# ASU CR Cards Round 3 Texas

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### 1

#### The Executive branch should publicly articulate its legal rationale for its targeted killing policy, including the process and safeguards in place for target selection. The United States Congress should enact a resolution and issue a white paper stating that, in the conduct of its oversight it has reviewed ongoing targeted killing operations and determined that the United States government is conducting such operations in full compliance with relevant laws, including but not limited to the Authorization to Use Military Force of 2001, covert action findings, and the President’s inherent powers under the Constitution. The Executive branch should ban the use of targeted killing to target drug cartels and drug traffickers.

#### The CP’s the best middle ground---preserves the vital counter-terror role of targeted killings while resolving all their downsides

Daniel Byman 13, Professor in the Security Studies Program at the Edmund A. Walsh School of Foreign Service at Georgetown University and a Senior Fellow at the Saban Center for Middle East Policy at the Brookings Institution, July/August 2013, “Why Drones Work,” Foreign Affairs, Vol. 92, No. 4

Despite President Barack Obama's recent call to reduce the United States' reliance on drones, they will likely remain his administration's weapon of choice. Whereas President George W. Bush oversaw fewer than 50 drone strikes during his tenure, Obama has signed off on over 400 of them in the last four years, making the program the centerpiece of U.S. counterterrorism strategy. The drones have done their job remarkably well: by killing key leaders and denying terrorists sanctuaries in Pakistan, Yemen, and, to a lesser degree, Somalia, drones have devastated al Qaeda and associated anti-American militant groups. And they have done so at little financial cost, at no risk to U.S. forces, and with fewer civilian casualties than many alternative methods would have caused. Critics, however, remain skeptical. They claim that drones kill thousands of innocent civilians, alienate allied governments, anger foreign publics, illegally target Americans, and set a dangerous precedent that irresponsible governments will abuse. Some of these criticisms are valid; others, less so. In the end, drone strikes remain a necessary instrument of counterterrorism. The United States simply cannot tolerate terrorist safe havens in remote parts of Pakistan and elsewhere, and drones offer a comparatively low-risk way of targeting these areas while minimizing collateral damage. So drone warfare is here to stay, and it is likely to expand in the years to come as other countries' capabilities catch up with those of the United States. But Washington must continue to improve its drone policy, spelling out clearer rules for extrajudicial and extraterritorial killings so that tyrannical regimes will have a harder time pointing to the U.S. drone program to justify attacks against political opponents. At the same time, even as it solidifies the drone program, Washington must remain mindful of the built-in limits of low-cost, unmanned interventions, since the very convenience of drone warfare risks dragging the United States into conflicts it could otherwise avoid.

#### Solves---the combination of executive disclosure and Congressional support boosts accountability and legitimacy

Gregory McNeal 13, Associate Professor of Law, Pepperdine University, 3/5/13, “Targeted Killing and Accountability,” <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1819583>

Perhaps the most obvious way to add accountability to the targeted killing process is for someone in government to describe the process the way this article has, and from there, defend the process. The task of describing the government’s policies in detail should not fall to anonymous sources, confidential interviews, and selective leaks. Government’s failure to defend policies is not a phenomenon that is unique to post 9/11 targeted killings. In fact, James Baker once noted "In my experience, the United States does a better job at incorporating intelligence into its targeting decisions than it does in using intelligence to explain those decisions after the fact. This in part reflects the inherent difficulty in articulating a basis for targets derived from ongoing intelligence sources and methods. Moreover, it is hard to pause during ongoing operations to work through issues of disclosure…But articulation is an important part of the targeting process that must be incorporated into the decision cycle for that subset of targets raising the hardest issues…"519 Publicly defending the process is a natural fit for public accountability mechanisms. It provides information to voters and other external actors who can choose to exercise a degree of control over the process. However, a detailed public defense of the process also bolsters bureaucratic and professional accountability by demonstrating to those within government that they are involved in activities that their government is willing to publicly describe and defend (subject to the limits of necessary national security secrecy). However, the Executive branch, while wanting to reveal information to defend the process, similarly recognizes that by revealing too much information they may face legal accountability mechanisms that they may be unable to control, thus their caution is understandable (albeit self-serving).520 It’s not just the Executive branch that can benefit from a healthier defense of the process. Congress too can bolster the legitimacy of the program by specifying how they have conducted their oversight activities. The best mechanism by which they can do this is through a white paper. That paper could include: A statement about why the committees believe the U.S. government's use of force is lawful. If the U.S. government is employing armed force it's likely that it is only doing so pursuant to the AUMF, a covert action finding, or relying on the President's inherent powers under the Constitution. Congress could clear up a substantial amount of ambiguity by specifying that in the conduct of its oversight it has reviewed past and ongoing targeted killing operations and is satisfied that in the conduct of its operations the U.S. government is acting consistent with those sources of law. Moreover, Congress could also specify certain legal red lines that if crossed would cause members to cease believing the program was lawful. For example, if members do not believe the President may engage in targeted killings acting only pursuant to his Article II powers, they could say so in this white paper, and also articulate what the consequences of crossing that red line might be. To bolster their credibility, Congress could specifically articulate their powers and how they would exercise them if they believed the program was being conducted in an unlawful manner. Perhaps stating: "The undersigned members affirm that if the President were to conduct operations not authorized by the AUMF or a covert action finding, we would consider that action to be unlawful and would publicly withdraw our support for the program, and terminate funding for it." A statement detailing the breadth and depth of Congressional oversight activities. When Senator Feinstein released her statement regarding the nature and degree of Senate Intelligence Committee oversight of targeted killing operations it went a long way toward bolstering the argument that the program was being conducted in a responsible and lawful manner. An oversight white paper could add more details about the oversight being conducted by the intelligence and armed services committees, explaining in as much detail as possible the formal and informal activities that have been conducted by the relevant committees. How many briefings have members attended? Have members reviewed targeting criteria? Have members had an opportunity to question the robustness of the internal kill-list creation process and target vetting and validation processes? Have members been briefed on and had an opportunity to question how civilian casualties are counted and how battle damage assessments are conducted? Have members been informed of the internal disciplinary procedures for the DoD and CIA in the event a strike goes awry, and have they been informed of whether any individuals have been disciplined for improper targeting? Are the members satisfied that internal disciplinary procedures are adequate? 3) Congressional assessment of the foreign relations implications of the program. The Constitution divides some foreign policy powers between the President and Congress, and the oversight white paper should articulate whether members have assessed the diplomatic and foreign relations implications of the targeted killing program. While the white paper would likely not be able to address sensitive diplomatic matters such as whether Pakistan has privately consented to the use of force in their territory, the white paper could set forth the red lines that would cause Congress to withdraw support for the program. The white paper could specifically address whether the members have considered potential blow-back, whether the program has jeopardized alliances, whether it is creating more terrorists than it kills, etc. In specifying each of these and other factors, Congress could note the types of developments, that if witnessed would cause them to withdraw support for the program. For example, Congress could state "In the countries where strikes are conducted, we have not seen the types of formal objections to the activities that would normally be associated with a violation of state's sovereignty. Specifically, no nation has formally asked that the issue of strikes in their territory be added to the Security Council's agenda for resolution. No nation has shot down or threatened to shoot down our aircraft, severed diplomatic relations, expelled our personnel from their country, or refused foreign aid. If we were to witness such actions it would cause us to question the wisdom and perhaps even the legality of the program."

### 2

#### Trade promotion authority will pass now despite Reid’s opposition – it’s key to global free trade.

Seher, 2-2

[Jason, “Kerry, Hagel rebuke Reid on fast-track trade bill”, 2-2-14, CNN

<http://politicalticker.blogs.cnn.com/2014/02/01/kerry-hagel-rebuke-reid-on-fast-track-track-bill/>, RSR]

(CNN) - Even old friends have occasional disagreements. In a rare joint appearance at the Munich Security Conference, Secretary of State John Kerry and Defense Secretary Chuck Hagel dismissed Senate Majority Leader Harry Reid's opposition to renewing fast-track trade authority and predicted that the bill will ultimately pass in spite of Reid's opposition. "I've heard plenty of statements in the Senate on one day that are categorical, and we've wound up finding accommodations and a way to find our way forward," Kerry told the audience of European allies. "I respect Harry Reid, worked with him for a long time," Kerry said. "I think all of us have learned to interpret a comment on one day in the United States Senate as not necessarily what might be the situation in a matter of months." Reid said Wednesday he is unlikely to consider a bill on the issue anytime soon. "I’m against fast track," said Reid, who controls which bills get to the Senate floor. "I think everyone would be well-advised not to push this right now." With several outstanding trade pacts - including a major deal with the European Union - securing President Barack Obama's "trade promotion authority" remains a priority for the administration. The power would limit Congress' ability to influence American trade policy, only allowing them up or down votes on massive trade deals while leaving negotiations with other nations entirely under the purvey of the President. Proponents of the measure say the TPA prevents crucial trade agreements from getting bogged down in the bureaucratic slog and would help open new markets for U.S. goods. Democrats oppose the measure, arguing past trade deals led companies to ship jobs overseas. Heralding the ability as something that could "have a profound impact" on the American economy, Kerry said the extension of President Obama's authority could pay dividends and help further drive down the unemployment rate. "It's worth millions of jobs," he said. Kerry also was emphatic that Reid's opposition would not stall progress. "I wouldn't let it deter us one iota, not one iota," he said. Hagel echoed his counterpart's tone on the issue, saying that Reid's decision to put the bill on hold was imprudent. "Let's be smart and let's be wise and let's be collaborative and use all of the opportunities and mechanisms that we have to enhance each other - culturally, trade, commerce, exchanges," Hagel said.

#### Congressional debate over the plan tanks agenda

Kriner, 10

(Douglas, Assistant professor of poly sci at Boston University, “After the

Rubicon: Congress, Presidents, and the Politics of Waging War”, University of Chicago Press, Dec

1, 2010)

While congressional support leaves the president’s reserve of political capital intact,¶ congressional criticism saps energy from other initiatives on the home front by forcing the¶ president to expend energy and effort defending his international agenda. Political capital spent shoring up support for a president’s foreign policies is capital that is unavailable for his future policy initiatives . Moreover, any weakening in the president’s political clout may have¶ immediate ramifications for his reelection prospects, as well as indirect consequences for congressional races.59¶ Indeed, Democratic efforts to tie congressional Republican incumbents to President George W. Bush and his war policies paid¶ immediate political dividends in the 2006 midterms, particularly in states, districts, and counties that had suffered the highest¶ casualty rates in the Iraq War. 60 In addition to boding ill for the president’s perceived political capital¶ and reputation, such partisan losses in Congress only further imperil his programmatic¶ agenda, both international and domestic. Scholars have long noted that President Lyndon¶ Johnson’s dream of a Great Society also perished in the rice paddies of Vietnam. Lacking the requisite¶ funds in a war-depleted treasury and the political capital needed to sustain his legislative vision, Johnson¶ gradually let his domestic goals slip away as he hunkered down in an effort first to win and¶ then to end the Vietnam War. In the same way, many of President Bush’s highest second-term¶ domestic proprieties, such as Social Security and immigration reform, failed perhaps in large part because¶ the administration had to expend so much energy and effort waging a rear-guard action¶ against congressional critics of the war in Iraq.61 When making their cost-benefit calculations,¶ presidents surely consider these wider political costs of congressional opposition to their¶ military policies. If congressional opposition in the military arena stands to derail other¶ elements of his agenda, all else being equal, the president will be more likely to judge the benefits¶ of military action insufficient to its costs than if Congress stood behind him in the¶ international arena.

#### Political capital is key.

Wall Street Journal, 1-28

[“Obama's Trade Test”, 1-28-14,

http://online.wsj.com/news/articles/SB10001424052702304347904579312942307977408, RSR]

President Obama says free-trade deals with Asia and Europe are a top priority in his second term. Sounds good, but the test of his sincerity will be whether he'll spend the political capital to persuade a skeptical Congress. Ways and Means Chairman Dave Camp and Senate Finance powers Max Baucus and Orrin Hatch recently introduced Trade Promotion Authority legislation, also known as fast-track, which would let Congress approve trade agreements by up-or-down vote without amendment. The President needs this to negotiate accords with 11 Pacific Rim countries and the European Union, which won't consent to deals that 535 Members of Congress can later rewrite. The accords would provide a major economic stimulus at no cost to taxpayers and especially to U.S. manufacturers that have become more competitive amid the surge in domestic natural gas and oil production. The proposed fast-track legislation isn't perfect but it ought to be good enough for sincere free traders. One useful provision directs the Obama Administration to negotiate labor and environmental provisions similar to those that were included in recent accords with Panama, Colombia, Peru and South Korea. That ought to allay GOP concerns that Mr. Obama could use the trade deals to override U.S. domestic law. More problematic is a directive that U.S. trade partners avoid manipulating exchange rates. This is a sop to unions and auto makers that blame currency shifts for their competitive woes, but the good news is that the legislative language is general and shouldn't poison negotiations with Japan and South Korea. The bill also targets state-owned enterprises, which unions complain unfairly benefit from government aid. Presumably they don't mean GM and the U.S. renewables industry. Silicon Valley is cheering the legislation's new trade goals to protect intellectual property and digital trade (e.g., e-books, mp3s). U.S. farmers would also benefit from a directive aimed at eliminating regulatory barriers to American products like the EU's bans on certain genetically-modified products and hormone-treated beef. One potential trouble spot is the proposal's larger opening for Congressional involvement in trade talks. Members have always been able to view the negotiating texts of trade agreements upon request, but this language would enshrine their access in statute. The danger is if Members become de facto co-negotiators with executive-branch officials, who would never be able to close a deal with 535 kibitzers in the hallway. Even with these concessions, House Democrats remain unsatisfied. "Congress will not be a rubber stamp for another flawed trade deal that will hang the middle class out to dry," Democratic Reps. Rosa DeLauro, Louise Slaughter and George Miller said in a statement. Ways and Means Ranking Member Sander Levin plans to introduce a rival bill to establish a special Congressional committee to determine whether a particular agreement would be eligible for fast-track. Mr. Levin is also demanding legislation that bars currency manipulation (as if the U.S. can push around foreign central banks) and "provides direct relief to U.S. industries materially injured by imports." These are all protectionist poison pills from the AFL-CIO, and free-traders are right to reject them. GOP leaders are supportive and will produce a majority of Republicans, but they want Mr. Obama to deliver some Democratic votes too. If Republicans are going to help Mr. Obama, he ought to be able to provide some political cover against union protectionists. George W. Bush personally made the fast-track case to Members in 2002, but Mr. Obama has so far outsourced the job to U.S. Trade Representative Michael Froman.

