings into play the same processes of denial of others as social shortsightedness. The absence of solidarity in time between generations merely reproduces selfishness in space within the same generation.”24 Thus, to the NIMBY (‘not-in-my-back-yard’) politics of the last few decades can be added the ‘not-in-my-lifetime’ or ‘not-to-my-children’ lines of reasoning. For members of dominant groups in the North Atlantic region, disasters are something for others to worry about – that is, those who are socio-economically marginal, or geographically and temporally distant. The variations on these themes are numerous. One is the oft-stated belief that prevention is a luxury that we can scarcely afford, or even an unwarranted conceit. Accordingly, by minimizing the urgency or gravity of potential threats, procrastination appears legitimate. Why squander time, energy, and resources to anticipate and thwart what are, after all, only hypothetical dangers? Why act today when, in any case, others will do so in the future? Why not limit ourselves to reacting to cataclysms if and when they occur? A ‘bad faith’ version of this argument goes even further by seeking to discredit, reject, or deny evidence pointing to upcoming catastrophes. Here, we enter into the domain of deliberate negligence and “culpable ignorance,”25 as manifest in the apathy of US Republican administrations toward climate change or the Clinton White House’s disengenuous and belated responses to the genocides in ex-Yugoslavia and Rwanda. At another level, instrumental-strategic forms of thought and action, so pervasive in modern societies because institutionally entrenched in the state and the market, are rarely compatible with the demands of farsightedness. The calculation of the most technically efficient means to attain a particular bureaucratic or corporate objective, and the subsequent relentless pursuit of it, intrinsically exclude broader questions of long-term prospects or negative side-effects. What matters is the maximization of profits or national self-interest with the least effort, and as rapidly as possible. Growing risks and perils are transferred to future generations through a series of trade-offs: economic growth versus environmental protection, innovation versus safety, instant gratification versus future well-being. What can be done in the face of short-sightedness? Cosmopolitanism provides some of the clues to an answer, thanks to its formulation of a universal duty of care for humankind that transcends all geographical and socio-cultural borders. I want to expand the notion of cosmopolitan universalism in a temporal direction, so that it can become applicable to future generations and thereby nourish a vibrant culture of prevention. Consequently, we need to begin thinking about a farsighted cosmopolitanism, a chrono-cosmopolitics that takes seriously a sense ¶ of “intergenerational solidarity” toward human beings who will live in our wake as much as those living amidst us today.26 But for a farsighted cosmopolitanism to take root in global civil society, the latter must adopt a thicker regulative principle of care for the future than the one currently in vogue (which amounts to little more than an afterthought of the non-descript ‘don’t forget later generations’ ilk). Hans Jonas’s “imperative of responsibility” is valuable precisely because it prescribes an ethico-political relationship to the future consonant with the work of farsightedness.27 Fully appreciating Jonas’s position requires that we grasp the rupture it establishes with the presentist assumptions imbedded in the intentionalist tradition of Western ethics. In brief, intentionalism can be explained by reference to its best-known formulation, the Kantian categorical imperative, according to which the moral worth of a deed depends upon whether the a priori “principle of the will” or “volition” of the person performing it – that is, his or her intention – should become a universal law.28 Ex post facto evaluation of an act’s outcomes, and of whether they correspond to the initial intention, is peripheral to moral judgment. A variant of this logic is found in Weber’s discussion of the “ethic of absolute ends,” the “passionate devotion to a cause” elevating the realization of a vision of the world above all other considerations; conviction without the restraint of caution and prudence is intensely presentist.29 By contrast, Jonas’s strong consequentialism takes a cue from Weber’s “ethic of responsibility,” which stipulates that we must carefully ponder the potential impacts of our actions and assume responsibility for them – even for the incidence of unexpected and unintended results. Neither the contingency of outcomes nor the retrospective nature of certain moral judgments exempts an act from normative evaluation. On the contrary, consequentialism reconnects what intentionalism prefers to keep distinct: the moral worth of ends partly depends upon the means selected to attain them (and vice versa), while the correspondence between intentions and results is crucial. At the same time, Jonas goes further than Weber in breaking with presentism by advocating an “ethic of long-range responsibility” that refuses to accept the future’s indeterminacy, gesturing instead toward a practice of farsighted preparation for crises that could occur.30 From a consequentialist perspective, then, intergenerational solidarity would consist of striving to prevent our endeavors from causing large-scale human suffering and damage to the natural world over time. Jonas reformulates the categorical imperative along these lines: “Act so that the effects of your action are compatible with the permanence of genuine human life,” or “Act so that the effects of your action are not destructive of the future possibility of such life.”31 What we find here, I would hold, is a substantive and future-oriented ethos on the basis of which civic associations can enact the work of preventive foresight.

#### Language can describe reality but does not shape it

Rorty 82

[Richard, Professor of Comparative Literature at Stanford University, “Consequences of Pragmatism”, University of Minnesota Press: <http://www.marxists.org/reference/subject/philosophy/index.htm>, MW]

This Davidsonian way of looking at language lets us avoid hypostatising Language in the way in which the Cartesian epistemological tradition, and particularly the idealist tradition which built upon Kant, hypostatised Thought. For it lets us see language not as a tertium quid between Subject and Object, nor as a medium in which we try to form pictures of reality, but as part of the behaviour of human beings. On this view, the activity of uttering sentences is one of the things people do in order to cope with their environment. The Deweyan notion of language as tool rather than picture is right as far as it goes. But we must be careful not to phrase this analogy so as to suggest that one can separate the tool, Language, from its users and inquire as to its “adequacy” to achieve our purposes. The latter suggestion presupposes that there is some way of breaking out of language in order to compare it with something else. But there is no way to think about either the world or our purposes except by using our language. One can use language to criticise and enlarge itself, as one can exercise one’s body to develop and strengthen and enlarge it, but one cannot see language-as-a-whole in relation to something else to which it applies, or for which it is a means to an end. The arts and the sciences, and philosophy as their self-reflection and integration, constitute such a process. of enlargement and strengthening. But Philosophy, the attempt to say “how language relates to the world” by saying what makes certain sentences true, or certain actions or attitudes good or rational, is, on this view, impossible.¶ It is the impossible attempt to step outside our skins – the traditions, linguistic and other, within which we do our thinking and self-criticism – and compare ourselves with something absolute. This Platonic urge to escape from the finitude of one’s time and place, the “merely conventional” and contingent aspects of one’s life, is responsible for the original Platonic distinction between two kinds of true sentence. By attacking this latter distinction, the holistic “pragmaticising” strain in analytic philosophy has helped us see how the metaphysical urge – common to fuzzy Whiteheadians and razor-sharp “scientific realists” – works. It has helped us be sceptical about the idea that some particular science (say physics) or some particular literary genre (say Romantic poetry, or transcendental philosophy) gives us that species of true sentence which is not just a true sentence, but rather a piece of Truth itself. Such sentences may be very useful indeed, but there is not going to be a Philosophical explanation of this utility. That explanation, like the original justification of the assertion of the sentence, will be a parochial matter – a comparison of the sentence with alternative sentences formulated in the same or in other vocabularies. But such comparisons are the business of, for example, the physicist or the poet, or perhaps of the philosopher – not of the Philosopher, the outside expert on the utility, or function, or metaphysical status of Language or of Thought.¶ The Wittgenstein-Sellars-Quine-Davidson attack on distinctions between classes of sentences is the special contribution of analytic philosophy to the anti-Platonist insistence on the ubiquity of language. This insistence characterises both pragmatism and recent “Continental” philosophising. Here are some examples:¶ Man makes the word, and the word means nothing which the man has not made it mean, and that only to some other man. But since man can think only by means of words or other external symbols, these might turn around and say: You mean nothing which we have not taught you, and then only so far as you address some word as the interpretant of your thought... ... . the word or sign which man uses is the man himself Thus my language is the sum-total of myself; for the man is the thought. (Peirce)¶ Peirce goes very far in the direction that I have called the de-construction of the transcendental signified, which, at one time or another, would place a reassuring end to the reference from sign to sign. (Derrida)¶ ... psychological nominalism, according to which all awareness of sorts, resemblances, facts, etc., in short all awareness of abstract entities – indeed, all awareness even of particulars – is a linguistic affair. (Sellars)¶ It is only in language that one can mean something by something. (Wittgenstein)¶ Human experience is essentially linguistic. (Gadamer)¶ ... man is in the process of perishing as the being of language continues to shine ever brighter upon our horizon. (Foucault)¶ Speaking about language turns language almost inevitably into an object ... and then its reality vanishes. (Heidegger)¶ This chorus should not, however, lead us to think that something new and exciting has recently been discovered about Language – e.g., that it is more prevalent than had previously been thought. The authors cited are making only negative points. They are saying that attempts to get back behind language to something which “grounds” it, or which it “expresses,” or to which it might hope to be “adequate,” have not, worked. The ubiquity of language is a matter of language moving into the vacancies left by the failure of all the various candidates for the position of “natural starting-points” of thought, starting-points which are prior to and independent of the way some culture speaks or spoke. (Candidates for such starting-points include clear and distinct ideas, sense-data, categories of the pure understanding, structures of prelinguistic consciousness, and the like.) Peirce and Sellars and Wittgenstein are saying that the regress – of interpretation cannot be cut off by the sort of “intuition” which Cartesian epistemology took for granted. Gadamer and Derrida are saying that our culture has been dominated by the notion of a “transcendental signified” which, by cutting off this regress, would bring us out from contingency and convention and into the Truth. Foucault is saying that we are gradually losing our grip on the “metaphysical comfort” which that Philosophical tradition provided – its picture of Man as having a “double” (the soul, the Noumenal Self) who uses Reality’s own language rather than merely the vocabulary of a time and a place. Finally, Heidegger is cautioning that if we try to make Language into a new topic of Philosophical inquiry we shall simply recreate the hopeless old Philosophical puzzles which we used to raise about Being or Thought.

