### Torture

#### Only democracy can solve their impact – prevents social and political control.

Lawrence Hatab, Professor of Philosophy and Religious Studies at Old Dominion University, 1995, A Nietzschean defense of democracy: an experiment in postmodem politics, pp.235-6

If there is one existential attitude that is worth promoting again and again in democratic discourse, it is suspicion of our narratives when it comes to political power--which is different from skepticism about narratives as such. Even if such an attitude is missing, though, democratic agonistics will provide continual checks and balances from other power sites in the social network. This pragmatic oscillation represents a postmodern alternative to various theories and stories that wittingly or unwittingly have measured politics according to prescriptive visions of social outcomes, purposes, and human relations. Such concentrations cannot avoid problematizing or marginalizing resistances, and political power permits an easy transition from mere criticism and judgment to subjugations of all forms. Democratic openness and freedom, therefore, are best protected by a dialogical-paralogical politics unscripted by any primal story, a political experiment ungoverned by any theory.

### CP

#### Court inactivism causes congress to fear the executive will manipulate their authorizations and means they go from restricted authorizations to no authorizations at all—that slays executive authority

Jinks and Katyal 7 [April, 2007, Derek Jinks is Assistant Professor of Law, University of Texas School of Law. Neal Kumar Katyal is Professor of Law, Georgetown University Law Center, “Disregarding Foreign Relations Law”, 116 Yale L.J. 1230]

If adopted, one of the most dangerous byproducts of Posner and Sunstein's theory may be to weaken, as a practical matter, the ability of Congress to legislate meaningful constraints on executive power. Members of Congress, when enacting legislation, would now have to contemplate whether any statutory ambiguities would be used to permit the President to violate longstanding treaty commitments. n170 The result of their proposal, ex ante, may be to instill trepidation in Congress about enacting legislation in the first place.¶ For example, imagine how Congress, under the Posner and Sunstein model, would react to an administration's request to pass a Use of Force Resolution. Members would have to fear that such legislation could be used by the President in the future as a blank check to permit him to disregard international law. The upshot of such fear is that they might not pass such a statute at all. Instead, some would predictably embrace theories about the [\*1276] "inherent" right of the President to use military force in times of crisis; others would simply stay quiet and let the President use force. The alternative to legislative silence - that Congress would have to enact such laws with such a degree of specificity (for example, no domestic spying, no torture, no indefinite detentions) - would demand such high foresight and political maneuvering that it would often be safer for Congress to decide to do nothing.¶ The risk of furthering congressional inactivity exists even with contemporary presidential interpretations of the AUMF. Congress already has to fear, with or without Chevron deference, that the executive will distort its statutes to permit activities that it did not intend. n171 But what stops that risk from flowering today is the courts - which have reassured Congress that it can pass something like the AUMF and not have it interpreted in ludicrous ways by the executive. n172 In this respect, cases such as Rasul v. Bush n173 and Hamdan are not only democracy-forcing ex post in that they compel Congress to act to give the executive additional powers in those specific areas; they are also democracy-forcing ex ante. They reassure the legislature that it can pass laws without having them subject to wild-eyed, self-interested interpretations by the executive.¶ By contrast, Posner and Sunstein's proposal would encourage executive branch gamesmanship and might lead, ex ante, to fewer congressional enactments in the area. Congress would have to fear the risk of unwittingly authorizing a variety of activities that it could not adequately foresee, and it would therefore stay silent. The result would be to further the democratic deficit that already plagues the nation in the legal war on terror - in which the [\*1277] President has been acting without the explicit support of the legislature. This presidential netherworld is bad for the reputation of the United States, as well as for our deliberative democracy.¶ There is no way to "prove" that such a result would follow from Posner and Sunstein's proposal short of adopting it and watching what would unfold. But the abdication of Congress for the five years after the September 11, 2001, attacks in many of the key decisions in this realm suggests that strong deference claims might make it harder to enact legislation. That view gains some support from structural principles as well. After all, our Founders set up the tripartite government to make it difficult for government to take action that deprives people of their rights. Short of an emergency that precluded Congress from acting, the concurrence of any one branch alone in such a scheme was not considered enough to change the status quo baseline. n174 Instead, Congress had to pass a law, the President had to enforce the law, and the courts had to uphold the law. All three branches thus had to agree under this constitutional framework - a key feature of the document that led to greater deliberation and dialogue among the branches.¶ Posner and Sunstein would flip that standard assumption. Under their view, Congress would necessarily have to fear that its authorizing legislation, in a world of Chevron deference, could be used for radically unintended purposes. It would be entirely natural for the legislative body, faced with such a dilemma, to be led down the path of doing nothing at all. This problem does not manifest itself as much in the domestic context, as there Congress has to act before the President can change the status quo. In the foreign policy arena, however, Congress knows that the President can always use his "inherent authority" to use military force regardless of what it does, and it may therefore find it safer to stay silent than to legislate.¶ Posner and Sunstein respond to these arguments by suggesting that their proposal would force more, not less, legislative restriction over the President. n175 They surmise that a future Congress "might issue a more detailed AUMF, one that more carefully described the entities against which force could be used and the limits under which the President might operate, rather than leaving those issues to a President it did not trust or to courts that had no expertise in the area." n176 Their last words are just one tip-off among many that this claim is a weak one. After all, if Congress didn't trust the courts, the status quo provides [\*1278] it plenty of opportunities to craft a more calibrated AUMF. But of course Congress hasn't done that, and the reasons have little to do with distrust of the courts. The reason why a more detailed AUMF is only conceivable in the University of Chicago Roundtable, as opposed to the halls of Congress, is that Congress will never be able, as a practical matter, to legislate with the necessary prospectivity. It did not foresee the National Security Agency (NSA) program or military commissions in the 2001 AUMF, and it is unlikely to be able to foresee the next round of programs either. (Recall that the executive branch has repeatedly justified its failure to inform Congress of the NSA program on the ground that even debate about the program would reveal details of our intelligence activities that Congress and our enemies do not currently know.) n177