#### Free trade prevents multiple scenarios for world war and WMD Terrorism

Panzner 2008

Michael, faculty at the New York Institute of Finance, 25-year veteran of the global stock, bond, and currency markets who has worked in New York and London for HSBC, Soros Funds, ABN Amro, Dresdner Bank, and JPMorgan Chase “Financial Armageddon: Protect Your Future from Economic Collapse,” pg. 136-138

Continuing calls for curbs on the flow of finance and trade will inspire the United States and other nations to spew forth protectionist legislation like the notorious Smoot-Hawley bill. Introduced at the start of the Great Depression, it triggered a series of tit-for-tat economic responses, which many commentators believe helped turn a serious economic downturn into a prolonged and devastating global disaster. But if history is any guide, those lessons will have been long forgotten during the next collapse. Eventually, fed by a mood of desperation and growing public anger, restrictions on trade, finance, investment, and immigration will almost certainly intensify. Authorities and ordinary citizens will likely scrutinize the cross-border movement of Americans and outsiders alike, and lawmakers may even call for a general crackdown on nonessential travel. Meanwhile, many nations will make transporting or sending funds to other countries exceedingly difficult. As desperate officials try to limit the fallout from decades of ill-conceived, corrupt, and reckless policies, they will introduce controls on foreign exchange. Foreign individuals and companies seeking to acquire certain American infrastructure assets, or trying to buy property and other assets on the cheap thanks to a rapidly depreciating dollar, will be stymied by limits on investment by noncitizens. Those efforts will cause spasms to ripple across economies and markets, disrupting global payment, settlement, and clearing mechanisms. All of this will, of course, continue to undermine business confidence and consumer spending. In a world of lockouts and lockdowns, any link that transmits systemic financial pressures across markets through arbitrage or portfolio-based risk management, or that allows diseases to be easily spread from one country to the next by tourists and wildlife, or that otherwise facilitates unwelcome exchanges of any kind will be viewed with suspicion and dealt with accordingly. The rise in isolationism and protectionism will bring about ever more heated arguments and dangerous confrontations over shared sources of oil, gas, and other key commodities as well as factors of production that must, out of necessity, be acquired from less-than-friendly nations. Whether involving raw materials used in strategic industries or basic necessities such as food, water, and energy, efforts to secure adequate supplies will take increasing precedence in a world where demand seems constantly out of kilter with supply. Disputes over the misuse, overuse, and pollution of the environment and natural resources will become more commonplace. Around the world, such tensions will give rise to full-scale military encounters, often with minimal provocation. In some instances, economic conditions will serve as a convenient pretext for conflicts that stem from cultural and religious differences. Alternatively, nations may look to divert attention away from domestic problems by channeling frustration and populist sentiment toward other countries and cultures. Enabled by cheap technology and the waning threat of American retribution, terrorist groups will likely boost the frequency and scale of their horrifying attacks, bringing the threat of random violence to a whole new level. Turbulent conditions will encourage aggressive saber rattling and interdictions by rogue nations running amok. Age-old clashes will also take on a new, more heated sense of urgency. China will likely assume an increasingly belligerent posture toward Taiwan, while Iran may embark on overt colonization of its neighbors in the Mideast. Israel, for its part, may look to draw a dwindling list of allies from around the world into a growing number of conflicts. Some observers, like John Mearsheimer, a political scientist at the University of Chicago, have even speculated that an “intense confrontation” between the United States and China is “inevitable” at some point. More than a few disputes will turn out to be almost wholly ideological. Growing cultural and religious differences will be transformed from wars of words to battles soaked in blood. Long-simmering resentments could also degenerate quickly, spurring the basest of human instincts and triggering genocidal acts. Terrorists employing biological or nuclear weapons will vie with conventional forces using jets, cruise missiles, and bunker-busting bombs to cause widespread destruction. Many will interpret stepped-up conflicts between Muslims and Western societies as the beginnings of a new world war.

### 3

#### Presidential war powers authority captures the legal system—statutory and judicial restrictions on the president only serve to legitimate state monopolies on violence which make the worst atrocities possible.

Morrissey 2011 [John, Department of Geography at the National University of Ireland, “Liberal Lawfare and Biopolitics: US Juridical Warfare in the War on Terror,” *Geopolitics* 16:280-305]

Nearly two centuries ago, Prussian military strategist, Carl von Clausewitz, observed how war is merely a “continuation of political commerce” by “other means”.70 Today, the lawfare of the US military is a continuation of war by legal means. Indeed, for US Deputy Judge Advocate General, Major General Charles Dunlap, it “has become a key aspect of modern war”.71 For Dunlap and his colleagues in the JAG corps, the law is a “force multiplier”, as Harvard legal scholar, David Kennedy, explains: it “structures logistics, command, and control”; it “legitimates, and facilitates” violence; it “privileges killing”; it identifies legal “openings that can be made to seem persuasive”, promissory, necessary and indeed therapeutic; and, of course, it is “a communication tool” too because defining the battlefield is not only a matter of “privileging killing”, it is also a “rhetorical claim”.72 Viewed in this way, the law can be seen to in fact “contribute to the proliferation of violence rather than to its containment”, as Eyal Weizman has instructively shown in the case of recent Israeli lawfare in Gaza.73 In the US wars in Iraq, Afghanistan and broader war on terror, the Department of Defense has actively sought to legalise its use of biopolitical violence against all those deemed a threat. Harvey Rishikof, the former Chair of the Department of National Security Strategy at the National War College in Washington, recently underlined ‘juridical warfare’ (his preferred designation over ‘lawfare’) as a pivotal “legal instrument” for insurgents in the asymmetric war on terror.74 For Rishikof and his contemporaries, juridical warfare is always understood to mean the legal strategies of the weak ‘against’ the United States; it is never acknowledged as a legal strategy ‘of’ the United States. However, juridical warfare has been a proactive component of US military strategy overseas for some time, and since the September 11 attacks in New York and Washington in 2001, a renewed focus on juridical warfare has occurred, with the JAG Corps playing a central role in reforming, prioritising and mobilising the law as an active player in the war on terror.75 Deputy Judge Advocate General, Major General Charles Dunlap, recently outlined some of the key concerns facing his corps and the broader US military; foremost of which is the imposing of unnecessary legal restraints on forward-deployed military personnel.76 For Dunlap, imposing legal restraints on the battlefield as a “matter of policy” merely “play[s] into the hands of those who would use [international law] to wage lawfare against us”.77 Dunlap’s counter-strategy is simply “adhering to the rule of law”, which “understands that sometimes the legitimate pursuit of military objectives will foreseeably – and inevitably – cause the death of noncombatants”; indeed, he implores that “this tenet of international law be thoroughly understood”.78 But ‘the’ rule of international law that Dunlap has in mind is merely a selective and suitably enabling set of malleable legal conventions that legitimate the unleashing of military violence.79 As David Kennedy illuminates so brilliantly in Of War and Law: We need to remember what it means to say that compliance with international law “legitimates.” It means, of course, that killing, maiming, humiliating, wounding people is legally privileged, authorized, permitted, and justified.80 The recent ‘special issue on juridical warfare’ in the US military’s flagship journal, Joint Force Quarterly, brought together a range of leading judge advocates, specialists in military law, and former legal counsels to the Chairman of the Joint Chiefs of Staff. All contributions addressed the question of “which international conventions govern the confinement and interrogation of terrorists and how”.81 The use of the term ‘terrorists’ instead of suspects sets the tone for the ensuing debate: in an impatient defence of ‘detention’, Colonel James Terry bemoans the “limitations inherent in the Detainee Treatment Act of 2005 and the Military Commissions Act of 2006” (which he underlines only address detainees at the US Naval Base at Guantanamo) and asserts that “requirements inherent in the war on terror will likely warrant expansion of habeas corpus limitations”;82 considering ‘rendition’, Colonel Kevin Cieply asks the shocking question “is rendition simply recourse to the beast at a necessary time”;83 Colonel Peter Cullen argues for the necessity of the “role of targeted killing in the campaign against terror”;84 Commander Brian Hoyt contends that it is “time to reexamine U.S. policy on the [international criminal] court, and it should be done through a strategic lens”;85 while Colonel James Terry furnishes an additional concluding essay with the stunningly instructive title ‘The International Criminal Court: A Concept Whose Time Has Not Come’.86 These rather chilling commentaries attest to one central concern of the JAG Corps and the broader military-political executive at the Pentagon: that enemies must not be allowed to exploit “real, perceived, or even orchestrated incidents of law-of-war violations being employed as an unconventional means of confronting American military power”.87 And such thinking is entirely consistent with the defining National Defense Strategy of the Bush administration, which signalled the means to win the war on terror as follows: “We will defeat adversaries at the time, place, and in the manner of our choosing”.88 If US warfare in the war on terror is evidently underscored by a ‘manner of our choosing’ preference – both at the Pentagon and in the battlefield – this in turn prompts an especially proactive ‘juridical warfare’ that must be simultaneously pursued to legally capacitate, regulate and maximise any, and all, military operations. The 2005 National Defense Strategy underlined the challenge thus: Many of the current legal arrangements that govern overseas posture date from an earlier era. Today, challenges are more diverse and complex, our prospective contingencies are more widely dispersed, and our international partners are more numerous. International agreements relevant to our posture must reflect these circumstances and support greater operational flexibility.89 It went on to underline its consequent key juridical tactic and what I argue is a critical weapon in the US military-legal arsenal in the war on terror: the securing of ‘Status of Forces Agreements’ – to “provide legal protections” against “transfers of U.S. personnel to the International Criminal Court”.90

#### The alternative is to reject their understanding of the law as an independent neutral entity with the power to restrict practices apart from practices. Instead, we should conceive of the law and practice as co-constitutive—this opens up the space to change the relationship between lived decisionmaking and the autocracy of bureaucratic legal determinations.

Krassman 2012 [Susan, Professor at the Institute for Criminological Research at the University of Hamburg. “Targeted Killing and Its Law: On a Mutually Constitutive Relationship,” *Leiden Journal of International Law* 25.03]

Foucault did not elaborate on a comprehensive theory of law – a fact that critics have attributed to his allegedly underestimating law's political and social relevance. Some statements by Foucault may have provoked this interpretation, among them his assertion that law historically ‘recedes’ with,46 or is being ‘colonized’ by,47 forms of knowledge that are addressed at governing people and populations. It is, though, precisely this analytical perspective that allows us to capture the mutually productive relationship between targeted killing and the law. In contrast to a widely shared critique, then, Foucault did not read law merely as a negative instrument of constraint. He referred, instead, to a particular mode of juridical power that operates in terms of repressive effects.48 Moreover, rather than losing significance coextensively with the ancient sovereign power, law enters new alliances, particularly with certain knowledge practices and attendant expertise.49 This linkage proves to be relevant in the present context, considering not only the interchange between the legal and political discourse on targeted killing, but notably the relationship between law and security. According to Foucault, social phenomena cannot be isolated from and are only decipherable within the practices, procedures, and forms of knowledge that allow them to surface as such.50 In this sense, ‘all phenomena are singular, every historical or social fact is a singularity’.51 Hence, they need to be studied within their historically and locally specific contexts, so as to account for both the subject's singularity and the conditions of its emergence. It is against this background that a crucial question to be posed is how targeted killing could emerge on the political stage as a subject of legal debate. Furthermore, this analytical perspective on power and knowledge intrinsically being interlinked highlights that our access to reality always entails a productive moment. Modes of thinking, or what Foucault calls rationalities, render reality conceivable and thus manageable.52 They implicate certain ways of seeing things, and they induce truth effects whilst translating into practices and technologies of government. These do not merely address and describe their subject; they constitute or produce it.53 Law is to be approached accordingly.54 It cannot be extracted from the forms of knowledge that enact it, and it is in this sense that law is only conceivable as practice. Even if we only think of the law in ideal terms, as being designated to contain governmental interference, for example, or to provide citizens’ rights, it is already a practice and a form of enacting the law. To enforce the law is always a form of enactment, since it involves a productive moment of bringing certain forms of knowledge into play and of rendering legal norms meaningful in the first place. Law is susceptible to certain forms of knowledge and rationalities in a way that these constitute it and shape legal claims. Rather than on the application of norms, legal reasoning is on the production of norms. Legality, within this account of law, then, is not only due to a normative authority that, based in our political culture, is external to law, nor is it something that is just inherent in law, epitomized by the principles that constitute law's ‘inner morality’.55 Rather, the enforcement of law and its attendant reasoning produce their own – legal – truth effects. Independently of the purported intentions of the interlocutors, the juridical discourse on targeted killing leads to, in the first instance, conceiving of and receiving the subject in legal terms. When targeted killing surfaced on the political stage, appropriate laws appeared to be already at hand. ‘There are more than enough rules for governing drone warfare’, reads the conclusion of a legal reasoning on targeted killing.56 Yet, accommodating the practice in legal terms means that international law itself is undergoing a transformation. The notion of dispositifs is useful in analysing such processes of transformation. It enables us to grasp the minute displacements of established legal concepts that,57 while undergoing a transformation, at the same time prove to be faithful to their previous readings. The displacement of some core features of the traditional conception of the modern state reframes the reading of existing law. Hence, to give just one example for such a rereading of international law: legal scholars raised the argument that neither the characterization of an international armed conflict holds – ‘since al Qaeda is not a state and has no government and is therefore incapable of fighting as a party to an inter-state conflict’58 – nor that of an internal conflict. Instead, the notion of dealing with a non-international conflict,59 which, in view of its global nature, purportedly ‘closely resembles’ an international armed conflict, serves to provide ‘a fuller and more comprehensive set of rules’.60 Established norms and rules of international law are preserved formally, but filled with a radically different meaning so as to eventually integrate the figure of a terrorist network into its conventional understanding. Legal requirements are thus meant to hold for a drone programme that is accomplished both by military agencies in war zones and by military and intelligence agencies targeting terror suspects beyond these zones,61 since the addressed is no longer a state, but a terrorist network. However, to conceive of law as a practice does not imply that law would be susceptible to any form of knowledge. Not only is its reading itself based on a genealogy of practices established over a longer period.62 Most notably, the respective forms of knowledge are also embedded in varying procedures and strategic configurations. If law is subject to an endless deference of meaning,63 this is not the case in the sense of arbitrary but historically contingent practices, but in the sense of historically contingent practices. Knowledge, then, is not merely an interpretive scheme of law. Rather than merely on meaning, focus is on practices that, while materializing and producing attendant truth effects, shape the distinctions we make between legal and illegal measures. What is more, as regards anticipatory techniques to prevent future harm, this perspective allows for our scrutinizing the division made between what is presumably known and what is yet to be known, and between what is presumably unknown and has yet to be rendered intelligible. This prospect, as will be seen in the following, is crucial for a rereading of existing law. It was the identification of a new order of threat since the terror attacks of 9/11 that brought about a turning point in the reading of international law. The identification of threats in general provides a space for transforming the unknowable into new forms of knowledge. The indeterminateness itself of legal norms proves to be a tool for introducing a new reading of law.

### Solvency

#### The availability of self-defense as a justification means the plan legally precludes zero targeted killings outside zones of hostilities

Jack Goldsmith 13, the Henry L. Shattuck Professor at Harvard Law School, 5/28/13, “Eight Thoughts on the Broad Reading of Article II Inherent in Bobby’s Conjecture,” http://www.lawfareblog.com/2013/05/eight-thoughts-on-the-broad-reading-of-article-ii-inherent-in-bobbys-conjecture/

Bobby’s post from Friday argued that “the current shadow war approach to counterterrorism doesn’t really require an armed-conflict predicate–or an AUMF, for that matter.” Bobby’s point is that most if not all of the USG’s current uses of force outside Afghanistan could in theory continue even if the armed conflict against al Qaeda ended. This is because, as Bobby says, the administration’s “imminent threat” constraint outside hot battlefields – which has allowed quite a lot of lethal force to be used in many nations – “is at least as restrictive as the boundaries of the self-defense model developed during the Reagan and Clinton years.” When these factors are combined with technological innovations (drones and the like) and the global dispersion of the threat, Bobby concludes: In short, the practical constraints on using force in self-defense have been removed, and if we find ourselves once more without a claim of armed conflict to support uses of force, we may well discover as a result that the pre-9/11 legal model is much less constraining than commonly assumed. Indeed, one might conclude that there is nothing currently done outside of Afghanistan by way of targeting under the color of the law of armed conflict that could not be done under color of the pre-9/11 self-defense model.