### Case (Interventions)

#### Anti-imperialism sanctions genocidal violence—even if action isn’t perfect, its better than abdicating our responsibility to prevent genocidal massacres

Shaw, Professor of International Relations and Politics at the University of Sussex, ’99 (Martin, November 9, “The unfinished global revolution: Intellectuals and the new politics of international relations”

World events repeatedly thrust these issues into our faces, but in the wider public debate too, many – lacking an understanding of the new situation – fall back on old ways of thought. The idea of absolute state sovereignty is resurrected by many who should know better, to defend the autonomy of repressive, even genocidal states. Louse Arbour, retiring Chief Prosecutor of the International War Crimes Tribunal for the Former Yugoslavia, provided a terse comment on this move. ‘Since the creation of this Tribunal, the Rwanda Tribunal, the Rome statute’, she says, ‘… there is now a much more ambitious agenda: the one of peace with justice, where no one can hijack the concept of state sovereignty and use it to guarantee his own impunity. These are yesterday’s visions of a peaceful world.’68 That these are indeed ‘yesterday’s visions’ is clear from the selective way in which they are used. It is a curious anti-imperialism that attacks the so-called ‘imperialism of human rights’69 but provides the defence of sovereignty to the imperialism of genocidal oppression. 70 Something is wrong with the radical tradition, when as distinguished a representative as Edward Said could write of the Kosovo war that what he found ‘most distressing’ was the ‘destruction from the air’ wrought by American power71 – not the genocidal massacres by Serbian forces that prompted NATO's (admittedly problematic) response. Said has reminded us recently of what Thompson called the ‘Natopolitan’ world, in which many intellectuals were indirectly on the payroll of the CIA.72 What he did not acknowledge was its Stalinist counterpart, in which intellectuals sold their souls to the KGB and the Stasi. And there was an anti-Cold War world, in which those who refused the choice of NATO and the Warsaw Pact elaborated their ideas. Although those of us in this intellectual third world turned down the lucre of the blocs, this did not guarantee lasting validity to our ideas. In the new global era, many characteristic assumptions of the old anti-Cold War left appear increasingly as prejudices. A whole generation has not let go of a mindset, four elements of which are problematic in the new situation. Most fundamental is a residual Third Worldist ideology. According to this, Western, especially American, imperialism is the touchstone for all world politics. Said’s anachronistic conclusion about Kosovo was to ask: ‘When will the smaller, lesser, weaker peoples realize that this America is to be resisted at all costs, not pandered to or given in to naively?’73 There are strong criticisms to be made of American and NATO policies in Kosovo. However a systematic blindness lies behind the continuing belief that America is the principal problem, coupled with the failure to recognise the need for international action against genocide.74 From this viewpoint, non-Western states are potential sites of resistance, organisers of ‘underdeveloped political economies’75 which can contest the dominant form. While sovereignty in general may be regarded as a political form of capitalist social relations76, the sovereignty of non-Western states must be defended from Western power. Yet to support Serbian sovereignty over Kosovo, or Chinese over Tibet, gives sustenance to forms of colonial domination deeply mired in blood. Critics find themselves in an inversion of the double standard of which they accuse NATO: if it is right to support Timorese self-determination against Indonesian claims to sovereignty, how can the same right be denied to the Kosovans or Tibetans?77

#### Global violence decreasing – civilization has become more moral

Pinker, Johnstone Family Professor at Harvard University, ‘7 (Steven, March 19, “A History of Violence” The New Republic, lexis)