#### Legislative action fails—isn’t globalized and doesn’t check the executive

Flaherty 11, Professor of International Law

[2011, Martin S. Flaherty is a Leitner Professor of International Law, Fordham Law School; Visiting Professor, Woodrow Wilson School of Public and International Affairs, Princeton University, “Judicial Foreign Relations Authority After 9/11”, 56 N.Y.L. Sch. L. Rev. 119]

2. Legislative Globalization This pro-executive conclusion becomes even harder to resist given the slowness with which national legislators have been interacting with their counterparts. Several factors account for the slower pace of legislative globalization. Membership in a legislature almost by definition entails not just representation but representation keyed to national and subnational units. The turnover among legislators typically outpaces either executive officials or, for that matter, judges. In further contrast to legislators, regulators need to be specialists, and specialization facilitates cross-border interaction if only because it is easier to identify counterparts and focus upon common challenges. n137 Transnational legislative networks exist nonetheless and are growing. To take one example, national legislators have begun to work with one another in the context of such international organizations as NATO, the Organization for Security and Co-operation in Europe (OSCE), and the Association of Southeast Asian Nations (ASEAN). To take another example, independent legislative networks have begun to emerge, such as the Inter-Parliamentary Union and Parliamentarians for Global Action. n138 Yet even were national legislators to "catch up" to their executive counterparts in any meaningful way, the result would not necessarily be more robust or adequate protection of fundamental rights in times of perceived danger or the protection of minority rights at any time. Human rights organizations around the world are all too familiar with the democratic pathology of draconian statutes hastily enacted in response to actual attacks or perceived threats, including the Prevention of Terrorism Act in the United Kingdom, the USA PATRIOT Act in the United States, and the Internal Security Act in Malaysia. n139 It is for this reason that the essential player in the matter of rights protection must remain the courts. [\*143] 3.

### DA

#### Obama already spent capital on Syria and it was perceived as a loss

Bohan, 9/11 (Caren, 9/11/2013, “Delay in Syria vote frees Obama to shift to hefty domestic agenda,” <http://www.reuters.com/article/2013/09/11/usa-obama-agenda-idUSL2N0H716N20130911>))

WASHINGTON, Sept 11 (Reuters) - Putting off a decision on military strikes on Syria allows President Barack Obama to shift his attention back to a weighty domestic agenda for the fall that includes budget fights, immigration and selecting a new chairman of the Federal Reserve.

Obama and his aides have immersed themselves for a week and a half in an intensive effort to win support in Congress for U.S. military action in Syria after a suspected chemical weapons attack last month killed more than 1,400 people.

But the effort, which included meetings by Obama on Capitol Hill on Tuesday followed by his televised speech to Americans, seemed headed for an embarrassing defeat, with large numbers of both Democrats and Republicans expressing opposition.

The push for a vote on Syria - which has now been delayed - had threatened to crowd out the busy legislative agenda for the final three months of 2013 and drain Obama's political clout, making it harder for him to press his priorities.

But analysts said a proposal floated by Russia, which the Obama administration is now exploring, to place Syria's weapons under international control may allow Obama to emerge from a difficult dilemma with minimal political damage.

"He dodges a tough political situation this way," said John Pitney, professor of politics at Claremont McKenna College in California.

Pitney said the delay in the Syria vote removes a big burden for Obama, given that Americans, who overwhelmingly opposed military intervention in Syria, will now be able to shift their attention to other matters.

He said Obama could suffer some weakening of his leverage with Congress. The administration's "full court press" to try to persuade lawmakers to approve military force on Syria was heavily criticized and did not yield much success.

"He probably has suffered some damage in Congress because there are probably many people on (Capitol Hill) who have increasing doubts about the basic competence of the administration and that's a disadvantage in any kind of negotiation," Pitney said.