#### Congressional signals fail.

Douglas Kriner 10, Assistant Profess of Political Science at Boston University, 2010, After the Rubicon: Congress, Presidents, and the Politics of Waging War, p. 81-2

First, in many cases congressional signals will likely **have** only a modest influence on the calculations of the target state at the conflict conduct phase. Uses of force involving the United States are different from most other uses of force occurring in the international system because of the tremendous asymmetric advantages in military capabilities that the United States enjoys over almost every adversary. By the time that the military policymaking process enters the conflict conduct phase, the target state's leader has already decided that his or her interests are best served by refusing to capitulate to American demands, even at the risk of almost certain tactical defeat at the hands of a superior military force. Having made this cost-benefit calculation, congressional signals during the course of a conflict should have only a modest impact on the target state leader's subsequent behavior at the conflict conduct phase." Moreover, the types of states whose leaders are most likely to make this calculation—weak states (including those harboring non-state actors who are the true target of a proposed use of force), failed states, and vulnerable dictatorships—are in many cases very different from most other members of the international community. For these actors, the costs of capitulating to American demands are so high that their cost-benefit calculations should be more impervious to congressional signals.

#### Obama will circumvent the plan

Anita Kumar 13, White House correspondent for McClatchy Newspapers, former writer for The Washington Post, covering Virginia politics and government, and spent a decade at the St. Petersburg Times, writing about local, state and federal government both in Florida and Washington, “Obama turning to executive power to get what he wants,” 3/19 <http://www.mcclatchydc.com/2013/03/19/186309/obama-turning-to-executive-power.html#.Ue18CdK1FSE>

Yet Obama’s use of power echoes that of his predecessors. For example, he signed 145 executive orders in his first term, putting him on track to issue as many as the 291 that Bush did in two terms.¶ John Yoo, who wrote the legal opinions that supported an expansion of presidential power after the 2001 terrorist attacks, including harsh interrogation methods that some called torture, said he thought that executive orders were sometimes appropriate – when conducting internal management and implementing power given to the president by Congress or the Constitution – but he thinks that Obama has gone too far.¶ “I think President Obama has been as equally aggressive as President Bush, and in fact he has sometimes used the very same language to suggest that he would not obey congressional laws that intrude on his commander-in-chief power,” said Yoo, who’s now a law professor at the University of California at Berkeley. “This is utterly hypocritical, both when compared to his campaign stances and the position of his supporters in Congress, who have suddenly discovered the virtues of silence.”¶ Most of Obama’s actions are written statements aimed at federal agencies that are published everywhere from the White House website to the Federal Register. Some are classified and hidden from public view.¶ “It seems to be more calculated to prod Congress,” said Phillip J. Cooper, the author of “By Order of the President: The Use and Abuse of Executive Direct Action.” “I can’t remember a president being that consistent, direct and public.”¶ Bush was criticized for many of his actions on surveillance and interrogation techniques, but attention has focused on Obama’s use of actions mostly about domestic issues.¶ In his first two years in the White House, when fellow Democrats controlled Capitol Hill, Obama largely worked through the regular legislative process to try to achieve his domestic agenda. His biggest achievements – including a federal health care overhaul and a stimulus package designed to boost the economy –came about with little or no Republican support.¶ But Republicans took control of the House of Representatives in 2010, making the task of passing legislation all the more difficult for a man with a detached personality who doesn’t relish schmoozing with lawmakers. By the next year, Obama wasn’t shy about his reasons for flexing his presidential power.¶ In fall 2011, he launched the “We Can’t Wait” campaign, unveiling dozens of policies through executive orders – creating jobs for veterans, adopting fuel efficiency standards and stopping drug shortages – that came straight from his jobs bills that faltered in Congress.¶ “We’re not waiting for Congress,” Obama said in Denver that year when he announced a plan to reduce college costs. “I intend to do everything in my power right now to act on behalf of the American people, with or without Congress. We can’t wait for Congress to do its job. So where they won’t act, I will.”¶ When Congress killed legislation aimed at curbing the emissions that cause global warming, Obama directed the Environmental Protection Agency to write regulations on its own incorporating some parts of the bill.¶ When Congress defeated pro-union legislation, he had the National Labor Relations Board and the Labor Department issue rules incorporating some parts of the bill.¶ “The president looks more and more like a king that the Constitution was designed to replace,” Sen. Charles Grassley, R-Iowa, said on the Senate floor last year.¶ While Republicans complain that Obama’s actions cross a line, experts say some of them are less aggressive than they appear.¶ After the mass shooting in Newtown, Conn., in December, the White House boasted of implementing 23 executive actions to curb gun control. In reality, Obama issued a trio of modest directives that instructed federal agencies to trace guns and send information for background checks to a database.¶ In his State of the Union address last month, Obama instructed businesses to improve the security of computers to help prevent hacking. But he doesn’t have the legal authority to force private companies to act.¶ “The executive order can be a useful tool but there are only certain things he can do,” said Melanie Teplinsky, an American University law professor who’s spoken extensively on cyber-law.¶ Executive actions often are fleeting. They generally don’t settle a political debate, and the next president, Congress or a court may overturn them.¶ Consider the so-called Mexico City policy. With it, Reagan banned federal money from going to international family-planning groups that provide abortions. Clinton rescinded the policy. George W. Bush reinstated it, and Obama reversed course again.¶ But congressional and legal action are rare. In 1952, the Supreme Court threw out Harry Truman’s order authorizing the seizure of steel mills during a series of strikes. In 1996, the District of Columbia Court of Appeals dismissed an order by Clinton that banned the government from contracting with companies that hire workers despite an ongoing strike.¶ Obama has seen some pushback.¶ Congress prohibited him from spending money to move inmates from the Guantanamo Bay U.S. naval base in Cuba after he signed an order that said it would close. A Chinese company sued Obama for killing its wind farm projects by executive order after he said they were too close to a military training site. A federal appeals court recently ruled that he’d exceeded his constitutional powers when he named several people to the National Labor Relations Board while the Senate was in recess.¶ But Obama appears to be undaunted.¶ “If Congress won’t act soon to protect future generations,” he told Congress last month, “I will.”

#### No incentive for Congress to act.

Druck, JD – Cornell Law, ‘12

[Judah, 98 Cornell L. Rev. 209]

Of course, despite these various suits, Congress has received much of the blame for the WPR's treatment and failures. For example, Congress has been criticized for doing little to enforce the WPR in using other Article I tools, such as the "power of the purse," n76 or by closing the loopholes frequently used by presidents to avoid the WPR [\*221] in the first place. n77 Furthermore, in those situations where Congress has decided to act, it has done so in such a disjointed manner as to render any possible check on the President useless. For example, during President Reagan's invasion of Grenada, Congress failed to reach an agreement to declare the WPR's sixty-day clock operative, n78 and later faced similar "dead-lock" in deciding how best to respond to President Reagan's actions in the Persian Gulf, eventually settling for a bill that reflected congressional "ambivalence." n79 Thus, between the lack of a "backbone" to check rogue presidential action and general ineptitude when it actually decides to act, n80 Congress has demonstrated its inability to remedy WPR violations. Worse yet, much of Congress's interest in the WPR is politically motivated, leading to inconsistent review of presi-dential military decisions filled with post-hoc rationalizations. Given the political risk associated with wartime deci-sions, n81 Congress lacks any incentive to act unless and until it can gauge public reaction - a process that often occurs after the fact. n82 As a result, missions deemed successful by the public will rarely provoke "serious congressional con-cern" about presidential compliance with the WPR, while failures will draw scrutiny. n83 For example, in the case of the Mayaguez, "liberals in the Congress generally praised [President Gerald Ford's] performance" despite the constitutional questions surrounding the conflict, simply because the [\*222] public deemed it a success. n84 Thus, even if Congress was effective at checking potentially unconstitutional presidential action, it would only act when politically safe to do so. This result should be unsurprising: making a wartime decision provides little advantage for politicians, especially if the resulting action succeeds. n85 Consequently, Congress itself has taken a role in the continued disregard for WPR enforcement. The current WPR framework is broken: presidents avoid it, courts will not rule on it, and Congress will not enforce it. This cycle has culminated in President Obama's recent use of force in Libya, which created little, if any, controversy, n86 and it provides a clear pass to future presidents, judges, and congresspersons looking to continue the system of pas-sivity and deferment.

### King Pins

#### Status quo drone flexibility *signals* U.S. superiority and strength – key to win the war on terror

Haddick 11 (Robert, contractor at U.S. Special Operations Command, From January 2009 to September 2012 he was Managing Editor of Small Wars Journal, former U.S. Marine Corps officer, served in the 3rd and 23rd Marine Regiments, and deployed to Asia and Africa, “Drones help Washington win a war of perceptions”, Oct 3, <http://smallwarsjournal.com/blog/drones-help-washington-win-a-war-of-perceptions>)

An article in Saturday’s New York Times asserted that policymakers in Washington have settled on a new favorite technique to fight terrorists – the missile-firing Predator drone. Last week’s killing of Anwar al-Awlaki in Yemen showed, according to the Times, “a cheap, safe and precise tool to eliminate enemies. It was also a sign that the decade-old American campaign against terrorism has reached a turning point … Disillusioned by huge costs and uncertain outcomes in Iraq and Afghanistan, the Obama administration has decisively embraced the drone, along with small-scale lightning raids like the one that killed Osama bin Laden in May, as the future of the fight against terrorist networks.”¶ In my Foreign Policy column later this week, I will explore what the drone strategy will mean for the Pentagon’s plans. Here, I assert that the drone strikes, along with special operations raids, have become the policymaker’s best friend because they allow these policymakers to show the world that they have the power to strike spectacularly against their terrorist adversaries, something that was in doubt at the beginning of the war. Successful drone strikes and raids are now putting Washington in the lead in the battle over perceptions.¶ With their attacks on targets ranging from the World Trade Center and Pentagon to brand label hotels, terror planners have revealed their preference for spectacle and symbolism. Washington’s drone strikes and special operations raids are useful at a practical level. But they have now become more important as symbolic acts, showing that the United States government really can strike at adversaries who may have once believed they could torment the West while remaining invisible. Washington’s policymakers have been anxious to show they are not impotent against iconic figures like bin Laden and Awlaki. The Predator drone, supported by a vast intelligence effort, has delivered the potency and relevance these policymakers have longed for.¶ In order to show they are dominant in the struggle against terrorists, Washington policymakers are attempting to “gain and maintain spectacle superiority.” Washington will achieve the perception that it is winning the war when it achieves more spectacular drone and special operations strikes than do the terrorists. The logical limit will be the killing of all of the most infamous terror figures, with the top of that list currently held by Ayman al Zawahiri. Some have argued that U.S. policymakers should leave Zawahiri in place -- as an allegedly poor and divisive leader, he is thought by some to be more harmful to al Qaeda alive than dead. But the logic of “spectacle superiority” argues that Zawahiri must get a Hellfire missile if only to show the world that no one can escape the CIA’s grasp.¶ As already noted, there were practical benefits to the strikes against bin Laden and Awlaki. The bin Laden raid resulted in a massive intelligence haul. The strike on Awlaki removed a potentially effective recruiter of “lone wolf” attackers inside the United States. Beyond these effects, the counterterrorism benefits of these and other strikes are much more diffuse and difficult to measure. In the long run, the TIDE database, maintained by the National Counterterrorism Center and supported by interagency and international cooperation, is the most important defense against terror attacks and provides more tangible security than kinetic action overseas. Even so, policymakers in Washington will deem it essential to win the war of perceptions over terrorism, if only to preserve their reputational power.¶ Killing the last of the notables al Qaeda figures could prompt Washington to declare victory. However, the war won’t be over – the next generation of al Qaeda figures may adapt by to the drone campaign by striving to keep their al Qaeda affiliations secret. Al Qaeda operational security may improve while recruiting and fund-raising for a then completely anonymous organization would undoubtedly suffer. U.S. drone strikes and raids, many also secret, would continue as an increasingly hidden war goes on.¶ If this describes the end-game, Washington stands likely to win the war of perception, especially if al Qaeda fails to mount another large-scale spectacle inside the United States. Predator drones, supported by an army of intelligence analysts, have gained the initiative and are winning the war of perceptions over al Qaeda. Policymakers in Washington, who live and die in the world of perceptions, should be grateful.

#### The plan undermines speed, flexibility and the power of the presidency in warfighting.

Blank, 13 **–** professor of law at Emory (Laurie, “LEARNING TO LIVE WITH (A LITTLE) UNCERTAINTY: THE OPERATIONAL ASPECTS AND CONSEQUENCES OF THE GEOGRAPHY OF CONFLICT DEBATE” <http://www.pennlawreview.com/online/161-U-Pa-L-Rev-Online-347.pdf>) **LOAC = Law of Armed Conflict**

Second, implementation in the context of a new law of war framework as proposed, based on distinctions between various zones of security needs and the shifting procedural obligations that result, poses even more signiﬁcant concerns. Pragmatically, threat and the concomitant need to respond to that threat will always be the primary consideration driving the strategic, operational, and tactical calculus: “Armed conﬂict is a threat-driven concept, arising when the threat necessitates resort to combat power, and extending to wherever the operational and tactical opportunity to produce a militarily valuable eﬀect on the enemy arises.”21 Divorcing a geographic analysis from this fundamental nature of military operations and decisionmaking can make the law less practical in the immediate sense, and can also, as explained below, hinder the development of the law going forward. During military operations, the law plays an essential protective role not only for those uninvolved in the conﬂict, but—just as importantly—for those who are ﬁghting.22 Beyond speciﬁc provisions that protect soldiers, sailors, airmen, and Marines (such as the obligation to care for the wounded,23 the prohibition on weapons that cause superﬂuous injury,24 and the protections provided for prisoners of war25), the law accomplishes this key purpose by striving for clarity and predictability. At the most basic level, soldiers need to know when and against whom they can use force. Uncertainty regarding that most fundamental aspect of wartime conduct places an extraordinary burden on the soldier and places him or her in grave danger beyond that already inherent in the nature of conﬂict. It may well be possible that a new law of war framework with binding rules that depend on a security calculus drawn from diﬀerent geographic zones can offer more guidance for a policymaker or other decisionmaker at the highest strategic level. For the men and women directly facing the enemy, however, it muddies the waters by introducing additional considerations to the tactical and operational decisionmaking process, a process that is measured in seconds, if not less.26

#### Drone prolif is inevitable – far more attractive than it’s alternatives.

Lewis, Associate Professor of Law at Ohio Northern University Pettit College of Law, ‘12

[Michael, “Drones and the Boundaries of the Battlefield”, 47 Texas International Law Journal 293 (2012), RSR]

The driving force behind the western militaries’ development of drone technology was to minimize the number of human lives placed at risk to collect intelligence and to deliver small amounts of ordnance with some degree of precision. However it is the relatively low cost of drones compared to that of modern combat aircraft that will drive the proliferation of drones over the next decade.14 More basic drones cost less than 1/20th as much as the latest combat aircraft and even the more advanced drones that feature jet propulsion and employ some stealth technology are less than 1/10th the cost.15 With defense budgets around the world under increasing pressure, drones will be seen as an attractive alternative to manned aircraft for certain types of missions. However the value of drones cannot be measured solely in lives and dollars saved. Operationally drones provide a couple of significant advantages over manned aircraft that make them particularly valuable in certain types of modern armed conflicts. Their biggest advantage is their very long endurance, over 30 hours for the Predator B and 20 hours for the Predator C (Avenger).16 This gives drones more than ten times the endurance of unrefueled manned aircraft, enabling them to observe and track a target for many hours at a time before deciding whether to employ ordnance. For manned aircraft to achieve the same loiter time extensive airborne refueling support would be required. And to achieve the same unbroken surveillance of a potential target offered by a single drone, multiple manned aircraft would be needed to avoid losing track of the target when the aircraft left its station to refuel. This makes drones an ideal surveillance and striking weapon in counterinsurgency or counterterrorism operations where the targets are usually individuals rather than objects.17 Another operational advantage that drones provide is greater legal compliance with IHL’s requirements of military necessity and proportionality. Although many of the early criticisms of drones were directed at their allegedly indiscriminate nature which purportedly resulted in disproportionate civilian casualties,18 the reality of drone strikes is that they provide many more opportunities for disproportionate attacks to be halted prior to weapons employment. For manned aircraft both the target identification and the final proportionality decision are left in the hands of one or two crewmembers whose attention is divided between flying the aircraft, looking for (and possibly evading) surface-to-air missiles and ground fire, identifying the target, assessing the proportionality of the attack and accurately delivering the weapon.19 In contrast the longer loiter time of drones allows for a much higher level of confidence that the target has been properly identified thereby meeting the military necessity requirement. Even more critically the drone’s sensors allow many sets of eyes, including those of JAG lawyers trained to assess proportionality, to make a proportionality determination at the time of weapons release. Even if the drone is evading fire at the time of weapons release, those making the final decision to carry out the attack are not dealing with the decision-impairing effects of mortal fear. Although the sanitary environment of the drone control room has been criticized for making war too much like a video game, it undoubtedly leads to much sounder proportionality determinations.