In sixteenth-century Paris, a popular form of entertainment was cat-burning, in which a cat was hoisted in a sling on a stage and slowly lowered into a fire. According to historian Norman Davies, "[T]he spectators, including kings and queens, shrieked with laughter as the animals, howling with pain, were singed, roasted, and finally carbonized." Today, such sadism would be unthinkable in most of the world. This change in sensibilities is just one example of perhaps the most important and most underappreciated trend in the human saga: Violence has been in decline over long stretches of history, and today we are probably living in the most peaceful moment of our species' time on earth. In the decade of Darfur and Iraq, and shortly after the century of Stalin, Hitler, and Mao, the claim that violence has been diminishing may seem somewhere between hallucinatory and obscene. Yet recent studies that seek to quantify the historical ebb and flow of violence point to exactly that conclusion. Some of the evidence has been under our nose all along. Conventional history has long shown that, in many ways, we have been getting kinder and gentler. Cruelty as entertainment, human sacrifice to indulge superstition, slavery as a labor-saving device, conquest as the mission statement of government, genocide as a means of acquiring real estate, torture and mutilation as routine punishment, the death penalty for misdemeanors and differences of opinion, assassination as the mechanism of political succession, rape as the spoils of war, pogroms as outlets for frustration, homicide as the major form of conflict resolution--all were unexceptionable features of life for most of human history. But, today, they are rare to nonexistent in the West, far less common elsewhere than they used to be, concealed when they do occur, and widely condemned when they are brought to light. At one time, these facts were widely appreciated. They were the source of notions like progress, civilization, and man's rise from savagery and barbarism. Recently, however, those ideas have come to sound corny, even dangerous. They seem to demonize people in other times and places, license colonial conquest and other foreign adventures, and conceal the crimes of our own societies. The doctrine of the noble savage--the idea that humans are peaceable by nature and corrupted by modern institutions--pops up frequently in the writing of public intellectuals like Jose Ortega y Gasset ("War is not an instinct but an invention"), Stephen Jay Gould ("Homo sapiens is not an evil or destructive species"), and Ashley Montagu ("Biological studies lend support to the ethic of universal brotherhood"). But, now that social scientists have started to count bodies in different historical periods, they have discovered that the romantic theory gets it backward: Far from causing us to become more violent, something in modernity and its cultural institutions has made us nobler. To be sure, any attempt to document changes in violence must be soaked in uncertainty. In much of the world, the distant past was a tree falling in the forest with no one to hear it, and, even for events in the historical record, statistics are spotty until recent periods. Long-term trends can be discerned only by smoothing out zigzags and spikes of horrific bloodletting. And the choice to focus on relative rather than absolute numbers brings up the moral imponderable of whether it is worse for 50 percent of a population of 100 to be killed or 1 percent in a population of one billion. Yet, despite these caveats, a picture is taking shape. The decline of violence is a fractal phenomenon, visible at the scale of millennia, centuries, decades, and years. It applies over several orders of magnitude of violence, from genocide to war to rioting to homicide to the treatment of children and animals. And it appears to be a worldwide trend, though not a homogeneous one. The leading edge has been in Western societies, especially England and Holland, and there seems to have been a tipping point at the onset of the Age of Reason in the early seventeenth century. At the widest-angle view, one can see a whopping difference across the millennia that separate us from our pre-state ancestors. Contra leftist anthropologists who celebrate the noble savage, quantitative body-counts--such as the proportion of prehistoric skeletons with axemarks and embedded arrowheads or the proportion of men in a contemporary foraging tribe who die at the hands of other men--suggest that pre-state societies were far more violent than our own. It is true that raids and battles killed a tiny percentage of the numbers that die in modern warfare. But, in tribal violence, the clashes are more frequent, the percentage of men in the population who fight is greater, and the rates of death per battle are higher. According to anthropologists like Lawrence Keeley, Stephen LeBlanc, Phillip Walker, and Bruce Knauft, these factors combine to yield population-wide rates of death in tribal warfare that dwarf those of modern times. If the wars of the twentieth century had killed the same proportion of the population that die in the wars of a typical tribal society, there would have been two billion deaths, not 100 million. Political correctness from the other end of the ideological spectrum has also distorted many people's conception of violence in early civilizations--namely, those featured in the Bible. This supposed source of moral values contains many celebrations of genocide, in which the Hebrews, egged on by God, slaughter every last resident of an invaded city. The Bible also prescribes death by stoning as the penalty for a long list of nonviolent infractions, including idolatry, blasphemy, homosexuality, adultery, disrespecting one's parents, and picking up sticks on the Sabbath. The Hebrews, of course, were no more murderous than other tribes; one also finds frequent boasts of torture and genocide in the early histories of the Hindus, Christians, Muslims, and Chinese. At the century scale, it is hard to find quantitative studies of deaths in warfare spanning medieval and modern times. Several historians have suggested that there has been an increase in the number of recorded wars across the centuries to the present, but, as political scientist James Payne has noted, this may show only that "the Associated Press is a more comprehensive source of information about battles around the world than were sixteenth-century monks." Social histories of the West provide evidence of numerous barbaric practices that became obsolete in the last five centuries, such as slavery, amputation, blinding, branding, flaying, disembowelment, burning at the stake, breaking on the wheel, and so on. Meanwhile, for another kind of violence--homicide--the data are abundant and striking. The criminologist Manuel Eisner has assembled hundreds of homicide estimates from Western European localities that kept records at some point between 1200 and the mid-1990s. In every country he analyzed, murder rates declined steeply--for example, from 24 homicides per 100,000 Englishmen in the fourteenth century to 0.6 per 100,000 by the early 1960s. On the scale of decades, comprehensive data again paint a shockingly happy picture: Global violence has fallen steadily since the middle of the twentieth century. According to the Human Security Brief 2006, the number of battle deaths in interstate wars has declined from more than 65,000 per year in the 1950s to less than 2,000 per year in this decade. In Western Europe and the Americas, the second half of the century saw a steep decline in the number of wars, military coups, and deadly ethnic riots. Zooming in by a further power of ten exposes yet another reduction. After the cold war, every part of the world saw a steep drop-off in state-based conflicts, and those that do occur are more likely to end in negotiated settlements rather than being fought to the bitter end. Meanwhile, according to political scientist Barbara Harff, between 1989 and 2005 the number of campaigns of mass killing of civilians decreased by 90 percent. The decline of killing and cruelty poses several challenges to our ability to make sense of the world. To begin with, how could so many people be so wrong about something so important? Partly, it's because of a cognitive illusion: We estimate the probability of an event from how easy it is to recall examples. Scenes of carnage are more likely to be relayed to our living rooms and burned into our memories than footage of people dying of old age. Partly, it's an intellectual culture that is loath to admit that there could be anything good about the institutions of civilization and Western society. Partly, it's the incentive structure of the activism and opinion markets: No one ever attracted followers and donations by announcing that things keep getting better. And part of the explanation lies in the phenomenon itself. The decline of violent behavior has been paralleled by a decline in attitudes that tolerate or glorify violence, and often the attitudes are in the lead. As deplorable as they are, the abuses at Abu Ghraib and the lethal injections of a few murderers in Texas are mild by the standards of atrocities in human history. But, from a contemporary vantage point, we see them as signs of how low our behavior can sink, not of how high our standards have risen. The other major challenge posed by the decline of violence is how to explain it. A force that pushes in the same direction across many epochs, continents, and scales of social organization mocks our standard tools of causal explanation. The usual suspects--guns, drugs, the press, American culture--aren't nearly up to the job. Nor could it possibly be explained by evolution in the biologist's sense: Even if the meek could inherit the earth, natural selection could not favor the genes for meekness quickly enough. In any case, human nature has not changed so much as to have lost its taste for violence. Social psychologists find that at least 80 percent of people have fantasized about killing someone they don't like. And modern humans still take pleasure in viewing violence, if we are to judge by the popularity of murder mysteries, Shakespearean dramas, Mel Gibson movies, video games, and hockey. What has changed, of course, is people's willingness to act on these fantasies. The sociologist Norbert Elias suggested that European modernity accelerated a "civilizing process" marked by increases in self-control, long-term planning, and sensitivity to the thoughts and feelings of others. These are precisely the functions that today's cognitive neuroscientists attribute to the prefrontal cortex. But this only raises the question of why humans have increasingly exercised that part of their brains. No one knows why our behavior has come under the control of the better angels of our nature, but there are four plausible suggestions. The first is that Hobbes got it right. Life in a state of nature is nasty, brutish, and short, not because of a primal thirst for blood but because of the inescapable logic of anarchy. Any beings with a modicum of self-interest may be tempted to invade their neighbors to steal their resources. The resulting fear of attack will tempt the neighbors to strike first in preemptive self-defense, which will in turn tempt the first group to strike against them preemptively, and so on. This danger can be defused by a policy of deterrence--don't strike first, retaliate if struck--but, to guarantee its credibility, parties must avenge all insults and settle all scores, leading to cycles of bloody vendetta. These tragedies can be averted by a state with a monopoly on violence, because it can inflict disinterested penalties that eliminate the incentives for aggression, thereby defusing anxieties about preemptive attack and obviating the need to maintain a hair-trigger propensity for retaliation. Indeed, Eisner and Elias attribute the decline in European homicide to the transition from knightly warrior societies to the centralized governments of early modernity. And, today, violence continues to fester in zones of anarchy, such as frontier regions, failed states, collapsed empires, and territories contested by mafias, gangs, and other dealers of contraband. Payne suggests another possibility: that the critical variable in the indulgence of violence is an overarching sense that life is cheap. When pain and early death are everyday features of one's own life, one feels fewer compunctions about inflicting them on others. As technology and economic efficiency lengthen and improve our lives, we place a higher value on life in general. A third theory, championed by Robert Wright, invokes the logic of non-zero-sum games: scenarios in which two agents can each come out ahead if they cooperate, such as trading goods, dividing up labor, or sharing the peace dividend that comes from laying down their arms. As people acquire know-how that they can share cheaply with others and develop technologies that allow them to spread their goods and ideas over larger territories at lower cost, their incentive to cooperate steadily increases, because other people become more valuable alive than dead. Then there is the scenario sketched by philosopher Peter Singer. Evolution, he suggests, bequeathed people a small kernel of empathy, which by default they apply only within a narrow circle of friends and relations. Over the millennia, people's moral circles have expanded to encompass larger and larger polities: the clan, the tribe, the nation, both sexes, other races, and even animals. The circle may have been pushed outward by expanding networks of reciprocity, a la Wright, but it might also be inflated by the inexorable logic of the golden rule: The more one knows and thinks about other living things, the harder it is to privilege one's own interests over theirs. The empathy escalator may also be powered by cosmopolitanism, in which journalism, memoir, and realistic fiction make the inner lives of other people, and the contingent nature of one's own station, more palpable--the feeling that "there but for fortune go I." Whatever its causes, the decline of violence has profound implications. It is not a license for complacency: We enjoy the peace we find today because people in past generations were appalled by the violence in their time and worked to end it, and so we should work to end the appalling violence in our time. Nor is it necessarily grounds for optimism about the immediate future, since the world has never before had national leaders who combine pre-modern sensibilities with modern weapons. But the phenomenon does force us to rethink our understanding of violence. Man's inhumanity to man has long been a subject for moralization. With the knowledge that something has driven it dramatically down, we can also treat it as a matter of cause and effect. Instead of asking, "Why is there war?" we might ask, "Why is there peace?" From the likelihood that states will commit genocide to the way that people treat cats, we must have been doing something right. And it would be nice to know what, exactly, it is.

#### Humanitarianism good—prevents liberal democracies from sliding into totalitarianism by eliminating instances of exclusion

Heins, Professor PolSci Concordia, ‘5 (Volker, “Giorgio Agamben and the Current State of Affairs in Humanitarian Law and Human Rights Policy” German Law Journal, Vol 6 No 5)

According to this basic Principle of Distinction, modern humanitarian action is directed towards those who are caught up in violent conflicts without possessing any strategic value for the respective warring parties. Does this imply that classic humanitarianism and its legal expressions reduce the lives of noncombatants to the "bare life" of nameless individuals beyond the protection of any legal order? I would rather argue that humanitarianism is itself an order-making activity. Its goal is not the preservation of life reduced to a bare natural fact, but conversely the protection of civilians and thereby the protection of elementary standards of civilization which prevent the exclusion of individuals from any legal and moral order. The same holds true for human rights, of course. Agamben fails to appreciate the fact that human rights laws are not about some cadaveric "bare life", but about the protection of moral agency.33 His sweeping critique also lacks any sense for essential distinctions. It may be legitimate to see "bare life" as a juridical fiction nurtured by the modern state, which claims the right to derogate from otherwise binding norms in times of war and emergency, and to kill individuals, if necessary, outside the law in a mode of "effective factuality."34 Agamben asserts that sovereignty understood in this manner continues to function in the same way since the seventeenth century and regardless of the democratic or dictatorial structure of the state in question. This claim remains unilluminated by the wealth of evidence that shows how the humanitarian motive not only shapes the mandate of a host state and nonstate agencies, but also serves to restrict the operational freedom of military commanders in democracies, who can- not act with impunity and who do not wage war in a lawless state of nature.35 Furthermore, Agamben ignores the crisis of humanitarianism that emerged as a result of the totalitarian degeneration of modern states in the twentieth century. States cannot always be assumed to follow a rational self-interest which informs them that there is no point in killing others indiscriminately. The Nazi episode in European history has shown that sometimes leaders do not spare the weak and the sick, but take extra care not to let them escape, even if they are handicapped, very old or very young. Classic humanitarianism depends on the existence of an international society whose members feel bound by a basic set of rules regarding the use of violence—rules which the ICRC itself helped to institutionalize. Conversely, classic humanitarianism becomes dysfunctional when states place no value at all on their international reputation and see harming the lives of defenseless individuals not as useless and cruel, but as part of their very mission.36 The founders of the ICRC defined war as an anthropological constant that produced a continuous stream of new victims with the predictable regularity and unavoidability of floods or volcanic eruptions. Newer organizations, by contrast, have framed conditions of massive social suffering as a consequence of largely avoidable political mistakes. The humanitarian movement becomes political, to paraphrase Carl Schmitt,37 in so far as it orients itself to humanitarian states of emergency, the causes of which are located no longer in nature, but in society and politics. Consequently, the founding generation of the new humanitarian organizations have freed themselves from the ideals of apolitical philanthropy and chosen as their new models historical figures like the Swedish diplomat Raoul Wallenberg, who saved thou- sands of Jews during the Second World War.38 In a different fashion than Agamben imagines, the primary concern in the field of humanitarian intervention and human rights politics today is not the protection of bare life, but rather the rehabilitation of the lived life of citizens who suffer, for in- stance, from conditions such as post-traumatic stress disorder. At the same time, there is a field of activity emerging beneath the threshold of the bare life. In the United States, in particular, pathologists working in conjunction with human rights organizations have discovered the importance of corpses and corporal remains now that it is possible to identify reliable evidence for war crimes from exhumed bod- ies.39