#### GOP will inevitably fold

Bolton, 9/14 (Alexander, 9/14/2013, “Confident Dems want separate showdowns on fiscal battles,” http://thehill.com/homenews/senate/322247-confident-democrats-want-separate-showdowns-on-shutdown-and-debt-limit))

“If push comes to shove on debt ceiling, I’m virtually certain they’ll blink,” said Sen. Charles Schumer (N.Y.), the third-ranking member of the Senate Democratic leadership. “They know they shouldn’t be playing havoc with the markets.”

Schumer said Republicans are on stronger political ground if there’s a government shutdown, but warned “even on that one, they’re on weak ground because the public sort of is finally smelling that these guys are for obstructing.”

#### Shutdown will give Obama leverage to resolve debt ceiling

Sanghoee, 9/12 --- has worked at leading investment banks as well as at a multi-billion dollar hedge fund (9/12/2013, Sanjay, “Why Obama Should Let the Government Shut Down,” <http://www.huffingtonpost.com/sanjay-sanghoee/why-obama-should-let-the-_b_3916099.html)>)

While the debate over Syria may have overshadowed the expected battle in Washington over budget cuts, the logjam between Democrats and Republicans on fiscal matters is far from being resolved, and is likely going to get worse. However, this also presents President Obama with a unique opportunity to obtain real leverage with Republicans this fall, and to break the logjam permanently.

To do this, he needs to let the government shut down.

If that sounds extreme, consider the recent decision by conservative members of the House to postpone a vote on Majority Leader Eric Cantor's plan to fund the government through mid-December. The proposal was rebuffed because it would enable the Democratic controlled Senate to exclude a provision to defund Obamacare when presenting it to the White House for approval; this despite the fact that a continuing resolution to carry us through December would maintain the lower level of spending that Republicans want and despite the silliness of expecting the president to defund his own signature law.

But even if Obamacare was not the main issue and even if the House approves a continuing resolution, it is a safe bet that the same fight will play out again at the end of this year over raising the federal debt ceiling -- an ugly hostage-taking drama that we have seen before. The GOP will not relent until Obama is willing to cut much deeper into the federal budget than he deems sensible and very likely not until he hits bone, and that is definitely not in the best interests of our nation. It is imperative, therefore, for the president to put an end to this, and the only way to really do that is by calling the opposition's bluff.

There are several reasons why a government shutdown would actually work in Obama's favor:

A government shutdown may be the most potent weapon in the GOP's arsenal but once invoked, it really cannot be used again in the near future (not without severe political carnage); and so by letting it happen, Obama can finally eliminate the biggest threat that Republicans have used to derail his agenda. Getting rid of this Democles' Sword hanging over his administration would benefit Obama on all issues, not just fiscal ones.

A recent CNN/ORC International Poll shows that 51 percent of Americans consider the Republicans more responsible for a potential government shutdown than the Democrats, which gives Obama slim but palpable political cover if it comes to pass. With a full year to go before the next midterm elections and three years till the presidential race, both parties have time to recover from the fallout of a shutdown, but I predict that the Republicans will take a more permanent hit -- largely because of their sustained obstructionism over the past five years.

The U.S. government shutdown on December 16, 1995 (that lasted for 28 days) under President Clinton over similar budget battles with the Republican party, though frightening, did not destroy the nation, and even though the public initially seemed to blame the president for the impasse, Clinton's approval ratings shot up dramatically after the shutdown was resolved, and the Republicans were excoriated for their obstinacy. In hindsight, it was a win for Clinton.

By refusing to let the GOP use Obamacare or the debt ceiling to secure spending cuts, the president will have demonstrated his resolve not to let policy decisions be influenced by political blackmail, hopefully changing the style of governing in Washington for the better.

A shutdown would also show the Tea Party base of the GOP, which is driving the push for steep budget cuts at all costs, how damaging the politics of extremism can really be. This is not an act of punishment but an act of education. It is highly ironic that those clamoring the hardest for defunding the government are those who depend the most heavily on the public services provided by it -- in other words, average Americans -- and yet a lot of those people continue to live in a utopian fantasy world. A small dose of a shutdown, then, might well be good for waking people up and for America's health in the long run. It is easy for the Tea Party to rally support behind an abstract revolution but it will be much harder to do so when the results of such a revolution hit the personal welfare of voters.

With three years left in his term, President Obama is at a crucial crossroads. The outcome of the upcoming budget battle will determine whether our nation remains stuck in neutral for the remainder of Obama's term on budgetary issues, lurching from one manufactured crisis to the next, or whether the president can finally force the Republicans to bargain more reasonably and govern cooperatively with the Democrats. Continuing resolutions will accomplish nothing and if the president is serious about his economic vision for America, then he needs to act proactively here, and really force the GOP's hand.

By not being afraid to shut down Washington.