### IHL

#### No risk of drone wars

Joseph Singh 12, researcher at the Center for a New American Security, 8/13/12, “Betting Against a Drone Arms Race,” http://nation.time.com/2012/08/13/betting-against-a-drone-arms-race/#ixzz2eSvaZnfQ

In short, the doomsday drone scenario Ignatieff and Sharkey predict results from an excessive focus on rapidly-evolving military technology. ¶ Instead, we must return to what we know about state behavior in an anarchistic international order. Nations will confront the same principles of deterrence, for example, when deciding to launch a targeted killing operation regardless of whether they conduct it through a drone or a covert amphibious assault team. ¶ Drones may make waging war more domestically palatable, but they don’t change the very serious risks of retaliation for an attacking state. Any state otherwise deterred from using force abroad will not significantly increase its power projection on account of acquiring drones. ¶ What’s more, the very states whose use of drones could threaten U.S. security – countries like China – are not democratic, which means that the possible political ramifications of the low risk of casualties resulting from drone use are irrelevant. For all their military benefits, putting drones into play requires an ability to meet the political and security risks associated with their use. ¶ Despite these realities, there remain a host of defensible arguments one could employ to discredit the Obama drone strategy. The legal justification for targeted killings in areas not internationally recognized as war zones is uncertain at best. ¶ Further, the short-term gains yielded by targeted killing operations in Pakistan, Somalia and Yemen, while debilitating to Al Qaeda leadership in the short-term, may serve to destroy already tenacious bilateral relations in the region and radicalize local populations. ¶ Yet, the past decade’s experience with drones bears no evidence of impending instability in the global strategic landscape. Conflict may not be any less likely in the era of drones, but the nature of 21st Century warfare remains fundamentally unaltered despite their arrival in large numbers.

### Europe

#### EU CT coop strong now.

Kristin Archick, European affairs specialist @ CRS, 9-4-2013, “U.S.-EU Cooperation Against Terrorism,” Congressional Research Service, <http://www.fas.org/sgp/crs/row/RS22030.pdf>

As part of the EU’s efforts to combat terrorism since September 11, 2001, the EU made improving law enforcement and intelligence cooperation with the United States a top priority. The previous George W. Bush Administration and many Members of Congress largely welcomed this EU initiative in the hopes that it would help root out terrorist cells in Europe and beyond that could be planning other attacks against the United States or its interests. Such growing U.S.-EU cooperation was in line with the 9/11 Commission’s recommendations that the United States should develop a “comprehensive coalition strategy” against Islamist terrorism, “exchange terrorist information with trusted allies,” and improve border security through better international cooperation. Some measures in the resulting Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458) and in the Implementing Recommendations of the 9/11 Commission Act of 2007 (P.L. 110-53) mirrored these sentiments and were consistent with U.S.-EU counterterrorism efforts, especially those aimed at improving border controls and transport security. U.S.-EU cooperation against terrorism has led to a new dynamic in U.S.-EU relations by fostering dialogue on law enforcement and homeland security issues previously reserved for bilateral discussions. Despite some frictions, most U.S. policymakers and analysts view the developing partnership in these areas as positive. Like its predecessor, the Obama Administration has supported U.S. cooperation with the EU in the areas of counterterrorism, border controls, and transport security. At the November 2009 U.S.-EU Summit in Washington, DC, the two sides reaffirmed their commitment to work together to combat terrorism and enhance cooperation in the broader JHA field. In June 2010, the United States and the EU adopted a new “Declaration on Counterterrorism” aimed at deepening the already close U.S.-EU counterterrorism relationship and highlighting the commitment of both sides to combat terrorism within the rule of law. In June 2011, President Obama’s National Strategy for Counterterrorism asserted that in addition to working with European allies bilaterally, “the United States will continue to partner with the European Parliament and European Union to maintain and advance CT efforts that provide mutual security and protection to citizens of all nations while also upholding individual rights.”

#### Even massive economic decline has zero chance of war

Robert Jervis 11, Professor in the Department of Political Science and School of International and Public Affairs at Columbia University, December 2011, “Force in Our Times,” Survival, Vol. 25, No. 4, p. 403-425

Even if war is still seen as evil, the security community could be dissolved if severe conflicts of interest were to arise. Could the more peaceful world generate new interests that would bring the members of the community into sharp disputes? 45 A zero-sum sense of status would be one example, perhaps linked to a steep rise in nationalism. More likely would be a worsening of the current economic difficulties, which could itself produce greater nationalism, undermine democracy and bring back old-fashioned beggar-my-neighbor economic policies. While these dangers are real, it is hard to believe that the conflicts could be great enough to lead the members of the community to contemplate fighting each other. It is not so much that economic interdependence has proceeded to the point where it could not be reversed – states that were more internally interdependent than anything seen internationally have fought bloody civil wars. Rather it is that even if the more extreme versions of free trade and economic liberalism become discredited, it is hard to see how without building on a preexisting high level of political conflict leaders and mass opinion would come to believe that their countries could prosper by impoverishing or even attacking others. Is it possible that problems will not only become severe, but that people will entertain the thought that they have to be solved by war? While a pessimist could note that this argument does not appear as outlandish as it did before the financial crisis, an optimist could reply (correctly, in my view) that the very fact that we have seen such a sharp economic down-turn without anyone suggesting that force of arms is the solution shows that even if bad times bring about greater economic conflict, it will not make war thinkable.

#### Consensus of experts agree no impact to warming

Hsu 10

Jeremy, Live Science Staff, July 19, pg. <http://www.livescience.com/culture/can-humans-survive-extinction-doomsday-100719.html>

His views deviate sharply from those of **most experts**, who **don't view climate change as the end for humans. Even the worst-case scenarios discussed by the Intergovernmental Panel on Climate Change don't foresee human extinction. "The scenarios that the mainstream climate community are advancing are not end-of-humanity, catastrophic scenarios," said Roger Pielke Jr., a climate policy analyst at the U**niversity of **C**olorado at **Boulder**. Humans have the technological tools to begin tackling climate change, if not quite enough yet to solve the problem, Pielke said. He added that doom-mongering did little to encourage people to take action. "My view of politics is that the long-term, high-risk scenarios are really difficult to use to motivate short-term, incremental action," Pielke explained. "The rhetoric of fear and alarm that some people tend toward is counterproductive." Searching for solutions One technological solution to climate change already exists through carbon capture and storage, according to Wallace **Broecker, a** geochemist and **renowned climate scientist at Columbia University**'s Lamont-Doherty Earth Observatory in New York City. But Broecker **remained skeptical** that governments or industry would commit the resources needed to slow the rise of carbon dioxide (CO2) levels, and predicted that more drastic geoengineering might become necessary to stabilize the planet. "**The rise in CO2 isn't going to kill many people**

**, and it's not going to kill humanity**," Broecker said. "But it's going to change the entire wild ecology of the planet, melt a lot of ice, acidify the ocean, change the availability of water and change crop yields, so we're essentially doing an experiment whose result remains uncertain."

## 2NC

### CP

#### 1 – Education - 90% debate is implementation

Elmore 80

Prof. Public Affairs at University of Washington, PolySci Quarterly 79-80, p. 605, 1980

The emergence of implementation as a subject for policy analysis coincides closely with the discovery by policy analysts that decisions are not self-executing. Analysis of policy choices matter very little if the mechanism for implementing those choices is poorly understood in answering the question, "What percentage of the work of achieving a desired governmental action is done when the preferred analytic alternative has been identified?" Allison estimated that in the normal case, it was about 10 percent, leaving the remaining 90 percent in the realm of implementation.

#### Its predictable – Executive action v Congress is a huge debate in the literature

Bejesky 12

(ROBERT BEJESKY, M.A. Political Science (Michigan), M.A. Applied Economics (Michigan), LL.M. International Law (Georgetown), St. Mary's Law Journal ARTICLE: WAR POWERS PURSUANT TO FALSE PERCEPTIONS AND ASYMMETRIC INFORMATION IN THE "ZONE OF TWILIGHT" 2012, LexisNexis, KB)

There are many reasons the expansion of the Executive Branch make it more difficult for Congress to preserve its institutional power. n372 First, Congress loses control over aspects of an agency's jurisdiction after delegating authority because Congress can only fund and oversee the bureaucracy, but cannot interfere with rule-making or otherwise retain a legislative veto.n373 Second, Congress lacks the institutional memory that [\*62] exists in administrative agencies. n374 Agency employees are civil servants working within the history of the organization, while members of Congress have more frequent turnover rates and concentrate their attention on current affairs. Third, the resources and privilege to information available to the Executive Branch vastly outweighs those resources available to the Legislative Branch. n375 For example, Congress has a workforce of 30,000 and a total budget of $ 4.7 billion, while defense- and security-related agencies have three million employees and a budget of $ 639 billion. n376 Hence, even if Congress did attempt to announce a preferred foreign policy, it has few institutions to execute it. n377 Fourth, the President appoints agency leadership with similar political predispositions, which in turn increases conformity to preferred policies within the agency. n378 Congress has some authority to set parameters for executive appointments, but may not infringe upon the President's main power of appointment. n379 For example, with regard to war powers, [\*63] Congress cannot divest Commander in Chief functions to another official, even though Congress has considerable power to assign specific functions to executive officials or employees who are "independent" of the President. n380 Fifth, the President possesses the authority to enter into treaties and executive agreements, conduct diplomacy, and interact with international organizations, which give the Executive substantial dominion over foreign policy. n381 Thus, Congress is more effective in constraining the President's powers with regard to domestic affairs. n382

#### Legal transparency solves global drone prolif---allows the U.S. to successfully shape international norms

Byman, Professor in the Security Studies Program at the Edmund A. Walsh School of Foreign Service at Georgetown University, ‘13

[Daniel, Senior Fellow at the Saban Center for Middle East Policy at the Brookings Institution, July/August 2013, “Why Drones Work,” Foreign Affairs, Vol. 92, No. 4]

The fact remains that by using drones so much, Washington risks setting a troublesome precedent with regard to extrajudicial and extraterritorial killings. Zeke Johnson of Amnesty International contends that "when the U.S. government violates international law, that sets a precedent and provides an excuse for the rest of the world to do the same." And it is alarming to think what leaders such as Syrian President Bashar al-Assad, who has used deadly force against peaceful pro-democracy demonstrators he has deemed terrorists, would do with drones of their own. Similarly, Iran could mockingly cite the U.S. precedent to justify sending drones after rebels in Syria. Even Brennan has conceded that the administration is "establishing precedents that other nations may follow."¶ Controlling the spread of drone technology will prove impossible; that horse left the barn years ago. Drones are highly capable weapons that are easy to produce, and so there is no chance that Washington can stop other militaries from acquiring and using them. Nearly 90 other countries already have surveillance drones in their arsenals, and China is producing several inexpensive models for export. Armed drones are more difficult to produce and deploy, but they, too, will likely spread rapidly. Beijing even recently announced (although later denied) that it had considered sending a drone to Myanmar (also called Burma) to kill a wanted drug trafficker hiding there.¶ The spread of drones cannot be stopped, but the United States can still influence how they are used. The coming proliferation means that Washington needs to set forth a clear policy now on extrajudicial and extraterritorial killings of terrorists -- and stick to it. Fortunately, Obama has begun to discuss what constitutes a legitimate drone strike. But the definition remains murky, and this murkiness will undermine the president's ability to denounce other countries' behavior should they start using drones or other means to hunt down enemies. By keeping its policy secret, Washington also makes it easier for critics to claim that the United States is wantonly slaughtering innocents. More transparency would make it harder for countries such as Pakistan to make outlandish claims about what the United States is doing. Drones actually protect many Pakistanis, and Washington should emphasize this fact. By being more open, the administration could also show that it carefully considers the law and the risks to civilians before ordering a strike.¶ Washington needs to be especially open about its use of signature strikes. According to the Obama administration, signature strikes have eliminated not only low-level al Qaeda and Taliban figures but also a surprising number of higher-level officials whose presence at the scenes of the strikes was unexpected. Signature strikes are in keeping with traditional military practice; for the most part, U.S. soldiers have been trained to strike enemies at large, such as German soldiers or Vietcong guerrillas, and not specific individuals. The rise of unconventional warfare, however, has made this usual strategy more difficult because the battlefield is no longer clearly defined and enemies no longer wear identifiable uniforms, making combatants harder to distinguish from civilians. In the case of drones, where there is little on-the-ground knowledge of who is who, signature strikes raise legitimate concerns, especially because the Obama administration has not made clear what its rules and procedures for such strikes are.¶ Washington should exercise particular care with regard to signature strikes because mistakes risk tarnishing the entire drone program. In the absence of other information, the argument that drones are wantonly killing innocents is gaining traction in the United States and abroad. More transparency could help calm these fears that Washington is acting recklessly.

#### The CP alone is the best way to boost U.S. legitimacy---bargaining theory proves that making concessions to critics of our drone policy encourages them to move the goalposts and never be satisfied---informing them of the rationale behind targeted killings with a “take it or leave it” stance encourages bandwagoning. Reject their ev by activists and academics---they always call for the most restrictive measures but their perspective’s irrelevant to actual inter-state relations.