### Solvency

#### Obama will circumvent the plan with creative lawyering

Hafetz, 11/5 --- law professor at Seton Hall

(11/5/2013, Jonathan, “Outrage Fatigue: The Danger of Getting Used to Gitmo,” http://www.worldpoliticsreview.com/articles/13311/outrage-fatigue-the-danger-of-getting-used-to-gitmo))

The Obama administration has shown no shortage of creative lawyering in justifying U.S. military involvement in Libya and Syria as well as in expanding America’s use of targeted drone strikes. In those instances, the administration has interpreted presidential authority robustly, while narrowly construing congressional attempts to cabin that authority, as in the War Powers Resolution. Yet, when it comes to releasing Guantanamo detainees, the administration remains sheepish. It has failed to apply the same interpretive approach to congressional transfer restrictions despite what the president has described as the clear national security interests in closing the prison. Only external events, such as the hunger strike, now seem to prompt any action. And even there, the urgency tends to dissipate once the public pressure and media attention fades.

#### Obama will redefine the law to circumvent the plan

Pollack, 13 --- professor of history emeritus at Michigan State

(2/5/2013, Norman, “For the Glory of What? Drones, Israel, and the Eclipse of Democracy,” <http://www.counterpunch.org/2013/02/05/drones-israel-and-the-eclipse-of-democracy/>)

Bisharat first addresses the transmogrification of international law by Israel’s military lawyers. We might call this damage control, were it not more serious. When the Palestinians first sought to join the I.C.C., and then, to receive the UN’s conferral of nonmember status on them, Israel raised fierce opposition. Why? He writes: “Israel’s frantic opposition to the elevation of Palestine’s status at the United Nations was motivated precisely by the fear that it would soon lead to I.C.C. jurisdiction over Palestinian claims of war crimes. Israeli leaders are unnerved for good reason. The I.C.C. could prosecute major international crimes committed on Palestinian soil anytime after the court’s founding on July 1, 2002.” In response to the threat, we see the deliberate reshaping of the law: Since 2000, “the Israel Defense Forces, guided by its military lawyers, have attempted to remake the laws of war by consciously violating them and then creating new legal concepts to provide juridical cover for their misdeeds.” (Italics, mine) In other words, habituate the law to the existence of atrocities; in the US‘s case, targeted assassination, repeated often enough, seems permissible, indeed clever and wise, as pressure is steadily applied to the laws of war. Even then, “collateral damage” is seen as unintentional, regrettable, but hardly prosecutable, and in the current atmosphere of complicity and desensitization, never a war crime. (Obama is hardly a novice at this game of stretching the law to suit the convenience of, shall we say, the national interest? In order to ensure the distortion in counting civilian casualties, which would bring the number down, as Brennan with a straight face claimed, was “zero,” the Big Lie if ever there was one, placing him in distinguished European company, Obama redefined the meaning of “combatant” status to be any male of military age throughout the area (which we) declared a combat zone, which noticeably led to a higher incidence of sadism, because it allowed for “second strikes” on funerals—the assumption that anyone attending must be a terrorist—and first responders, those who went to the aid of the wounded and dying, themselves also certainly terrorists because of their rescue attempts.) These guys play hardball, perhaps no more than in using—by report—the proverbial baseball cards to designate who would be next on the kill list. But funerals and first responders—verified by accredited witnesses–seems overly much, and not a murmur from an adoring public.

#### Congress doesn’t support shifting power from President to Congress

Devins, 9 --- Professor of Law and Professor of Government, College of William and Mary

(Spring 2009, Neal, Willamette Law Review, “PRESIDENTIAL UNILATERALISM AND POLITICAL POLARIZATION: WHY TODAY'S CONGRESS LACKS THE WILL AND THE WAY TO STOP PRESIDENTIAL INITIATIVES,” 45 Willamette L. Rev. 395))

Today, Congress has neither the will nor the way to pursue the type of bipartisan reforms that characterized the Watergate-era Congress. Democrats and Republicans in Congress are more interested in strengthening their position vis-a-vis the other party than in strengthening Congress as an institution. Members of the President's party are loyal to their party, not Congress as an institution, and therefore, will not join forces with the opposition party to assert Congress's institutional prerogatives. Equally telling, members of Congress see little personal gain in advancing a legislative agenda that shifts power from the President to Congress.

# 2NC

### Framing

War turns structural violence

Goldstein 1—Prof PoliSci @ American University, Joshua, War and Gender , P. 412

First, peace activists face a dilemma in thinking about causes of war and working for peace. Many peace scholars and activists support the approach, "if you want peace, work for justice". Then if one believes that sexism contributes to war, one can work for gender justice specifically (perhaps among others) in order to pursue peace. This approach brings strategic allies to the peace movement (women, labor, minorities), but rests on the assumption that injustices cause war. The evidence in this book suggests that causality runs at least as strongly the other way. War is not a product of capitalism, imperialism, gender, innate aggression, or any other single cause, although all of these influences wars' outbreaks and outcomes. Rather, war has in part fueled and sustained these and other injustices. So, "if you want peace, work for peace." Indeed, if you want justice (gener and others), work for peace. Causality does not run just upward through the levels of analysis from types of individuals, societies, and governments up to war. It runs downward too. Enloe suggests that changes in attitudes toward war and the military may be the most important way to "reverse women's oppression/" The dilemma is that peace work focused on justice brings to the peace movement energy, allies and moral grounding, yet, in light of this book's evidence, the emphasis on injustice as the main cause of war seems to be empirically inadequate.

#### You should presume life has intrinsic value at all times—existence is always superior

Kateb, Professor of Politics at Princeton University, ‘92 (George, The Inner Ocean, pg. 144)

To sum up the lines of thought that Nietzsche starts, I suggest first that it is epistemologically impossible for humanity to arrive at an estimation of the worth of itself or of the rest of nature: it cannot pretend to see itself from the outside or to see the rest, as it were, from the inside. Second, after allowance is made for this quandary, which is occasioned by the death of God and the birth of truth, humanity, placed in a position in which it is able to extinguish human life and natural life on earth, must simply affirm existence as such. Existence must go on but not because of any particular feature or group of features. The affirmation of existence refuses to say what worth existence has, even from just a human perspective, from any human perspective whatever. It cannot say, because existence is indefinite; it is beyond evaluating; being undesigned it is unencompassable by a defined and definite judgment. (The philosopher Frederick A. Olafson speaks of "the stubbornly unconceptualizable fact of existence.") The worth of the existence passed on to the unborn is not measurable but indefinite. The judgment is minimal: no human purpose or value within existence is worth more than existence and can ever be used to justify the risk of extinction. Third, from the moral point of view, existence seems unjustifiable because of the pain and ugliness in it, and therefore the moral point of view must be chastened if it is not to block attachment to existence as such. The other minimal judgment is that whatever existence is, it is better than nothing. For the first time, in the nuclear age, humanity can fully perceive existence from the perspective of nothing, which in part is the perspective of extinction.