Anderson, Professor of International Law at American University, ‘11

[Kenneth, 10/3/11, “Public Legitimacy for Targeted Killing Using Drones,” <http://www.volokh.com/2011/10/03/public-legitimacy-for-targeted-killing-using-drones/>]

Jack Goldsmith, writing at Lawfare, urges the Obama administration to release a redacted version of the Justice Department’s memo concluding that the targeting of Al-Awlaki was lawful – if not a redacted version, then some reasonably complete and authoritative statement of its legal reasoning. I agree. The nature of these operations abroad is that they will almost certainly remain beyond judicial review and, as a consequence, OLC opinions will serve as the practical mechanism of the rule of law. ¶ The best argument against disclosure is that it would reveal classified information or, relatedly, acknowledge a covert action. This concern is often a legitimate bar to publishing secret executive branch legal opinions. But the administration has (in unattributed statements) acknowledged and touted the U.S. role in the al-Aulaqi killing, and even President Obama said that the killing was in part “a tribute to our intelligence community.” I understand the reasons the government needs to preserve official deniability for a covert action, but I think that a legal analysis of the U.S. ability to target and kill enemy combatants (including U.S. citizens) outside Afghanistan can be disclosed without revealing means or methods of intelligence-gathering or jeopardizing technical covertness. The public legal explanation need not say anything about the means of fire (e.g. drones or something else), or particular countries, or which agencies of the U.S. government are involved, or the intelligence basis for the attacks. (Whether the administration should release more information about the intelligence supporting al-Aulaqi’s operational role is a separate issue that raises separate classified information concerns.) We know the government can provide a public legal analysis of this sort because presidential counterterrorism advisor John Brennan and State Department Legal Advisor Harold Koh have given such legal explanations in speeches, albeit in limited and conclusory terms. These speeches show that there is no bar in principle to a public disclosure of a more robust legal analysis of targeted killings like al-Aulaqi’s. So too do the administration’s many leaks of legal conclusions (and operational details) about the al-Aulaqi killing. ¶ The public accountability and legitimacy of these vital national security operations is strengthened to the extent that the public is informed and, through the political branches, part of the debate on the law of targeted killing. That cannot be operational discussion, for obvious reasons. But there is still a good deal that could be said about the underlying legal rationales, without compromising security. I myself favor revisions, either as internal executive branch policy or, in a better world, as formal legal revisions to Title 50 (CIA, covert action, etc.) and the oversight and reporting processes. One of those revisions would be to get beyond the not just silly, but in some deeper way, de-legitimizing insistence that these operations cannot be acknowledged even as a program; I would establish a distinct category of “deniable” rather than “covert,” and a category of programs that can be acknowledged as existing even without comment on particular operations. ¶ John Bellinger, the former State Department Legal Adviser in the last years of the Bush administration, raises concerns in the Washington Post today about the best way to defend the international legitimacy of these operations. He notes the deep hostility of the international advocacy groups, UN special raporteurs, numbers of foreign governments, and the studied silence of US allies (even as NATO, I’d add, has relied upon drones as an essential element of its Libyan air war). ¶ [T]he U.S. legal position may not satisfy the rest of the world. No other government has said publicly that it agrees with the U.S. policy or legal rationale for drones. European allies, who vigorously criticized the Bush administration for asserting the unilateral right to use force against terrorists in countries outside Afghanistan, have neither supported nor criticized reported U.S. drone strikes in Pakistan, Yemen and Somalia. Instead, they have largely looked the other way, as they did with the killing of Osama bin Laden. ¶ Human rights advocates, on the other hand, while quiet for several years (perhaps to avoid criticizing the new administration), have grown increasingly uncomfortable with drone attacks. Last year, the U.N. rapporteur for summary executions and extrajudicial killings said that drone strikes may violate international humanitarian and human rights law and could constitute war crimes. U.S. human rights groups, which stirred up international opposition to Bush administration counterterrorism policies, have been quick to condemn the Awlaki killing. ¶ Even if Obama administration officials are satisfied that drone strikes comply with domestic and international law, they would still be wise to try to build a broader international consensus. The administration should provide more information about the strict limits it applies to targeting and about who has been targeted. One of the mistakes the Bush administration made in its first term was adopting novel counterterrorism policies without attempting to explain and secure international support for them. ¶ The problem of international legitimacy is always tricky, as Bellinger knows better than anyone. I look at it this way. Tell the international community that we care about legitimacy – which is to say, that we care about their opinion in relation to our practices – and all of sudden we have handed other folks a rhetorical hold-up, to a greater or lesser degree. Unsurprisingly, the price of their good opinion and their desire to exercise control over our actions goes up. This is nothing special to this; it’s just standard bargaining theory. ¶ On the other hand, ignore them altogether, and they – particularly, note, our allies, those who say that they are acting roughly within our shared sphere of values discourse, not the Chinese or the Russians – develop a set of norms that they then apply in such a way as to mark us as the outlier and the deviant. Again, this is just drawn from any standard account of norm-negotiation; it’s not a statement of nefarious intent; it’s an acknowledgment that both we and our allies are invested in norms, and that we are not merely societies of narrow interests. At its worst, developing a quite separate norm regime and then characterizing us as genuinely deviant from it might lead to arrest warrants issued for current or former US officials, and much distrust between sides. It might also lead to places where even our allies might not want to go – putting themselves outside of the US security umbrella in particular matters that turn out to concern them a lot, such has having access to drones in Libya. ¶ If the norm envelope is pushed hard enough, however, then our allies wind up depriving themselves of access to the weapon, which clearly they don’t want to do. So they have reasons not to push too hard – both for fear of us simply ignoring them altogether (in effect withdrawing the acceptance that their opinion matters to the legitimacy of the activity) and because they want at least “parts” of it. ¶ The best place to be, then, for both sides, is roughly in the middle that Bellinger stakes out. (Note that nothing I’ve said here should be attributed to him; these are my views on the negotiation stakes.) Meaning that we have reasons to talk with our allies at length and in detail, in private and public, to try and persuade them to our views, and to persuade them that genuflecting to their advocacy and NGO groups will be worse for them than accepting our space to act, insofar as we can give a plausible interpretation of law. Plausibility is the central touchstone for international law in relations among states, finally; we and they don’t have to agree, only to agree that our several interpretations are within the ballpark of acceptability. It might involve alterations of our practice; it might not. ¶ This will never satisfy the non-governmental advocates or the academics, of course. They have no skin in the game and hence can always hold out for the most extreme position with only an indirect cost in credibility. In the case of drones, in which even some of the advocates are belatedly realizing that the weapon is indeed more precise and sparing of civilians, ignoring the NGO advocates as profoundly mistaken has spared a human tragedy in collateral damage over the long run. But the striking thing about the interstate negotiations among allies is that they don’t have to reach a conclusion – an agreement – and probably won’t. An acceptance of the plausibility of each side’s position and an agreement to continue discussion around alternatives that are considered plausible is sufficient.

#### Establishing a transparent set of standards for identifying targets outside a zone of active hostilities solves.

Daskal, Fellow and Adjunct Professor, Georgetown Center on National Security and the Law, Georgetown University Law Center, ‘13

[Jennifer, April 2013, ARTICLE: THE GEOGRAPHY OF THE BATTLEFIELD: A FRAMEWORK FOR DETENTION AND TARGETING OUTSIDE THE "HOT" CONFLICT ZONE, 161 U. Pa. L. Rev. 1165, RSR]

In the absence of such a system, the President ought to, at a minimum, issue an executive order establishing a transparent set of standards and procedures for identifying targets of lethal killing and detention operations outside a zone of active hostilities.192 To enhance legitimacy, the procedures should include target list reviews and disposition plans by the top official in each of the agencies with a stake in the outcome—the Secretary of Defense, the Director of the CIA, the Secretary of State, the Director of Homeland Security, and the Director of National Intelligence, with either the Secretary of Defense, Director of National Intelligence, or President himself, respon- sible for final sign-off.193 In all cases, decisions should be unanimous, or, in the absence of consensus, elevated to the President of the United States.194 Additional details will need to be worked out, including critical questions about the standard of proof that applies. Given the stakes, a clear and convincing evidentiary standard is warranted.195 While this proposal is obviously geared toward the United States, the same principles should apply for all states engaged in targeting operations.196 States would ideally subject such determinations to independent review or, alternatively, clearly articulate the standards and procedures for their decisionmaking, thus enhancing accountability.

#### President action solves the signaling of the aff.

Singer, director – Center for 21st Century Security and Intelligence @ Brookings, and Wright, senior fellow – Brookings, 2/7/’13

[Peter W. and Thomas, "Obama, own your secret wars", www.nydailynews.com/opinion/obama-secret-wars-article-1.1265620]

It is time for a new approach. And all that is required of the President is to do the thing that he does perhaps best of all: to speak.¶ **Obama has a unique opportunity** — in fact, an urgent obligation — **to create a new doctrine**, unveiled in a major presidential speech, **for the use** and deployment **of these new tools of war**.¶ While the Republicans tried to paint the President as weak on security issues in the 2012 elections, history will record instead that his administration pushed into new frontiers of war, most especially in the new class of technologies that move the human role both geographically and chronologically further from the point of action on the battlefield.¶ The U.S. military’s unmanned systems, popularly known as “drones,” now number more than 8,000 in the air and 12,000 on the ground. And in a parallel development, the U.S. Cyber Command, which became operational in 2010, has added an array of new (and controversial) responsibilities — and is set to quintuple in size.¶ This is not just a military matter. American intelligence agencies are increasingly using these technologies as the tips of the spear in a series of so-called “shadow wars.” These include not only the more than 400 drone strikes that have taken place from Pakistan to Yemen, but also the deployment of the Stuxnet computer virus to sabotage Iranian nuclear development, the world’s first known use of a specially designed cyber weapon.¶ Throughout this period, **the administration has tried to** have it both ways — leaking out success stories of our growing **use** of **these** new **technologies but not** tying its hands **with official statements and set policies**.¶ This made great sense at first, when much of what was happening was ad hoc and being fleshed out as it went along.¶ But that position has become unsustainable. The less the U.S. government now says about our policies, the more that vacuum is becoming filled by others, in harmful ways.¶ By acting but barely explaining our actions, **we’re creating precedents for other states to exploit**. More than 75 countries now have military robotics programs, while another 20 have advanced cyber war capacities. Rest assured that nations like Iran, Russia and China will use these technologies in far more crude and indiscriminate ways — yet will do so while claiming to be merely following U.S. footsteps.¶ In turn, international organizations — the UN among them — are pushing ahead with special investigations into potential war crimes and proposing new treaties.¶ Our leaders, meanwhile, stay mum, which isolates the U.S. and drains its soft power.¶ The current policy also makes it harder to respond to growing concerns over civilian casualties. Indeed, Pew polling found 96% levels of opposition to U.S. drones in the key battleground state of Pakistan, a bellwether of the entire region. It is indisputable than many civilians have been harmed over the course of hundreds of strikes. And yet it is also indisputable that various groups have incentives to magnify such claims.¶ Yet so far, U.S. officials have painted themselves into a corner — either denying that any collateral losses have occurred, which no one believes, or reverting to the argument **that we cannot confirm or deny our involvement**, which no one believes, either.¶ Finally, the domestic support and legitimacy needed for the use of these weapons is in transition. Polling has found general public support for drone strikes, but only to a point, with growing numbers in the “not sure” category and growing worries around cases of targeting U.S. citizens abroad who are suspected of being terrorists.¶ The administration is so boxed in that, even when it recently won a court case to maintain the veil of semi-silence that surrounds the drone strike program, the judge described the current policy as having an “Alice in Wonderland” feel.¶ The White House seems to be finally starting to realize the problems caused by this disconnect of action but no explanation. **After years of silence**, occasional statements by senior aides are acknowledging the use of drones, while **lesser-noticed working level documents have been created to formalize strike policies** and even to explore what to do about the next, far more autonomous generation of weapons.¶ **These** efforts have been **good starts**, but they **have been disjointed and partial**. Most important, they are missing the much-needed stamp of the President’s voice and authority, which is essential to turn tentative first steps into established policy.¶ Much remains to be done — and said — out in the open.¶ This is why **it’s time for Obama’s voice to ring loud and clear**. Much as Presidents Harry Truman and Dwight Eisenhower were able keep secret aspects of the development of nuclear weapons, even as they articulated how and when we would use them, **Obama should publicly lay out criteria by which the U**nited **S**tates **will develop**, **deploy and use these new weapons**.¶ The President has a strong case to make — if only he would finally make it. After all, the new weapons have worked. They have offered new options for military action that are more accurate and proportionate and less risky than previously available methods.¶ But they have also posed many new complications. Explaining our position is about embracing both the good and the bad. It is about acknowledging the harms that come with war regardless of what technology is being used and making clear what structures of accountability are in place to respond.¶ **It’s** also **about** finally **defining where America** truly **stands on** some of **the** most **controversial questions**. These include the tactics of “signature” strikes, where the identity is not firmly identified, and “double tap” strikes, where rescuers aiding victims of a first attack are also brought under fire. These have been reported as occurring and yet seem to run counter to the principles under which the programs have been defended so far.¶ **The role of the President is** not to conduct some kind of retrospective of what we have done and why, but **to lay out a course of the future**. What are the key strategic goals and ethical guidelines that should drive the development and use of these new technologies? Is current U.S. and international law sufficient to cover them?¶ There are also crucial executive management questions, like where to draw the dividing line between military and civilian intelligence agency use of such technologies, and how to keep a growing range of covert actions from morphing into undeclared and undebated wars.¶ And, finally, **the President must help resolve growing tensions between the executive** branch **and** an increasingly restive **Congress**, including how to handle situations where we create the effect of war but no U.S. personnel are ever sent in harm’s way.¶ Given the sprawling complexity of these matters, only the President can deliver an official statement on where we stand. If only we somehow had a commander in chief who was simultaneously a law professor and Nobel Peace Prize winner!¶ The President’s voice on these issues won’t be a cure-all. But it will lay down a powerful marker, shaping not just the next four years but the actions of future administrations.

### Solvency

#### The administration’s conception of ‘imminent threat’ is so broad that self-defense authority justifies anything

Kenneth Roth 13, Executive Director, Human Rights Watch, 5/16/13, “US: Statement to the Senate Armed Services Committee on the AUMF, Targeted Killing, & Guantanamo,” http://www.hrw.org/news/2013/05/16/us-statement-senate-armed-services-committee-aumf-targeted-killing-guantanamo

Even in the absence of a combatant at war with the United States, the US government is entitled to use lethal force in certain limited circumstances under international human rights law. A police officer on the streets of Washington, for example, is entitled to shoot a suspect if it is the last feasible resort to avoid an “imminent” threat to life—such as when a hostage-taker is holding a gun to a victim’s head. That same standard might justify targeting people overseas as well (leaving aside questions of sovereignty, which would depend on the consent of the relevant government). At times the Obama administration has used this language of imminence but it has done so in a way that seems to render it infinitely elastic. The administration has argued that it should not have to wait until the last possible moment to avert a planned attack—a fair point—but in certain circumstances it appears to be lethally striking targets where no reasonable claim of an imminent threat can be made. The alleged use of signature strikes provides perhaps the clearest illustration of the problem. The lack of clarity and transparency surrounding the drone program leaves the impression that people are being targeted for no more than carrying weapons and associating with unsavory people. The administration’s unwillingness in many cases to articulate anything remotely resembling an imminent threat makes it seem that human rights standards on policing, insofar as they are being relied upon to justify drone strikes, are being flouted.

#### Actually using self-defense as the sole justification for killings outside conflict zones would be a massive expansion of Article II authority

Jack Goldsmith 13, the Henry L. Shattuck Professor at Harvard Law School, 5/28/13, “Eight Thoughts on the Broad Reading of Article II Inherent in Bobby’s Conjecture,” http://www.lawfareblog.com/2013/05/eight-thoughts-on-the-broad-reading-of-article-ii-inherent-in-bobbys-conjecture/

First, I agree with Bobby’s implication that we are on the road toward post-AUMF uses of military force around the globe justified entirely on the basis of self-defense and the President’s Article II powers. Self-defensive military actions based on Article II are (I think) what Jeh Johnson was talking about when he referred to “military assets available in reserve to address continuing and imminent [extra-AUMF] terrorist threats” and what Harold Koh meant when he said “I see no proof that the U.S. lacks legal authority to defend itself against those [beyond the AUMF] . . . who pose to us a genuine and imminent threat,” and what the President probably had in mind when he said that “[o]ur systematic effort to dismantle terrorist organizations must continue” even after the AUMF-war ends. Second, it would be an unprecedented expansion of Article II authority if the scope and scale of current military and paramilitary operations outside Afghanistan today were justified under Article II. I agree with Bobby that these actions, considered individually, have the same form as the Article II actions under Clinton and Reagan. But as Bobby suggests, organizational and technological innovations, and the global expansion of the threat, mean that the scope and scale of these operations are different in kind from the pre-9/11 context. It would be quite a formalism to say that war on the scale now being waged by the USG is justified on the basis of the same power that President Clinton exercised in 1998. Put another way: In substance it would take a different and broader conception of Article II to justify continuous war on this scale.