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#### **Predictions most ethical – failure of preventative action and predictions drives structural violence and inequality, only actions that act to preserve future generations can resolve power relations**

Kurasawa‘4,

(Fuyuki, Assistant Prof. of Sociology @ York University, Cautionary Tales, Constellations Vol. 11, No. 4, Blackwell Synergy)

In the previous section, I described how the capacity to produce, disseminate, and receive warning signals regarding disasters on the world stage has developed in global civil society. Yet the fact remains that audiences may let a recklessness or insouciance toward the future prevail, instead of listening to and acting upon such warnings. There is no doubt that the short-sightedness and presentism are strong dynamics in contemporary society, which is enveloped by a “temporal myopia” that encourages most individuals to live in a state of chronological self-referentiality whereby they screen out anything that is not of the moment.22 The commercial media, advertising, and entertainment industries are major contributors to this “tyranny of real time”23 that feeds a societal addiction to the ‘live’ and the immediate while eroding the principle of farsightedness. The infamous quip attributed to Madame de Pompadour, ‘après nous, le déluge,’ perfectly captures a sense of utter callousness about the future that represents one of presentism’s most acute manifestations. Two closely related notions underlie it: the belief that we should only concern ourselves with whether our actions, or lack thereof, have deleterious consequences visible to us in the short-to medium-term (temporally limited responsibility); and sheer indifference toward the plight of those who will come after us (generational self-centeredness). Substantively, the two are not much different because they shift the costs and risks of present-day decisions onto our descendants. “The crisis of the future is a measure of the deficiency of our societies, incapable as they are of assessing what is involved in relationships with others,” Bindé writes. “This temporal myopia brings into play the same processes of denial of others as social shortsightedness. The absence of solidarity in time between generations merely reproduces selfishness in space within the same generation.”24 Thus, to the NIMBY (‘not-in-my-back-yard’) politics of the last few decades can be added the ‘not-in-my-lifetime’ or ‘not-to-my-children’ lines of reasoning. For members of dominant groups in the North Atlantic region, disasters are something for others to worry about – that is, those who are socio-economically marginal, or geographically and temporally distant. The variations on these themes are numerous. One is the oft-stated belief that prevention is a luxury that we can scarcely afford, or even an unwarranted conceit. Accordingly, by minimizing the urgency or gravity of potential threats, procrastination appears legitimate. Why squander time, energy, and resources to anticipate and thwart what are, after all, only hypothetical dangers? Why act today when, in any case, others will do so in the future? Why not limit ourselves to reacting to cataclysms if and when they occur? A ‘bad faith’ version of this argument goes even further by seeking to discredit, reject, or deny evidence pointing to upcoming catastrophes. Here, we enter into the domain of deliberate negligence and “culpable ignorance,”25 as manifest in the apathy of US Republican administrations toward climate change or the Clinton White House’s disengenuous and belated responses to the genocides in ex-Yugoslavia and Rwanda. At another level, instrumental-strategic forms of thought and action, so pervasive in modern societies because institutionally entrenched in the state and the market, are rarely compatible with the demands of farsightedness. The calculation of the most technically efficient means to attain a particular bureaucratic or corporate objective, and the subsequent relentless pursuit of it, intrinsically exclude broader questions of long-term prospects or negative side-effects. What matters is the maximization of profits or national self-interest with the least effort, and as rapidly as possible. Growing risks and perils are transferred to future generations through a series of trade-offs: economic growth versus environmental protection, innovation versus safety, instant gratification versus future well-being. What can be done in the face of short-sightedness? Cosmopolitanism provides some of the clues to an answer, thanks to its formulation of a universal duty of care for humankind that transcends all geographical and socio-cultural borders. I want to expand the notion of cosmopolitan universalism in a temporal direction, so that it can become applicable to future generations and thereby nourish a vibrant culture of prevention. Consequently, we need to begin thinking about a farsighted cosmopolitanism, a chrono-cosmopolitics that takes seriously a sense ¶ of “intergenerational solidarity” toward human beings who will live in our wake as much as those living amidst us today.26 But for a farsighted cosmopolitanism to take root in global civil society, the latter must adopt a thicker regulative principle of care for the future than the one currently in vogue (which amounts to little more than an afterthought of the non-descript ‘don’t forget later generations’ ilk). Hans Jonas’s “imperative of responsibility” is valuable precisely because it prescribes an ethico-political relationship to the future consonant with the work of farsightedness.27 Fully appreciating Jonas’s position requires that we grasp the rupture it establishes with the presentist assumptions imbedded in the intentionalist tradition of Western ethics. In brief, intentionalism can be explained by reference to its best-known formulation, the Kantian categorical imperative, according to which the moral worth of a deed depends upon whether the a priori “principle of the will” or “volition” of the person performing it – that is, his or her intention – should become a universal law.28 Ex post facto evaluation of an act’s outcomes, and of whether they correspond to the initial intention, is peripheral to moral judgment. A variant of this logic is found in Weber’s discussion of the “ethic of absolute ends,” the “passionate devotion to a cause” elevating the realization of a vision of the world above all other considerations; conviction without the restraint of caution and prudence is intensely presentist.29 By contrast, Jonas’s strong consequentialism takes a cue from Weber’s “ethic of responsibility,” which stipulates that we must carefully ponder the potential impacts of our actions and assume responsibility for them – even for the incidence of unexpected and unintended results. Neither the contingency of outcomes nor the retrospective nature of certain moral judgments exempts an act from normative evaluation. On the contrary, consequentialism reconnects what intentionalism prefers to keep distinct: the moral worth of ends partly depends upon the means selected to attain them (and vice versa), while the correspondence between intentions and results is crucial. At the same time, Jonas goes further than Weber in breaking with presentism by advocating an “ethic of long-range responsibility” that refuses to accept the future’s indeterminacy, gesturing instead toward a practice of farsighted preparation for crises that could occur.30 From a consequentialist perspective, then, intergenerational solidarity would consist of striving to prevent our endeavors from causing large-scale human suffering and damage to the natural world over time. Jonas reformulates the categorical imperative along these lines: “Act so that the effects of your action are compatible with the permanence of genuine human life,” or “Act so that the effects of your action are not destructive of the future possibility of such life.”31 What we find here, I would hold, is a substantive and future-oriented ethos on the basis of which civic associations can enact the work of preventive foresight.

#### Our authors academically came to sound conclusions – defer to specifics over vague claims that they turn case

Chernoff, PolSci Professor at Colgate, ‘5 (Fred, “The Power of International Theory: Reforging the Link to Foreign Policy-Making through Scientific Enquiry” p 169-170)

Over the past century IR developed as a discipline with the primary goal of providing a basis for changing the world for the better; i.e., as a basis for the formulation of policy. Despite the fact that most critical theorists, reflectivist and anti- post-positivists passionately wish to use the study of IR for that purpose, the meta-theories they adopt, with their attacks on predictions, undermine the project of using the study of IR to change the world. In IR and other social sciences, policy-makers must predict and, contrary to post-positivism, if there are no sounder generalizations available, then phenomenal regularities must be enough to go on, at least some of the time. Even for those who accept Bohman’s HT arguments against deterministic explanation in the social sciences, and who thus see explanations as perspectival, in complete and circular, it is possible to ground a notion of ‘prediction’ that is capable of satisfying enabling conditions (at least closely enough) to allow policy-makers to use social theory generalizations as a foundation for predictions and thus for policies. The generalizations are neither perfectly reliable nor deterministic. They are probabilistic and offer the decision-maker imperfect guarantees about the future. Still, in many epistemic circumstances, they provide the decision-maker with much greater assurances that the chosen policy will lead to the desired result than he or she would have if policies were selected randomly. Bohman overlooks the need for social prediction even more than the other authors discussed. Little overlooks it, but at least makes reference to ‘probabilistic prediction’ in some of his writings. Doran begins with an argument for prediction-scepticism but then adds several qualifications, which would seem to open up some room for prediction or forecasting. However those remarks are surrounded by comments that undercut the qualifications and which thereby restore full-blown prediction-scepticism. Berstein et al. offer a range of criticisms that fail to target the most common sorts of predictions of policy-makers and they offer an alternative that makes use of the sort of theory-base predictions they claim to have rejected. This chapter has thus sought to show that the arguments against prediction offered by each author are flawed and that the sound elements of the foundational positions sketched out by the various authors (especially Bohman and Bernstein et al.) can consistently be brought into line with some notion of ‘prediction’, when that notion is founded on probabilistic rather than deterministic generalizations. Bernstein et al. attempt to discredit. Prediction’ by arguing that IR is much more similar to evolutionary theory than to physical sciences like classical mechanics. Is IR very like classical mechanics or evolutionary biology? It shares many features with both but also has many dissimilarities to both and consequently is ‘very like’ neither. A major part of the strategy of the critique of Bernstein et al. has been to show that a further probing of the character of physical science revels that the dissimilarities that Bernstein et al. claims do not hold. This is not to say that an unrestricted naturalism is justified. Far from it. Comprehensive theories like those of physical sciences are not like to emerge in IR. Nevertheless, theoretical and scientific-style investigation in IR has great value and holds out possibility, at least within tightly circumscribed domains, to achieve natural-science-like consensus and well-founded prediction. Indeed, prediction is necessary for good policy-making, even though there are limitations due to hermeneutic interpretation, lack of governing regularities and non-linearities. These considerations lead to the conclusion that there are limitations on the types of predictions one might propose and the confidence that should be displayed in the, but not to conclude that policy-making, prediction alone is not sufficient, since normative considerations must always be addressed. Probabilistic predictions man inform one of the things like ‘socialist states go to war with non-socialist states less often than democratic states go to war with non-democracies’. But normative analysis is clearly required in order to determine whether this is a good or bad thing and what policy initiatives should be perused.

#### Language does not shape reality—they have no empirical evidence to support their link argument, don’t support their vague assertions.