#### This is net offense---it makes the plan look like a disingenuous legal trick, and self-defense would justify a more expansive global battlefield than current doctrine because of the administration’s expansive definition of ‘imminent threat’

Jack Goldsmith 13, the Henry L. Shattuck Professor at Harvard Law School, 5/28/13, “Eight Thoughts on the Broad Reading of Article II Inherent in Bobby’s Conjecture,” http://www.lawfareblog.com/2013/05/eight-thoughts-on-the-broad-reading-of-article-ii-inherent-in-bobbys-conjecture/

Third, Ben asks: “[H]ow do we feel about what we might term a militarily active peace—that is, a peace in which drone strikes and special forces operations take place regularly, a peace that is so minimally different from warfare that nobody (except Bobby) even noticed that we had transitioned from wartime to peacetime?” As Ben implies, if Bobby is right, the Obama administration’s post-AUMF “peace” or “no more war” trope should not be taken too seriously. It would be little more than a (domestic law) legalistic trick to say that we are not at “war” if we are regularly exercising the use of force around the globe, albeit in pinpoint fashion, just because the President would be acting in self-defense under Article II rather than pursuant to an AUMF. We are currently engaged in numerous and manifold military and paramilitary and intelligence operations in many countries outside Afghanistan (see Mark Mazzetti’s book for a recent description). The scale and persistence of the operations means that many of them would amount to “armed conflicts” even if they were justified as self-defense. And with some caveats about Obama administration practice below, they should (when conducted by DOD) at a minimum trigger at least the reporting provisions (and perhaps more) under the War Powers Resolution. Fourth, the stealth self-defensive war that Bobby describes and that I think the administration envisions in a post-AUMF world is even less bounded than the AUMF-war in this sense: force can be used wherever a threatening group meets the (slippery-at-best and auto-interpreted) “imminent threat” threshold, as long as the nation in question consents or is unwilling or unable to prevent the threat. The Article II war, unlike the AUMF war, requires no nexus to al Qaeda or its associates.

### IHL

#### No impact to multilateralism.

Azar Gat, July/August 2009, is a researcher and author on military history, he was the Chair of the Department of Political Science at Tel Aviv University, Foreign Affairs, “Which Way Is History Marching?,”<http://www.foreignaffairs.com/articles/65162/azar-gat-daniel-deudney-and-g-john-ikenberry-and-ronald-inglehar/which-way-is-history-marching?page=show>

UNDILUTED OPTIMISM to the sweeping, blind forces of globalization. A message need not be formulated in universalistic terms to have a broader appea When it comes to the question of how to deal with a nondemocratic superpower China in the international arena, Deudney and Ikenberry, as well as Inglehart and Welzel, exhibit undiluted liberal internationalist optimism. China's free access to the global economy is fueling its massive growth, thereby strengthening the country as a potential rival to the United States -- a problem for the United States not unlike that encountered by the free-trading British Empire when it faced other industrializing great powers in the late nineteenth century. According to Inglehart and Welzel, there is little to worry about, because rapid development will only quicken China's democratization. But it was the United Kingdom's great fortune -- and liberal democracy's -- that its hegemonic status fell into the hands of another liberal democracy, the United States, rather than into those of nondemocratic Germany and Japan, whose future trajectories remained uncertain at best. The liberal democratic countries could have made China's access to the global economy conditional on democratization, but it is doubtful that such a linkage would have been feasible or desirable. After all, China's economic growth has benefited other nations and has made the developed countries -- and the United States in particular -- as dependent on China as China is dependent on them. Furthermore, economic development and interdependence in themselves -- in addition to democracy -- are a major force for peace. Democracies' ability to promote internal democratization in countries much smaller and weaker than China has been very limited, and putting pressure on China could backfire, souring relations with China and diverting its development to a more militant and hostile path. Deudney and Ikenberry suggest that China's admission into the institutions of the liberal international order established after World War II and the Cold War will oblige the country to transform and conform to that order. But large players are unlikely to accept the existing order as it is, and their entrance into the system is as likely to change it as to change them. The Universal Declaration of Human Rights provides a case in point. It was adopted by the United Nations in 1948, in the aftermath of the Nazi horrors and at the high point of liberal hegemony. Yet the UN Commission on Human Rights, and the Human Rights Council that replaced it, has long been dominated by China, Cuba, and Saudi Arabia and has a clear illiberal majority and record. Today, more countries vote with China than with the United States and Europe on human rights issues in the General Assembly of the United Nations. Critics argue that unlike liberalism, nondemocratic capitalist systems have no universal message to offer the world, nothing attractive to sell that people can aspire to, and hence no "soft power" for winning over hearts and minds. But there is a flip side to the universalist coin: many find liberal universalism dogmatic, intrusive, and even oppressive. Resistance to the unipolar world is a reaction not just to the power of the United States but also to the dominance of human rights liberalism. There is a deep and widespread resentment in non-Western societies of being lectured to by the West and of the need to justify themselves according to the standards of a hegemonic liberal morality that preaches individualism to societies that value community as a greater good. Compared to other historical regimes, the global liberal order is in many ways benign, welcoming, and based on mutual prosperity.

### King Pins

#### Nuclear terrorist attack turns every impact – destroys the nuclear taboo which makes war inevitable.

Bin, director of Arms Control Program at the Institute of International Studies, Tsinghua University, ‘9

[5-22-09 About the Authors Prof. Li Bin is a leading Chinese expert on arms control and is currently the director of Arms Control Program at the Institute of International Studies, Tsinghua University. He received his Bachelor and Master Degrees in Physics from Peking University before joining China Academy of Engineering Physics (CAEP) to pursue a doctorate in the technical aspects of arms control. He served as a part-time assistant on arms control for the Committee of Science, Technology and Industry for National Defense (COSTIND).Upon graduation Dr. Li entered the Institute of Applied Physics and Computational Mathematics (IAPCM) as a research fellow and joined the COSTIND technical group supporting Chinese negotiation team on Comprehensive Test Ban Treaty (CTBT). He attended the final round of CTBT negotiations as a technical advisor to the Chinese negotiating team. Nie Hongyi is an officer in the People’s Liberation Army with an MA from China’s National Defense University and a Ph.D. in International Studies from Tsinghua University, which he completed in 2009 under Prof. Li Bin]

The nuclear taboo is a kind of international norm and this type of norm is supported by the promotion of the norm through international social exchange. But at present the increased threat of nuclear terrorism has lowered people’s confidence that nuclear weapons will not be used. China and the United States have a broad common interest in combating nuclear terrorism. Using technical and institutional measures to break the foundation of nuclear terrorism and lessen the possibility of a nuclear terrorist attack can not only weaken the danger of nuclear terrorism itself but also strengthen people’s confidence in the nuclear taboo, and in this way preserve an international environment beneficial to both China and the United States. In this way even if there is crisis in China-U.S. relations caused by conflict, the nuclear taboo can also help both countries reduce suspicions about the nuclear weapons problem, avoid miscalculation and thereby reduce the danger of a nuclear war.

#### The plan undermines warfighting by increasing military burdens in interpreting the LOAC

Blank, 13 **–** professor of law at Emory (Laurie, “LEARNING TO LIVE WITH (A LITTLE) UNCERTAINTY: THE OPERATIONAL ASPECTS AND CONSEQUENCES OF THE GEOGRAPHY OF CONFLICT DEBATE” <http://www.pennlawreview.com/online/161-U-Pa-L-Rev-Online-347.pdf>) **LOAC = Law of Armed Conflict**

Uncertainty about the geographic scope of armed conflict leads to a variety of analytical and implementation challenges with regard to LOAC, human rights law, jus ad bellum, and other relevant legal regimes. The simple fact that within an armed conﬂict, a party to the conﬂict can use lethal force as a ﬁrst resort, while outside an armed conﬂict, such deadly force may only be used as a last resort, is the starkest reminder of why such extensive attention has been focused on this question over the past few years. For the purpose of achieving LOAC’s central goal of “alleviating, as much as possible the calamities of war,”32 greater clarity regarding where an armed conﬂict is taking place and to where the concomitant authorities and obligations extend certainly would be a signiﬁcant contribution. The international community—military lawyers, policymakers, international law scholars— should therefore address these issues head-on in a continuing eﬀort to better understand how to apply the law most eﬀectively and eﬃciently.33 Daskal’s proposal for a rules-driven new law of war framework is therefore a welcome and important contribution to the discussion and debate. At the same time, however, these eﬀorts must stay true to the needs and goals of LOAC as a pragmatic, operationally focused body of law that is, above all, designed to work in the inherent chaos and uncertainty of armed conﬂict. As I have argued elsewhere, there are signiﬁcant risks for the future implementation and development of LOAC as a result of conﬂating norms from LOAC with norms from human rights law, or of borrowing one from the other without careful delineation, including, in particular, the rules regarding surrender and capture and the different applications and purposes of proportionality in each legal regime.34 No place is this risk more profound than in relation to the legal authority to employ force against an enemy belligerent. In the context of a speciﬁc legal framework for one particular type of conﬂict, the same concerns about blurring the lines between legal regimes remain. LOAC does not require an individualized threat assessment in the targeting of combatants, who are presumed hostile by dint of their status. Over time, however, the requirement for an individualized threat assessment in certain geographical zones in a new law of war framework for conﬂicts with transnational terrorist groups may well begin to bleed into the application of LOAC in more traditional conﬂicts. In essence, therefore, a carefully designed paradigm for one complex and diﬃcult conﬂict scenario ultimately impacts LOAC writ large, even absent any perceived need or direct motivation for such change. Interpreting LOAC to require an individualized threat assessment for all targeting decisions—even those against the regular armed forces of the enemy state in an international armed conﬂict—introduces signiﬁcant tactical and operational risk for soldiers not mandated or envisioned by the law.35 The same conﬂation problem holds true for other non-LOAC obligations that might be imported into LOAC depending on the analysis of where and how a new law of war framework were to apply. It is important to recognize, notwithstanding the focus on the operational eﬀectiveness of LOAC in this Response, that conﬂation and “borrowing” oﬀer the same challenges for the implementation of human rights law, to the extent that norms from LOAC begin to bleed into the application of human rights norms. Lastly, superimposing an artiﬁcially created framework detracts attention from—or even papers over—current challenges within LOAC, such as the identiﬁcation of enemy operatives, the nature and amount of proof required for determinations of reasonableness or unreasonableness in targeting decisions, and other perennially tricky issues.

## 1NR

### Europe

#### Prefer our evidence – newest studies disprove all of your authors.

INPCC 11 (Nongovernmental International Panel on Climate Change. Surviving the unprecedented climate change of the IPCC. 8 March 2011. <http://www.nipccreport.org/articles/2011/mar/8mar2011a5.html>, NP)

In a paper published in Systematics and Biodiversity, Willis et al. (2010) consider the IPCC (2007) "predicted climatic changes for the next century" -- i.e., their contentions that "global temperatures will increase by 2-4°C and possibly beyond, sea levels will rise (~1 m ± 0.5 m), and atmospheric CO2will increase by up to 1000 ppm" -- noting that it is "widely suggested that the magnitude and rate of these changes will result in many plants and animals going extinct," citing studies that suggest that "within the next century, over 35% of some biota will have gone extinct (Thomas et al., 2004; Solomon et al., 2007) and there will be extensive die-back of the tropical rainforest due to climate change (e.g. Huntingford et al., 2008)." On the other hand, they indicate that some biologists and climatologists have pointed out that "many of the predicted increases in climate have happened before, in terms of both magnitude and rate of change (e.g. Royer, 2008; Zachos et al., 2008), and yet biotic communities have remained remarkably resilient (Mayle and Power, 2008) and in some cases thrived (Svenning and Condit, 2008)." But they report that those who mention these things are often "placed in the 'climate-change denier' category," although the purpose for pointing out these facts is simply to present "a sound scientific basis for understanding biotic responses to the magnitudes and rates of climate change predicted for the future through using the vast data resource that we can exploit in fossil records." Going on to do just that, Willis et al. focus on "intervals in time in the fossil record when atmospheric CO2 concentrations increased up to 1200 ppm, temperatures in mid- to high-latitudes increased by greater than 4°C within 60 years, and sea levels rose by up to 3 m higher than present," describing studies of past biotic responses that indicate "the scale and impact of the magnitude and rate of such climate changes on biodiversity." And what emerges from those studies, as they describe it, "is evidence for rapid community turnover, migrations, development of novel ecosystems and thresholds from one stable ecosystem state to another." And, most importantly in this regard, they report "there is very little evidence for broad-scale extinctions due to a warming world." In concluding, the Norwegian, Swedish and UK researchers say that "based on such evidence we urge some caution in assuming broad-scale extinctions of species will occur due solely to climate changes of the magnitude and rate predicted for the next century," reiterating that "the fossil record indicates remarkable biotic resilience to wide amplitude fluctuations in climate."

### K

#### **This is a comparatively more productive strategy than the aff’s hubristic attempts to change the world – only our framework produces an ethical self that can create productive micropolitics**

Chandler 13 – prof of IR @ Westminster

(The World of Attachment? The Post-humanist Challenge to Freedom and Necessity, Millenium: Journal of International Studies, 41(3), 516– 534)

The world of becoming thereby is an ontologically flat world without the traditional hierarchies of existence and a more shared conception of agency. For Bennett, therefore, ‘to begin to experience the relationship between persons and other materialities more horizontally, is to take a step toward a more ecological sensibility’.78 Here there is room for human agency but this agency involves a deeper understanding of and receptivity to the world of objects and object relations. Rather than the hubristic focus on transforming the external world, the ethico-political tasks are those of work on the self to erase hubristic liberal traces of subject-centric understandings, understood to merely create the dangers of existential resentment. Work on the self is the only route to changing the world. As Connolly states: ‘To embrace without deep resentment a world of becoming is to work to “become who you are”, so that the word “become” now modifies “are” more than the other way around.’ Becoming who you are involves the ‘microtactics of the self’, and work on the self can then extend into ‘micropolitics’ of more conscious and reflective choices and decisions and lifestyle choices leading to potentially higher levels of ethical self-reflectivity and responsibility. Bennett argues that against the ‘narcissism’ of anthropomorphic understandings of domination of the external world, we need ‘some tactics for cultivating the experience of our selves as vibrant matter’. Rather than hubristically imagining that we can shape the world we live in, Bennett argues that: ‘Perhaps the ethical responsibility of an individual human now resides in one’s response to the assemblages in which one finds oneself participating. Such ethical tactics include reflecting more on our relationship to what we eat and considering the agentic powers of what we consume and enter into an assemblage with. In doing so, if ‘an image of inert matter helps animate our current practice of aggressively wasteful and planet-endangering consumption, then a materiality experienced as a lively force with agentic capacity could animate a more ecologically sustainable public’. For new materialists, the object to be changed or transformed is the human – the human mindset. By changing the way we think about the world and the way we relate to it by including broader, more non-human or inorganic matter in our considerations, we will have overcome our modernist ‘attachment disorders’ and have more ethically aware approaches to our planet. In cultivating these new ethical sensibilities, the human can be remade with a new self and a ‘new self-interest’.

#### Fairness impacts are a TROJAN HORSE for substantive agendas. All interpretations both create and destroy ground—objectivity is an illusion.

Olson, Professor of English at the University of South Florida, ‘2

[Gary, “Justifying Belief: Stanley Fish and the Work of Rhetoric” p. 51-52, p. 64-65]

**In** intractable **policy debates, invoking the principle of fairness** **will not advance** these **debates because** at a certain level such debates are about “what fairness (or neutrality or impartiality) really is” (3). In effect, a contest over the content of a particular issue is also a contest over two or more contending notions of fairness (or impartiality or whatever principle is being invoked). Even if it were possible to produce a general principle devoid of specific content – a notion of fairness, say, untethered to any specific perspective or ideological orientation – it would be of no use, says Fish, because it would be empty. That is, appealing to it would not point you in any direction in relation to other possible directions. **Its** very **emptiness renders it useless as a moral compass. In effect, a neutral principle is a floating signifier, an “unoccupied vessel waiting to be filled by whoever gets to it first or with the most persuasive force**” (7). In fact, it is exactly this condition of emptiness, its status as a floating signifier available for people to invest with substance, that makes neutral principles so politically useful – and even potentially dangerous, since they can be employed to further evil (as defined by you) ends just as easily as more positive (as defined by you) goals: It is because they don’t have the constraining power claimed for them (they neither rule out nor mandate anything) and yet have the *name* of constraints (people think that **when you invoke fairness you call for something determinate and determinable) that neutral principles can make an argument look as though it has a support higher or deeper than the support provided by its own substantive thrust**. Indeed, the vocabulary of **neutral principle can be used to disguise substance so that it appears to be the inevitable and nonengineered product of an impersonal logic.** (4) In other words, a general principle such as **fairness is deployed as a weapon in political, legal and ethical struggles precisely because it masks the interestedness of those appealing to it and cloaks the fact that the actual policy, law, or proposal being advanced in the name of the principle is embedded in specific historical circumstances and furthers the interests and objectives of one set of individuals over and against the interests and objectives of others**. The fact that general principles do not exist and the fact that they can be deployed to effect harm may seem at odds; however, there is no contradiction in declaring that, on the one hand, general principles do not exist (that is, that they have no substance except when they are involved and thus invested with a particular substance that furthers a particular agenda) and that, on the other hand, they can be deployed to further odious agendas (that is, agendas that you yourself find to be odious). It is precisely the emptiness of principles (the fact that they can mean everything and thus nothing and therefore do not exist in any meaningful way *as neutral principles*) that makes them available to be used to do harmful (or good) work in the world. In other words, neutral principles do not exist as genuinely “neutral” principles independent of someone’s agenda, but the vocabulary of neutrality causes principles to become very powerful tools in the political arena exactly because such language masks particular agendas. Fish writes, **“The fact that the game of neutral principles is really a political game** – the object of which is to package your agenda in a vocabulary everyone, or almost everyone, honors – is itself neutral and tells you nothing about how the game will be played in a particular instance” (7). For example, someone may very well invoke the principle of fairness (or some other principle), but the mere fact of invoking this terminology tells you nothing of whether you will or will not agree with the petitioner’s agenda and with the petitioner’s definition of fairness until you have heard the substance that he or she has packaged under the label “fair.” Nothing about the word “fair” would alert you ahead of time as to where that person is likely to stand on the issue in question. Fish maintains that it would not be unusual or inconsistent to attack the rhetoric of neutral principles in one instance and to employ that very same rhetoric in another, because in both instances what grounds a person’s stance is his or her convictions and commitments, and “the means used to advance them would be secondary” (8). People typically begin with a strong conviction and them employ (or attack) a principle to advance that belief; they don’t begin with a principle and then arrive at a strong conviction. If this modus operandi sounds like a description of the Machiavellian “ends justify the means” conduct, it is indeed, but Fish is quick to stipulate that he is only reporting on how things work, not advocating that they ought to work that way. **Because it is impossible to disentangle oneself from substantive agendas, ends-based behavior simply cannot be avoided.** People will always seek to further their own agendas and to defeat those they oppose. Fish is only pointing out “for the umpteenth time” that “when all is said and done there is nowhere to go except to the goals and desires that already possesses you, and nothing to do but try as hard as you can to implement them in the world” (8-9). […]Continued… That is, if the institution of law and institution of religion were to correspond perfectly, then citizens would be able to extrapolate from moral precepts exactly what their legal obligation are in any given situation, thus rendering the institution of law redundant. Interpretation is seen as a threat to the law in that it is characterized as the act of disregarding or dismissing the meaning inherent in a text in favor of another more partisan or interested reading of the text. Both morality and interpretation, then, threaten to substitute local or individual concerns, causes, or readings (**since there are multiple** moralities and potential **readings**) for **the** larger, mores table, supposedly **disinterested** **perspective** of the law. **The law attempts to keep partisanship in check by appealing to the doctrine of formalism, the belief that it is possible to compose language with such precision that a text’s meaning will always be clear** and understandable despite the individual perspective of those reading the text. Formalist assume that statutes, contracts, and other legal documents can be written in such a way so as to prescribe that agents take or not take certain actions under specific circumstances—regardless of the agents’ desires, ethical creeds, political convictions, or personal values—and that it will always be clear precisely the, why, and under what conditions such actions should be taken. Once a statement is expressed in its proper form as a legal statement or question, this text will generate a chain of circumscribed actions unaffected by personal agendas. In other words, the very form of legal discourse allows the law to adjudicate fairly and independently between two or more contending interests while establishing standards that claim to rise above any specific interests.Fish, of course, insists that **no such independent position is possible, that individual desires**, ethical creeds, political convictions, and personal **values** **are always** already **at play** in the production and consumption of legal texts. **The aura of** blind **objectivity** that the legal system embraces as its identity **is an illusion** – indeed, an impossibility. He argues that although the law yearns to have a formal existence, such aspirations will consistently be frustrated because interpretation will always play a role in any specification of what the law is, and thus any such specification will be susceptible to challenge. Rather than concluding, however, that the law completely fails to have formal existence, he claims that in a very important sense it “always succeeds, although the nature of that success – it is a political/rhetorical achievement – renders it bitter to the formal taste” (144). Fish in effect re-describes how formalism operates within legal discourse.

#### The aff’s move to create statutory restrictions over areas of executive discretion legalizes exceptional authority, turning the aff. Vote negative to leave presidential discretion outside the bounds of the constitution. This move subjects presidential law-breaking to citizen disavowal, which is the only way to galvanize the public and prevent inevitable expansions in presidential power.

Kleinerman, Ph.D. in Political Science from Michigan State University, 2009 [Benjamin, The Discretionary President: The Promise and Peril of Executive Power, p. 245-248]

Modern constitutionalism aims for a new type of politics. Whereas the politics of the past sought to answer the fundamental questions about human life—that is, what is the good life or what is the best way to live?—this new politics subordinates those fundamental questions to a more primary question—that is, how do we achieve political peace? Although republican rule is by no means required by the old politics, the people's pride stands in the way of other forms of government. If political rule allows one answer to these fundamental questions, to deny political rule would be, quite literally, to deny the people's ability to rule themselves. Denying the people rule is to say to the people that they are essentially children in need of others' guidance because they cannot provide it on their own. In the old politics, although republican pride might not necessarily be rational, it is inevitable. Although there may be better regimes in theory, the people's pride stands in their way, making the republican regime the best practicable possibility.¶ Modern constitutionalism changes all this by changing the question from one that implicates the people's pride to one that actually seems rather bothersome to the people. If politics is about achieving peace, then this is a mechanical question best left to others. This is what Hobbes saw first and best; but precisely because he saw this, he was not a constitutionalist. The founder of the modern approach to politics is, instead, an absolutist who insists both that the people have no place in nor taste for politics and that the laws are nothing except the sovereign's commands. In Hobbes's thought, both of these arguments stem not from any love of monarchy or hatred of the people; it would be much easier for us modern constitutionalists if they did. Instead, they stem from the assumption that all political questions should be subordinated to the mechanical question as to how best to achieve peace. The preeminence of peace forecloses the political contestation that would arise if there is anything other than one absolute answer to all political questions. Unitary sovereigns are always right not because they are any more special¶ than anyone else but because they have to be always right, else civil war and anarchy. Hobbes's sovereign absolutism rests on the inexorable logic of a devotion to peace to the exclusion of all other political goods.¶ For Locke, modern constitutionalism responds to Hobbes on the same mechanical ground that Hobbes claims for his own. The sovereign cannot be absolute else the people will stand prostrate before a lion, even as they escaped the state of nature to free themselves from their troubles with pole-cats. Constitutionalism emerges to give the people freedom from arbitrariness, both at the hands of others and at the hands of those who hold political power. Whereas Hobbes thinks the "inconveniences" that would follow from creating an alternative source of legitimacy to the sovereign's command too great, Locke thinks the people too insecure if there is no alternative. The laws bracket and delimit what can be claimed as a legitimate exercise of power by the sovereign. The people can now rest easily at night, knowing that it would not be legitimate for the king or queen to show up, arbitrarily take all their land, turn it into a hunting ground, and lock them up so that they cannot complain. Even though exercised by the sovereign, this would be a serious violation of the laws.¶ But two problems persist. First, though arbitrary power cannot be legitimate if it is exercised merely at the sovereign's whim, this does not preclude its necessity. The lawmakers simply cannot foresee and thus provide for all the power that may become necessary. And, even if they could, the exigencies coeval with political life sometimes require the exercise of power even against intelligent and reasonable standing laws. It is perfectly reasonable and legitimate to bracket and delimit the government from torture, yet the famous "ticking bomb" scenario may well require the government to torture. In these cases, it is not that the lawmakers could not foresee everything that might become necessary. Instead, it is that the necessity should not have been foreseen by them. Thus, although constitutionalism can keep the monarchs off your land because they like the deer that roam there, it may not prevent them from breaking into your house and torturing you to find out where you have hidden the plans for the enemies' attack.¶ Second, Hobbes's logic stands on more than just the necessity of sovereign absolutism; it also counts on its inevitability. Given that political rule does not implicate their ability to rule themselves, the people would rather not be bothered with it. They would rather pursue their private goods, leaving the mechanical questions of politics to the mechanics in charge. Very few insist on fixing their own car because they are too proud to let someone else do it for them. They only insist if they do not trust their mechanics. Although Locke cultivates a spirit of distrust in the people, most give up that distrust when they meet a very nice and dependable mechanic. For this reason, the necessity of prerogative poses a deeper peril to the constitutional regime than just that people will be occasionally woken up in the middle of the night and tortured. Prerogative stands as a constant temptation to the people, who have been made apolitical by the limited ends of modern government.

The people would, it seems, prefer to hand over rule to a mechanic they trust¶ than to bother insisting on ruling themselves. This problem is deeper insofar as the mechanic can effect justice and preserve security in a way that the laws, given the limitations they impose on government for the people's own good, cannot. Finally, if Locke is right, even the people's ability to determine who to trust is all too limited; they trust appearances without bothering to probe enough to discover the reality. As long as mechanics smile nicely and promise the people they care only for their good, the people will continue to trust. The people do not get under the hood and find out if the mechanic did any of the promised repairs.¶ All of this requires then that we do more than just assert that the executive comfortably corrects the limitations of constitutionalism. The bland assertions about the independence of discretionary executive power do not suffice if, in the first place, it truly is necessary sometimes to wake people up in the middle of the night and torture them. In other words, precisely because we require more from the executive than comportment with the laws, or precisely because we require the president to break the laws at times, we must beware of the attempts to legalize executive discretion. A legal executive cannot possibly break people's doors down to find the plans for the enemies' attack and still remain legal. Yet, this is precisely what the executive might have to do on certain occasions. Modern constitutionalism stands as a correction to Hobbes, but Hobbes's insight about the necessity of sovereign action does not disappear. The Bush administration's attempts to legalize executive discretion pose a danger to the constitutional regime from both directions. They invite too much power, because the claims of necessity have now a legal standing. As long as you claim torture is necessary, it is legal. But insofar as Bush administration actions are "legal," they also may preclude the dramatic exercise of power that truly is necessary. A "legal" power to torture must, after all, have some limitations.¶ The temptation of executive prerogative makes these bland assertions of legality as dangerous if not more so. The people's all-too-willing acceptance of prerogative requires a constitutional order that makes it suspect else the constitutional order will be overrun. If the people were less willing to accept the "god-like prince," the constitutional order would have to worry more about their foreclosing the necessity of prerogative or punishing the exercise of prerogative unjustly. Because they tend to accept it, the constitutional order must create the conditions under which they will view it with suspicion. In other words, their apolitical tendencies must be corrected by a demand that they become political by participating in the constitutional politics of judging necessity. This participation requires that the objects of executive discretion stand outside the constitutional order until that discretion is permitted to become constitutional. Again, this constitutional position follows from the political fact of the people's tendencies if left uncorrected by constitutional doctrine. Just as the preservation of the constitutional order sometimes requires the exercise of prerogative, so too it requires that such exercise be constitutionally suspect.¶ But even as the independence of the discretionary executive poses these¶ challenges to the constitutional order, this independence is also essential. If every action of the executive must be preauthorized by the laws, then the constitutional order becomes a legalistic order that is no longer constitutional. The lawmakers will be forced to preauthorize the executive's breaking into people's houses and torturing them. Then, unsavory agents of the executive will have the authority to engage in torture. Because the exercise of discretionary power lies outside the laws, it allows the lawmakers to authorize only those actions they would be willing to contemplate as a routine matter. The existence of a discretionary executive allows the exception to remain so. But this is only possible if the executive is understood as independent of the legislature.¶ To a certain degree, both the Constitution and the separation of powers it creates aim to solve the Hobbesian problem. Although the political order remains fundamentally committed to the Hobbesian goal of peace, it reintroduces the possibility of real political contestation over the means of achieving peace. Moreover, the separation of powers creates three different brunches that represent different aspects of what we mean by peace. The judiciary represents the individual rights that the achievement of peace aims to secure. The legislative represents the common good that emerges from peace. And the executive represents the self-preservation essential for the other political goods to flourish. In its aims, executive power is necessary but not sufficient for the other two goods to flourish. The danger first perceived by Locke is that the necessary condition subsumes and overwhelms the sufficient conditions. In contemporary parlance, the demands of national security always threaten to subsume the roles of Congress and the Supreme Court.¶ For this reason, the real lesson we can gain by taking our bearing from Hobbes is how essential it is that we not conceive of our government as a unified sovereign entity. After Neagle referred to the specific national security concerns of the executive as the requirement of the government, the congressional role and the judicial role could be subsumed into the executive. After Congress believes that it must empower executive discretion for it to exist, it forces onto itself the executive perspective according to which national security is most important. After all, the necessary condition for the congressional function must be the security in which to exercise it. If Congress is responsible for providing that security, it will subsume its concern for the common good into the concern for self-preservation. The division of labor created by the separation of powers allows each branch to thrive in aiming at its function, secure in the knowledge that there is another branch aiming at other political goods. There is and must be, of course, contestation over the boundaries of these functions. But this contestation should be, in itself, viewed as a political good rather than as an evil that should be corrected by final pronouncements. The contestation over political authority corrects the Hobbesian tendency in modern liberalism to avoid politics entirely. And, as Madison suggests, it gives the people a new reason to feel republican pride in their ability to rule themselves.