Matthew Roskoski and Joe Peabody, Communications—Florida State University, 1991

“A Linguistic and Philosophical Critique of Language "Arguments",” <http://debate.uvm.edu/Library/DebateTheoryLibrary/Roskoski&Peabody-LangCritiques>

Language Does Not Create Reality

Language "arguments" assume the veracity of the Sapir-Whorf hypothesis. Usually, this is made explicit in a subpoint labeled something like "language creates reality." Often, this is implicitly argued as part of claims such as "they're responsible for their rhetoric" or "ought always to avoid X language." Additionally, even if a given language "argument" does not articulate this as a premise, the authors who write the evidence comprising the position will usually if not always assume the Sapir-Whorf hypothesis. Perhaps the most common example is the popular sexist language "argument" critiquing masculine generic references. Frequently debaters making this "argument" specifically state that language creates reality. The fact that their authors assume this is documented by Khosroshahi:

The claim that masculine generic words help to perpetuate an androcentric world view assumes more or less explicitly the validity of the Sapir-Whorf hypothesis according to which the structure of the language we speak affects the way we think.

(Khosroshahi 506).

We believe this example to be very typical of language "arguments." If the advocate of a language "argument" does not defend the Sapir-Whorf hypothesis, then there can be no link between the debater's rhetoric and the impacts claimed. This being the case, we will claim that a refutation of the Sapir-Whorf hypothesis is a sufficient condition for the refutation of language "arguments". Certainly no logician would contest the claim that if the major premise of a syllogism is denied, then the syllogism is false.

Before we begin to discuss the validity of the hypothesis, we ought first to note that there are two varieties of the Sapir-Whorf hypothesis. The strong version claims that language actually creates reality, while the weak version merely claims that language influences reality in some way (Grace). As Bloom has conceded, the strong version - "the claim that language or languages we learn determine the ways we think" is "clearly untenable" (Bloom 275). Further, the weak form of the hypothesis will likely fail the direct causal nexus test required to censor speech. The courts require a "close causal nexus between speech and harm before penalizing speech" (Smolla 205) and we believe debate critics should do the same. We dismiss the weak form of the hypothesis as inadequate to justify language "arguments" and will focus on the strong form.

Initially, it is important to note that the Sapir-Whorf hypothesis does not intrinsically deserve presumption, although many authors assume its validity without empirical support. The reason it does not deserve presumption is that "on a priori grounds one can contest it by asking how, if we are unable to organize our thinking beyond the limits set by our native language, we could ever become aware of those limits" (Robins 101). Au explains that "because it has received so little convincing support, the Sapir-Whorf hypothesis has stimulated little research" (Au 1984 156). However, many critical scholars take the hypothesis for granted because it is a necessary but uninteresting precondition for the claims they really want to defend. Khosroshahi explains:

However, the empirical tests of the hypothesis of linguistic relativity have yielded more equivocal results. But independently of its empirical status, Whorf's view is quite widely held. In fact, many social movements have attempted reforms of language and have thus taken Whorf's thesis for granted. (Khosroshahi 505).

One reason for the hypothesis being taken for granted is that on first glance it seems intuitively valid to some. However, after research is conducted it becomes clear that this intuition is no longer true. Rosch notes that the hypothesis "not only does not appear to be empirically true in any major respect, but it no longer even seems profoundly and ineffably true" (Rosch 276). The implication for language "arguments" is clear: a debater must do more than simply read cards from feminist or critical scholars that say language creates reality. Instead, the debater must support this claim with empirical studies or other forms of scientifically valid research. Mere intuition is not enough, and it is our belief that valid empirical studies do not support the hypothesis. After assessing the studies up to and including 1989, Takano claimed that the hypothesis "has no empirical support" (Takano 142). Further, Miller & McNeill claim that "nearly all" of the studies performed on the Whorfian hypothesis "are best regarded as efforts to substantiate the weak version of the hypothesis" (Miller & McNeill 734). We additionally will offer four reasons the hypothesis is not valid.

The first reason is that it is impossible to generate empirical validation for the hypothesis. Because the hypothesis is so metaphysical and because it relies so heavily on intuition it is difficult if not impossible to operationalize. Rosch asserts that "profound and ineffable truths are not, in that form, subject to scientific investigation" (Rosch 259). We concur for two reasons. The first is that the hypothesis is phrased as a philosophical first principle and hence would not have an objective referent. The second is there would be intrinsic problems in any such test. The independent variable would be the language used by the subject. The dependent variable would be the subject's subjective reality. The problem is that the dependent variable can only be measured through self-reporting, which - naturally - entails the use of language. Hence, it is impossible to separate the dependent and independent variables. In other words, we have no way of knowing if the effects on "reality" are actual or merely artifacts of the language being used as a measuring tool.

#### Changing representational practices won’t alter policy—looking to structures and politics is more vital

Tuathail, Professor of Geography at Virginia Polytechnic Institute, 96 (Gearoid, Political Geography, Vol 15 No 6-7, p. 664, Science Direct)

While theoretical debates at academic conferences are important to academics, the discourse and concerns of foreign-policy decision- makers are quite different, so different that they constitute a distinctive problem- solving, theory-averse, policy-making subculture. There is a danger that academics assume that the discourses they engage are more significant in the practice of foreign policy and the exercise of power than they really are. This is not, however, to minimize the obvious importance of academia as a general institutional structure among many that sustain certain epistemic communities in particular states. In general, I do not disagree with Dalby’s fourth point about politics and discourse except to note that his statement-‘Precisely because reality could be represented in particular ways political decisions could be taken, troops and material moved and war fought’-evades the important question of agency that I noted in my review essay. The assumption that it is representations that make action possible is inadequate by itself. Political, military and economic structures, institutions, discursive networks and leadership are all crucial in explaining social action and should be theorized together with representational practices. Both here and earlier, Dalby’s reasoning inclines towards a form of idealism. In response to Dalby’s fifth point (with its three subpoints), it is worth noting, first, that his book is about the CPD, not the Reagan administration. He analyzes certain CPD discourses, root the geographical reasoning practices of the Reagan administration nor its public-policy reasoning on national security. Dalby’s book is narrowly textual; the general contextuality of the Reagan administration is not dealt with. Second, let me simply note that I find that the distinction between critical theorists and post- structuralists is a little too rigidly and heroically drawn by Dalby and others. Third, Dalby’s interpretation of the reconceptualization of national security in Moscow as heavily influenced by dissident peace researchers in Europe is highly idealist, an interpretation that ignores the structural and ideological crises facing the Soviet elite at that time. Gorbachev’s reforms and his new security discourse were also strongly self- interested, an ultimately futile attempt to save the Communist Party and a discredited regime of power from disintegration. The issues raised by Simon Dalby in his comment are important ones for all those interested in the practice of critical geopolitics. While I agree with Dalby that questions of discourse are extremely important ones for political geographers to engage, there is a danger of fetishizing this concern with discourse so that we neglect the institutional and the sociological, the materialist and the cultural, the political and the geographical contexts within which particular discursive strategies become significant. Critical geopolitics, in other words, should not be a prisoner of the sweeping ahistorical cant that sometimes accompanies ‘poststructuralism nor convenient reading strategies like the identity politics narrative; it needs to always be open to the patterned mess that is human history.

1964, p. 37).

### CP

#### Perm still requires Obama to assemble a legislative coalition

Howell, 5 – Associate Professor of Government at Harvard

(William G., Presidential Studies Quarterly, “Unilateral Powers: A Brief Overview,” September 2005, v35n3, p.417, proquest)

Third, it can be just as difficult to convince bureaucrats to execute laws as unilateral directives. If anything, laws may prove more difficult, if only because their mandates tend to be broader and their contents more ambiguous. In order to placate the required supermajorities within Congress, members often fill laws with loopholes and compromises, granting bureaucrats ample opportunities to substitute their own policy preferences for those of their political superiors. As presidents need not assemble a legislative coalition in order to issue a unilateral directive, their orders can be more direct. And as others have effectively argued, possibilities for shirking decline in direct proportion to clarity with which directions are handed down (Huber and Shipan 2002).

#### Plan alone allows executive to avoid hardened congressional opposition

Fleishman, 76 --- Prof Law and Policy Sciences at Duke [Joel, Law & Contemporary Problems, Summer, p. 38]

Several related factors, in particular, make executive orders especially attractive policymaking tools for a President. First is speed. Even if a President is reasonably confident of securing desired legislation from congress, he must wait for congressional deliberations to run their course. Invariably, [s]he can achieve far faster, if not immediate, results by issuing an executive order. Moreover, when a President acts through an order, he avoids having to subject his policy to public scrutiny and debate. Second is flexibility. Executive orders have the force of law. Yet they differ from congressional legislation in that a President can alter any executive order simply with the stroke of his pen—merely by issuing another executive order. As noted earlier, Presidents have developed the system of classifying national security documents in precisely this manner. Finally, executive orders allow the President, not only to evade hardened congressional opposition, but also to preempt potential or growing opposition—to throw Congress off balance, to reduce its ability to formulate a powerful opposing position.