#### Sequencing DA – The alt is fundamentally prior to achieving effective legal change.

Aziz Rana 12, Assistant Professor of Law, Cornell University Law School; A.B., Harvard College; J.D., Yale Law School; PhD., Harvard University, July 2012, “NATIONAL SECURITY: LEAD ARTICLE: Who Decides on Security?,” 44 Conn. L. Rev. 1417

But this mode of popular involvement comes at a key cost. Secret information is generally treated as worthy of a higher status than information already present in the public realm—the shared collective information through which ordinary citizens reach conclusions about emergency and defense. Yet, oftentimes, as with the lead up to the Iraq War in 2003, although the actual content of this secret information is flawed,197 its status as secret masks these problems and allows policymakers to cloak their positions in added authority. This reality highlights the importance of approaching security information with far greater collective skepticism; it also means that security judgments may be more ‘Hobbesian’—marked fundamentally by epistemological uncertainty as opposed to verifiable fact—than policymakers admit. If the objective sociological claims at the center of the modern security concept are themselves profoundly contested, what does this meahn for reform efforts that seek to recalibrate the relationship between liberty and security? Above all, it indicates that the central problem with the procedural solutions offered by constitutional scholars-emphasizing new statutory frameworks or greater judicial assertiveness-is that they mistake a question of politics for one of law. In other words, such scholars ignore the extent to which governing practices are the product of background political judgments about threat, democratic knowledge, professional expertise, and the necessity for insulated decision-making. To the extent that Americans are convinced that they face continuous danger from hidden and potentially limitless assailants-danger too complex for the average citizen to comprehend independently-it is inevitable that institutions (regardless of legal reform initiatives) will operate to centralize power in those hands presumed to enjoy military and security expertise. Thus, any systematic effort to challenge the current framing of the relationship between security and liberty must begin by challenging the underlying assumptions about knowledge and security upon which legal and political arrangements rest. Without a sustained and public debate about the validity of security expertise, its supporting institutions, and the broader legitimacy of secret information, there can be no substantive shift in our constitutional politics. The problem at present, however, is that it remains unclear which popular base exists in society to raise these questions. Unless such a base fully emerges, we can expect our prevailing security arrangements to become ever more entrenched.

#### Restrictions on presidential war powers push the overall acceptance of sovereign violence. Biopolitical strategies about the conduct of war are not centered around the exclusion of practice as extralegal exceptions but rather the administration of killing as a continuation of the sovereign’s power to regulate bodies as a whole.

Krassman 2012 [Susan, Professor at the Institute for Criminological Research at the University of Hamburg. “Targeted Killing and Its Law: On a Mutually Constitutive Relationship,” *Leiden Journal of International Law* 25.03]

The legal debate on targeted killing, particularly that referring to the US practice, has increased immensely during the last decade and even more so very recently, obviously due to a ‘compulsion of legality’.87 Once this state practice of resorting to the use of lethal force has been recognized as systematically taking place, it needs to be dealt with in legal terms. Whether this is done in supportive or critical terms, the assertion of targeted killing as a legal practice commences at this point. This is due to the fact that the law, once invoked, launches its own claims. To insist on disclosing ‘the full legal basis for targeted killings’; on criteria, legal procedures, and ‘access to reliable information’ in order to render governmental action controllable; or on legal principles to be applied in order to estimate the necessity and proportionality of a concrete intervention at stake,88 not only involves accepting targeted killing as a legitimate subject of debate in the first place. It requires distinctions to be made between, for example, a legitimate and an illegitimate target. It invokes the production of knowledge and the establishment of pertinent rules. Indeterminate categories are to be determined and thus established as a new reading of positive law. The introduction of international human rights standards into the debate, for example, clearly allows limits to be set in employing the pre-emptive tactic. As Wouter Werner has shown with regard to the Israeli High Court of Justice's decision on the legality of targeted killing operations,89 this may well lead, for example, to recognizing the enemy as being not ‘outlaws’ but, instead, combatants who are to be granted basic human rights. Subsequently, procedural rules may be established that restrict the practice and provide criteria for assessing the legality of concrete operations.90 At the same time, however, targeted killing is recognized as a legitimate tactic in the fight against terrorism and is being determined and implemented legally.91 When framed within the ‘theatre of war’, targeted killing categorically seems to be justifiable under the legal principles of necessity, proportionality, discrimination, and the avoidance of unnecessary suffering. This is true as long as one presupposes in general terms, as the juridical discourse usually does, both a well-considered proceeding along those principles92 and, accordingly, that targeted killing, by its very nature, is a ‘calculated, precise use of lethal force’.93 Procedural rules, like the ‘proportionality test’, that are essentially concerned with determination, namely with specifying criteria of intervention for the concrete case or constellation, certainly provide reliability by systematically inciting and provoking justifications. Their application therefore, we may say, contributes to clarifying a controversial normative interpretation, but it will never predict or determine how deliberation and justification translate into operational action. The application of procedural rules does not only notoriously remain ‘indeterminate’,94 but also produces its own truth effects. The question of proportionality, for example, is intrinsically a relational one. The damage that targeting causes is to be related to the anticipated military advantage and to the expected casualties of non-targeted operations. Even if there are ‘substantial grounds to believe’ that such an operation will ‘encounter significant armed resistance’,95 this is a presumption that, above all, entails a virtual dimension: the alternate option will never be realized. According to a Foucauldian perspective, decisions always articulate within an epistemic regime and thus ‘eventualize’ on the political stage.96 There is, in this sense, no mere decision and no mere meaning; and, conversely, there is no content of a norm, and no norm, independent of its enforcement.97 To relate this observation to our problem at hand means that, rather than the legal principles’ guiding a decision, it is the decision on how to proceed that constitutes the meaning of the legal principle in question. The legal reasoning, in turn, produces a normative reality of its own, as we are now able to imagine, comprehend, and assess a procedure and couch it in legal terms. This is also noticeable in the case of the Osama bin Laden killing. As regards the initial strategy of justification, the question of resistance typically is difficult to establish ex post in legal terms. Such situations are fraught with so many possible instances of ambiguous behaviour and risk, and the identification of actual behaviour as probably dangerous and suspicious may change the whole outcome of the event.98 But, once the public found itself with little alternative but to assume that the prospect of capturing the subject formed part of the initial order, it also had to assume that the intention was to use lethal force as a last resort. And, once the public accepts the general presumption that the United States is at war with the terrorist organization, legal reasoning about the operation itself follows and constitutes a rationale shaping the perception of similar future actions and the exercise of governmental force in general.99 Part of this rationale is the assumption, as the president immediately pointed out in his speech, that the threat of al Qaeda has not been extinguished with bin Laden. The identification of a threat that emanates from a network may give rise to the question of whether the killing of one particular target, forming part of a Hydra, makes any sense at all.100 Yet, it equally nourishes the idea that the fight against terrorism, precisely because of its elusiveness, is an enduring one, which is exactly the position the United States takes while considering itself in an armed conflict with the terrorist organization. Targeting and destroying parts of a network, then, do not destroy the entire network, but rather verify that it exists and is at work. The target, in this sense, is constituted by being targeted.101 Within the rationale of the security dispositif, there continue to be threats and new targets. Hence, at work is a transformation of laws through practice, rather than their amendment. Giorgio Agamben maintains that a legal norm, because abstract, does not stipulate its application.102 ‘Just as between language and world . . . there is no internal nexus’ between them. The norm, in this sense, exists independent of ‘reality’. This, according to Agamben, allows for the norm in the ‘state of exception’ both to be applied with the effect of ‘ceasing to apply’103 – ‘the rule, suspending itself, gives rise to the exception’104 – and to be suspended without being abolished. Although forming part of and, in fact, being the effect of applying the law, the state of exception, in Agamben's view, disconnects from the norm. Within a perspective on law as practice, by contrast, there is no such difference between norm and reality. Even to ignore a pertinent norm constitutes an act that has a meaning, namely that the norm is not being enforced. It affects the norm. Targeted killing operations, in this sense, can never be extra-legal.105 On the contrary, provided that illegal practices come up systematically, they eventually will effectuate the transformation of the law. Equally, the exception from the norm not only suspends the norm, transforming it, momentarily or permanently, into a mere symbol without meaning and force, but at the same time also impinges upon the validity of that norm. Moreover, focus on the exception within the present context falls short of capturing a rather gradual transitional process that both resists a binary deciphering of either legal or illegal and is not a matter of suspending a norm. As practices deploying particular forms of knowledge, targeted killing and its law mutually constitute each other, thus re-enforcing a new security dispositif.

The appropriate research question therefore is how positive law changes its framework of reference. Targeted killing, once perceived as illegal, now appears to be a legal practice on the grounds of a new understanding of international law's own elementary concepts. The crux of the ‘compulsion of legality’ is that legality itself is a shifting reference. Seen this way, the United States does not establish targeted killing as a legal practice on the grounds of its internationally ‘possessing’ exceptional power. Rather the reverse; it is able to employ targeted killing as a military tactic, precisely because this is accepted by the legal discourse. As a practice, targeted killing, in turn, reshapes our understanding of basic concepts of international law. Any dissenting voice will now be heard with more difficulty, since targeted killing is a no longer an isolated practice but, within the now establishing security dispositif, appears to be appropriate and rational. To counter the legal discourse, then, would require to interrupt it, rather than to respond to it, and to move on to its political implications that are rather tacitly involved in the talk about threats and security, and in the dispute about targeted killing operations’ legality. 6. Conclusion Analysing targeted killing that has asserted itself as a tactic in the US fight against terrorism within a Foucauldian perspective challenges common normative approaches in legal theory towards this phenomenon. Identifying the tactic as residing between the alternatives of either being accomplished illegally or being legal misses some important points – first of all, that there is a process at work. While presenting itself as a military tactic employed in the name of defending a threatened population, targeted killing today appears to be a new phenomenon that discarded its historical association with political assassination. As a security dispositif, second, it displaces some of the established co-ordinates of international law that are able to formally stick to established legal principles. The identification of a new dimension of threats thereby marked the turning point for a new reading of international law, as it provided a space for transforming the unknowable threat into new forms of knowledge. Third, legal reasoning that tries, whether in supportive or critical terms, to make sense of the current incoherence in international law contributes to the legal acceptance of targeted killing. This is because legal reasoning, couching the issue in legal terms, constitutes a normative reality of its own. There is, then, finally, no superior normativity the law could be measured against and therefore nothing principally unlegalizable. Instead, the normative authority resides in the law itself. It is, though, neither a quality of law as such nor merely something society attributes to the law. It lies in the very moment of law's enactment, whereas its significance depends upon the knowledge and claims thus brought into play.

#### The impact is the biopolitical securitization of populations.

Morrissey 2011 [John, Department of Geography at the National University of Ireland, “Liberal Lawfare and Biopolitics: US Juridical Warfare in the War on Terror,” *Geopolitics* 16:280-305]

What does it mean to place ‘life’ at the centre of political inquiry? What is achieved in this move? Is it possible to speak of a ‘spatiality of biopolitics’, which not only pays attention to scale but also to the complex constellation of sovereign and biopolitical power? And if so, is it helpful any longer to speak of ‘biopolitics’ and ‘geopolitics’ separately? In recent years, such questions have featured prominently in reflections across the social sciences that have sought to theorise the relations between ‘territory’ and ‘sovereign power’, ‘populations’ and ‘biopolitical power’.7 Though ‘biopolitics’ is a much contested term, deployed differently in an array of contexts, a key focus of examination in the increasingly extensive literature on the subject has nonetheless been on the spatial politics through which life is constituted and governed; in other words, how life is incorporated into modern forms of governmentality. And this, of course, is a particularly geographical concern. For geographers, putting ‘life’ at the centre of political critique poses a number of intriguing theoretical challenges that have been taken up in a variety of ways.8 Many have drawn on the work of Foucault and particularly his recently translated lectures on security, territory and population at the Collège de France in 1978.9 For Foucault, geography was, of course, pivotal to his thinking on biopower;10 and, together with the figure of ‘population’, was central too in the advancement of what Derek Gregory has called his “biopolitical imaginary”.11 In Security, Territory, Population, Foucault outlines what he saw as the eighteenth-century12 move from power primarily directed over ‘territory’ to power increasingly focused on ‘population’. From this point, Foucault argues a new “general economy of power” began to emerge, dominated by “mechanisms” or “technologies” of security whose endgame was the identification, regulation and circulation of populations; and this new “society of security” was enabled by “making the old armatures of the law and discipline function”.13 The new regulatory “apparatuses (dispositifs) of security” reflected for Foucault a shift in the sovereign’s concerns from: “the safety of his territory” to the “security of the population”; from “what limit to impose” to “facilitating the proper circulation of people”; from traditional “sovereign power” to modern “biopolitical power”.14 Foucault’s outlining of the governmental shift towards the security and securitization of whole “populations” is especially instructive to the argument I want to make later concerning the biopolitical strategies of US military commanders on the new frontiers of the war on terror.

For commanders, the ‘population’ under their command – including especially US troops – presents a dialectic of what Foucault calls “juridical-political” subjects and “technical-political” objects of “management and government”.15 In theorising the confluence of ‘security, territory, population’ in early 1978, Foucault introduced the concept of ‘governmentality’ for the first time, and indeed acknowledged his preference for “a history of “governmentality”” as a more apposite title for his lecture course that spring. ‘Governmentality’ was formulated as both a “problematic” that marks the entry of the “modern state in a general technology of power”, but also as an analytical tool that involves a “methodological principle” of going behind or outside the ‘state’ (a move away, in other words, from an “institutionalcentric” approach) to conceive of a wider perspective on “the technology of power”.16 ‘Governmentality’, for Foucault, is understood first and foremost as an assemblage of “institutions, procedures, analyses and reflections, calculations, and tactics” that capacitate a form of power that “has the population as its target, political economy as its major form of knowledge, and apparatuses of security as its essential technical instrument”.17 And the era of modernity is marked not by the state’s “takeover” of society but rather by how the state became gradually “administrative” and “governmentalized” and “controlled by apparatuses of security”.18 Foucault’s envisioning of a more governmentalised and securitized modernity, framed by a ubiquitous architecture of security, speaks on various levels to the contemporary US military’s efforts in the war on terror, but I want to mention three specifically, which I draw upon through the course of the paper. First, in the long war in the Middle East and Central Asia, the US military actively seeks to legally facilitate both the ‘circulation’ and ‘conduct’ of a target population: its own troops. This may not be commonly recognized in biopolitical critiques of the war on terror but, as will be seen later, the Judge Advocate General Corps has long been proactive in a ‘juridical’ form of warfare, or lawfare, that sees US troops as ‘technical-biopolitical’ objects of management whose ‘operational capabilities’ on the ground must be legally enabled. Second, as I have explored elsewhere, the US military’s ‘grand strategy of security’ in the war on terror – which includes a broad spectrum of tactics and technologies of security, including juridical techniques – has been relentlessly justified by a power/knowledge assemblage in Washington that has successfully scripted a neoliberal political economy argument for its global forward presence.19 Securitizing economic volatility and threat and regulating a neoliberal world order for the good of the global economy are powerful discursive touchstones registered perennially on multiple forums in Washington – from the Pentagon to the war colleges, from IR and Strategic Studies policy institutes to the House and Senate Armed Services Committees – and the endgame is the legitimisation of the military’s geopolitical and biopolitical technologies of power overseas.20 Finally, Foucault’s conceptualisation of a ‘society of security’ is marked by an urge to ‘govern by contingency’, to ‘anticipate the aleatory’, to ‘allow for the evental’.21 It is a ‘security society’ in which the very language of security is promissory, therapeutic and appealing to liberal improvement. The lawfare of the contemporary US military is precisely orientated to plan for the ‘evental’, to anticipate a series of future events in its various ‘security zones’ – what the Pentagon terms ‘Areas of Responsibility’ or ‘AORs’ (see Figure 1).22 These AORs equate, in effect, to what Foucault calls “spaces of security”, comprising “a series of possible events” that must be securitized by inserting both “the temporal” and “the uncertain”.23 And it is through preemptive juridical securitization ‘beyond the battlefield’ that the US military anticipates and enables the necessary biopolitical modalities of power and management on the ground for any future interventionary action.