#### Unilateral action is the only politically feasible strategy --- t00 difficult to get legislation through Congress

Devins, 9 --- Professor of Law and Professor of Government, College of William and Mary

(Spring 2009, Neal, Willamette Law Review, “PRESIDENTIAL UNILATERALISM AND POLITICAL POLARIZATION: WHY TODAY'S CONGRESS LACKS THE WILL AND THE WAY TO STOP PRESIDENTIAL INITIATIVES,” 45 Willamette L. Rev. 395))

Finally and, for my purposes, most significant, party polarization contributes to the rise of presidential unilateralism. When the Congress is polarized, members of the President's party are not likely to break ranks and vote to limit presidential initiatives. When government is unified, this means that no bill will get through Congress to limit presidential initiatives. When Congress is divided, members of the President's party will resist any opposition party efforts to repudiate the President. More than that, since divided government is increasingly common (thirty of the past forty years), it is also increasingly difficult for Congress to enact significant legislation. As such, Presidents have even more incentive to act unilaterally - since they cannot get Congress to enact their legislative agenda. n50

#### Direct congressional action to limit presidential powers triggers a veto that must be overridden by fiat

Covington, 12 --- School of Engineering, Vanderbilt University

(Spring 2012, Megan, Vanderbilt Undergraduate Research Journal, “Executive Legislation and the Expansion of Presidential Power,” http://ejournals.library.vanderbuilt.edu)

In actuality, however, Congress is generally unwilling or unable to respond to the president’s use of executive legislation. Congress can override a presidential veto but does not do it very often; of 2,564 presidential vetoes in our nation’s history, only 110 have ever been overridden. 44 The 2/3 vote of both houses needed to override a veto basically means that unless the president’s executive order is grossly unconstitutional – and thus capable of earning bipartisan opposition - one party needs to have a supermajority of both houses. Even passing legislation to nullify an executive order can be difficult to accomplish, especially with Congress as polarized and bitterly divided along party lines as it is today. Congress could pass legislation designed to limit the power of the president, but such a bill would be difficult to pass and any veto on it – which would be guaranteed – would be hard to override. In addition, if such legislation was passed over a veto, there is no guarantee that the bill would successfully limit the president’s actions; the War Powers Act does little to restrain the president’s ability to wage war.45 Impeachment is always an option, but the gravity of such a charge would prevent many from supporting it unless the president was very unpopular and truly abused his power. 46

#### That veto will destroy the agenda

Slezak, 7 --- Center for the Study of the Presidency Fellow 2006-2007 at UCLA and MA in Security Studies at Georgetown

(Nicole L., “The Presidential Veto: A Strategic Asset” https://host.genesis4100.net/thepresidency/pubs/fellows2007/Slezak.pdf)

Although the veto offers the president a significant advantage in dealing with a sometimes combative and divisive Congress, James Gattuso discusses four “caveats” that should be considered by presidents when devising a veto strategy. First, presidents should not veto without care, for if Congress overrides it is politically damaging to the president.8 This means that if the president does not garner the required one-third plus one in either house of Congress and his veto is overridden, he will not only lose face, but lose political capital that gives him leverage in dealing with Congress. If the president loses political capital he can put himself at a disadvantage for future interactions with Congress; hence, when vetoing he must consider his support in Congress and the potential ramifications of an override. However, Gattuso adds that worse than having a veto overridden is a president who threatens to veto and does not follow through once Congress has passed legislation.9 This is even more damaging than an override because the president is caught making “empty threats.” Therefore, Congress will continue to produce legislation to their liking rather than revising it because Congress is inclined to believe the president is no longer serious about his veto threats.

#### Permutation is severance --- counterplan has the executive exercise self-restraint which is distinct from judicial or congressional restrictions that create external checks on presidential war powers authority

Fisher 12 (Louis, Scholar in Residence at The Constitution Project; served for four decades at the Library of Congress, as Senior Specialist, Congressional Research Service, “Basic Principles of the War Power,” 2012 Journal of National Security Law & Policy 5 J. Nat'l Security L. & Pol'y 319)

Article II designates the President as Commander in Chief, but that title does not carry with it an independent authority to initiate war or act free of legislative control. Article II provides that the President "shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States." Congress, not the President, does the calling. Article I grants Congress the power to provide "for calling forth the Militia to execute the laws of the Union, suppress Insurrections, and repel invasions." Presidential use of the militia depends on policy enacted by Congress. The Commander in Chief Clause is sometimes interpreted as an exclusive, plenary power of the President, free of statutory checks. It is not. Instead, it offers several protections for republican, constitutional government. Importantly, it preserves civilian supremacy over the military. The individual leading the armed forces is an elected civilian, not a general or admiral. Attorney General Edward Bates in 1861 concluded that the President is Commander in Chief not because he is "skilled in the art of war and qualified to marshal a host in the field of battle." He possesses that title for a different reason. Whatever military officer leads U.S. forces against an enemy, "he is subject to the orders of the civil magistrate, and he and his army are always "subordinate to the civil power.'" n23 Congress is an essential part of that civil power. The Framers understood that the President may "repel sudden attacks," especially when Congress is out of session and unable to assemble quickly, but the power to take defensive actions does not permit the President to initiate wars and exercise the constitutional authority of Congress. President Washington took great care in instructing his military commanders that operations against Indians were to be limited to defensive actions. n24 Any offensive action required congressional authority. He wrote in 1793: "The Constitution vests the power of declaring war with Congress; therefore no offensive expedition of importance can be undertaken until after they have deliberated upon the subject, and authorized such a measure." n25 [\*324] In 1801, President Jefferson directed that a squadron be sent to the Mediterranean to safeguard American interests against the Barbary pirates. On December 8, he informed Congress of his actions, asking lawmakers for further guidance. He said he was "unauthorized by the Constitution, without the sanction of Congress, to go beyond the line of defense ... ." It was up to Congress to authorize "measures of offense also." n26 In 1805, after conflicts developed between the United States and Spain, Jefferson issued a public statement that articulates fundamental constitutional principles: "Congress alone is constitutionally invested with the power of changing our condition from peace to war." n27 In the Smith case of 1806, a federal circuit court acknowledged that if a foreign nation invades the United States, the President has an obligation to resist with force. But there was a "manifest distinction" between going to war with a nation at peace and responding to an actual invasion: "In the former case, it is the exclusive province of congress to change a state of peace into a state of war." n28 The second value that the Founders embraced in the Commander-in-Chief Clause is accountability. Hamilton in Federalist No. 74 wrote that the direction of war "most peculiarly demands those qualities which distinguish the exercise of power by a single hand." The power of directing war and emphasizing the common strength "forms a usual and essential part in the definition of the executive authority." n29 Presidential leadership is essential but it cannot operate outside legislative control. The President is subject to the rule of law, including statutory and judicial restrictions.

#### Judicial restrictions are limits imposed by the courts

Charles Grove Haines – PhD, Fellow @ Columbia University – 2001, The Conflict over Judicial Powers, googlebooks

The political theories of the time favored judicial restriction of state laws to the point of practical nullification. The same trend of thought regarded the federal courts as the only proper tribunals to determine the validity or the invalidity of state laws contrary to the terms of the treaty of peace or to the principles of the law of nations. In practice a principle was emerging, not sanctioned by any positive enactment, which dealt a severe blow to the power of the legislative department. State courts were asserting authority above that of the legislative assemblies. Federal courts were claiming the right to declare void state laws contrary to national laws and treaties, and contrary to the “sovereign rights of peace and war” vested in the Confederate Congress. It was but a short step, therefore, to Mar- bury vs. Madison.

#### ( ) “Statutory restrictions” require statutory language - Congress

Kershner 10 (Joshua, Articles Editor, Cardozo Law Review. J.D. Candidate (June 2011), Benjamin N. Cardozo School of Law, “Political Party Restrictions and the Appointments Clause: The Federal Election Commission's Appointments Process Is Constitutional” Cardozo Law Review de novo 2010 Cardozo L. Rev. De Novo 615)

n17 The phrase "statutory restrictions" is used hereinafter to mean statutory language that restricts the President's powers of nomination and appointment to those individuals meeting specific criteria. Examples include gender, state of residence, and most importantly political party. n18 Since 1980, more than one hundred Presidential signing statements have specifically mentioned the Appointments Clause. See The Public Papers of the Presidents, AM. PRESIDENCY PROJECT, http://www.presidency.ucsb.edu/ws (search for "Appointments Clause"). n19 These signing statements typically invoke the authority of the Appointments Clause to argue that statutory restrictions on appointment or removal of Officers of the United States are merely advisory. For numerous examples, see id. See also infra note 175. n20 The phrase "hyper-partisan atmosphere" has been frequently used by the news media and commentators to describe the political gridlock in Washington during the first years of the Obama administration. See, e.g., Eric Moskowitz, Hundreds Brave Cold to Hear From Scott Brown, THE BOSTON GLOBE, Jan. 29, 2010, http://www.boston.com/news/local/breaking\_news/2010/01/scores\_wait\_for.html (reporting on then Senator-Elect Scott Brown explaining that "he felt the hyper-partisan atmosphere in Washington was already changing as a result of his election" ten days earlier); Editorial, Bayh Bailout No Cause to Mourn Moderation, ORANGE COUNTY REG., Feb. 17, 2010, at H, available at http://www.ocregister.com/opinion/bayh-234673-sen-one.html (describing Senator Bayh's verbal attacks on the operation of the Senate after announcing his decision not to run for reelection as "using the occasion to decry the hyperpartisan atmosphere in Washington"). n21 As political battles over delays in approving Presidential nominations continue to be the norm, it is progressively more likely that Presidents will seek to bypass the Senate in the nomination process. This could include recess appointments bypassing both the "advice and consent" of the Senate, as well as any statutory restrictions. See, e.g., Scott Wilson, Obama Considers Recess Appointments, WASH. POST, Feb. 9, 2010 ("President Obama is considering recess appointments to fill some or all of the nominations held up in the Senate. President Bush used a recess appointment to make John Bolton the U.S. ambassador to the United Nations bypassing Democrats."). n22 Statutory restrictions date back to the first Congress and continue today. See infra notes 116, 118, 122. n23 See discussion infra Part I.D and note 128. n24 The phrase "political party restrictions" is used hereinafter to mean statutory restrictions on the President's powers of nomination and appointment by political party.

#### No movements – the public doesn’t care

Galloway 7

[Ryan, Director of Debate and assistant professor in Communication Studies at Samford University, “DINNER AND CONVERSATION AT THE ARGUMENTATIVE TABLE: RECONCEPTUALIZING DEBATE AS AN ARGUMENTATIVE DIALOGUE”, Contemporary Argumentation and Debate, Vol. 28, MW]

Additionally, debate is unlike public speaking since it happens almost always in a private setting. There are several distinctions. First, very few people watch individual contest rounds. The vast majority of such rounds take place with five people in the room—the four debaters, and the lone judge. Even elimination rounds with the largest audiences have no more than approximately one hundred observers, almost all of whom are debaters. Rarely do people outside the community watch debates. Also, debate has developed a set of norms and procedures quite unlike public speaking. While some indict these norms (Warner 2003), the rapid rate of speed and heavy reliance on evidence distinguishes debate from public speaking. Our activity is more like the closed debating society that Murphy admits can be judged by “pedagogical, rather than ethical, standards” (1957, p. 7). When debates do occur that target the general public (public debates on campus for example), moderators are careful to explain that debaters may be playing devil’s advocate. Such statements prevent confusion regarding whether or not a debater Contemporary Argumentation and Debate, Vol. 28 (2007) 11 speaks in a role or from personal conviction. While speaking from conviction is a political act, speaking in accordance with a role is a pedagogical one (Klopf & McCroskey,

#### Executive orders won’t be rolled back

Duncan, 10 --- Associate Professor of Law, College of Law, Florida A & M University (Winter 2010, John C. Duncan, Jr., J.D., Ph.D., Vermont Law Review, “ARTICLE: A CRITICAL CONSIDERATION OF EXECUTIVE ORDERS: GLIMMERINGS OF AUTOPOIESIS IN THE EXECUTIVE ROLE,” 35 Vt. L. Rev. 333)

Conclusion

The trajectory of the evolution of the executive power in the United States, as seen through the prism of the growing edifice of executive orders have become increasingly formal and permanent. The evolution of executive power in the United States has shifted executive orders from mere legislative interpretation to ancillary legislation. Executive orders continue to influence subsequent presidents. The elaboration of executive order promulgation, as an autopoietic process was necessary to the very existence of presidential power. That is, the mechanisms for formalizing executive orders have always existed in the executive power in a government whose legitimacy lives in written pronouncements treated as delicate, sacred, and worth protecting at all cost. Part of this formalization is a consequence of the reverence for precedent. Thus, prior presidents influence future presidents, less because future presidents wish to mimic their predecessors, but more because future presidents act within an edifice their predecessors have already erected. Thus, the growth and elaboration of an ever more robust structure of executive orders resembles an autopoietic process. n561

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### PTX

#### Slow growth risks global nuclear war

**Heinberg 12** – Senior Fellow-in-Residence of Post Carbon Institute [Richard Heinberg, “Conflict and Change in the Era of Economic Decline: Part 2: War and peace in a shrinking economy,” [Post Carbon Institute](http://www.postcarbon.org/article/1345757-conflict-and-change-in-the-era)  | Dec 12, 2012, pg. http://tinyurl.com/cxytpjh]

But there is a problem with Pinker’s implied conclusion that global violence will continue to decline. The Long Peace we have known since World War II may well turn out to be shorter than hoped as world economic growth stalls and as American hegemony falters—in John Michael Greer’s words, as “the costs of maintaining a global imperial presence soar and the profits of the imperial wealth pump slump.” Books and articles predicting the end of the American empire are legion; while some merely point to the rise of China as a global rival, others describe the looming failure of the essential basis of the U.S. imperial system—the global system of oil production and trade (with its petro-dollar recycling program) centered in the Middle East. There are any number of scenarios describing how the end of empire might come, but few credible narratives explaining why it won’t. When empires crumble, as they always do, the result is often a free-for-all among previous subject nations and potential rivals as they sort out power relations. The British Empire was a seeming exception to this rule: in that instance, the locus of military, political, and economic power simply migrated to an ally across the Atlantic. A similar graceful transfer seems unlikely in the case of the U.S., as economic decline during the 21st century will be global in scope. A better analogy to the current case might be the fall of Rome, which led to centuries of incursions by barbarians as well as uprisings in client states. Disaster per se need not lead to violence, as Rebecca Solnit argues in her book A Paradise Built in Hell: The Extraordinary Communities that Arise in Disaster. She documents five disasters—the aftermath of Hurricane Katrina; earthquakes in San Francisco and Mexico City; a giant ship explosion in Halifax, Canada; and 9/11—and shows that rioting, looting, rape, and murder were not automatic results. Instead, for the most part, people pulled together, shared what resources they had, cared for the victims, and in many instances found new sources of joy in everyday life. However, the kinds of social stresses we are discussing now may differ from the disasters Solnit surveys, in that they comprise a “long emergency,” to borrow James Kunstler’s durable phrase. For every heartwarming anecdote about the convergence of rescuers and caregivers on a disaster site, there is a grim historic tale of resource competition turning normal people into monsters. In the current context, a continuing source of concern must be the large number of nuclear weapons now scattered among nine nations. While these weapons primarily exist as a deterrent to military aggression, and while the end of the Cold War has arguably reduced the likelihood of a massive release of these weapons in an apocalyptic fury, [it is still possible to imagine several scenarios in which a nuclear detonation could occur as a result of accident](http://www.carolmoore.net/nuclearwar/alternatescenarios.html), aggression, pre-emption, or retaliation. We are in a race—but it’s not just an arms race; indeed, it may end up being an arms race in reverse. In many nations around the globe the means to pay for armaments and war are starting to disappear; meanwhile, however, there is increasing incentive to engage in international conflict as a way of re-channeling the energies of jobless young males and of distracting the general populace, which might otherwise be in a revolutionary mood. We can only hope that historical momentum can maintain The Great Peace until industrial nations are sufficiently bankrupt that they cannot afford to mount foreign wars on any substantial scale.

#### More ev

AFP, 12/16 (Agence France Presse, 12/16/2013, “Obama highlights desire for vast Pacific trade deal,” Factiva))

The White House sent a strong signal Monday of its desire to create a huge Pacific free trade area, despite the slippage of its year-end deadline for the 12-nation project.

President Barack Obama gathered senior trade advisors in the Oval Office and invited news photographers to document the meeting, in the wake of the latest ministerial talks last week on the Trans-Pacific Partnership (TPP) in Singapore.

"This remains a top priority of the president because of the positive economic benefits that come from it," White House spokesman Jay Carney said.

"Congress and the American public have high expectations for the TPP.

"The administration is determined to get the best deal possible, and we are pleased with the progress made towards achieving an ambitious, comprehensive, high-standard agreement."

Ministers gave up last week on meeting the year-end goal of concluding the TPP, but US Trade Representative Michael Froman, who was in Singapore, and in Obama's Oval Office consultations on Monday, said significant progress had been made.

#### Trade is most important --- Obama sees it as his new legacy issue

Stelzer, 12/15 --- business adviser and director of economic policy studies at the Hudson Institute (12/15/2013, Irwin, The Sunday Times, “Obama pins his legacy on trade, not healthcare,” Factiva))

"The action is in the regionals," the University of California's Kati Suominen tells the press. And whether that "action" reduces trade barriers will depend heavily on America, the world's biggest market — putting Obama at centre stage, with Congress waiting in the wings. The president dearly wants to make successful conclusions of these regional negotiations part of his legacy. He is convinced freer trade would spur American exports, accelerate economic growth and create jobs. His hope that Obamacare would be an enduring legacy is fading. Bringing free trade to the world might have to do as a lesser substitute.

#### TPA will pass early this year but only with Obama’s involvement

Truitt, 12/12 (Gary, 12/12/2013, “TPA Bill Could Move in Congress Early 2014,” <http://www.hoosieragtoday.com/tpa-bill-could-move-in-congress-early-2014/>))

According to House Ways and Means Chair Dave Camp, lawmakers have made considerable progress in pulling together a Trade Promotion Authority bill. In fact, he expects Congress to pass a bill within the first few months of the new year as long as the Administration actively participates. The Obama Administration has been calling on Congress to approve TPA, which would allow any trade deal to move through Congress swiftly as lawmakers can only vote them up or down. The Administration needs TPA to secure the Trans-Pacific Partnership and the Transatlantic Trade and Investment Partnership. Camp said concluding those negotiations, and other trade agreements, will require Congressional passage of Trade Promotion Authority legislation.