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### Battlefield norms

#### Executive legal discretion for drone use outside active hostilities gets modeled and makes conflict inevitable

Rosa Brooks, Professor of Law, Georgetown University Law Center, Bernard L. Schwartz Senior Fellow, New America Foundation, 4/23/13, The Constitutional and Counterterrorism Implications of Targeted Killing, http://www.judiciary.senate.gov/pdf/04-23-13BrooksTestimony.pdf

Mr. Chairman, I would like to turn now to the legal framework applicable to US drone strikes. Both the United States and the international community have long had rules governing armed conflicts and the use of force in national self-defense. These rules apply whether the lethal force at issue involves knives, handguns, grenades or weaponized drones. When drone technologies are used in traditional armed conflicts—on “hot battlefields” such as those in Afghanistan, Iraq or Libya, for instance – they pose no new legal issues. As Administration officials have stated, their use is subject to the same requirements as the use of other lawful means and methods of warfare.28

But if drones used in traditional armed conflicts or traditional self-defense situations present no “new” legal issues, some of the activities and policies enabled and facilitated by drone technologies pose significant challenges to existing legal frameworks.

As I have discussed above, the availability of perceived low cost of drone technologies makes it far easier for the US to “expand the battlefield,” striking targets in places where it would be too dangerous or too politically controversial to send troops. Specifically, drone technologies enable the United States to strike targets deep inside foreign states, and do so quickly, efficiently and deniably. As a result, drones have become the tool of choice for so-called “targeted killing” – the deliberate targeting of an individual or group of individuals, whether known by name or targeted based on patterns of activity, inside the borders of a foreign country. It is when drones are used in targeted killings outside of traditional or “hot” battlefields that their use challenges existing legal frameworks.

Law is almost always out of date: we make legal rules based on existing conditions and technologies, perhaps with a small nod in the direction of predicted future changes. As societies and technologies change, law increasingly becomes an exercise in jamming square pegs into round holes. Eventually, that process begins to do damage to existing law: it gets stretched out of shape, or broken. Right now, I would argue, US drone policy is on the verge of doing significant damage to the rule of law.

A. The Rule of Law

At root, the idea of “rule of law” is fairly simple, and well understood by Americans familiar with the foundational documents that established our nation, such as the Declaration of Independence, the Constitution and the Bill of Rights. The rule of law requires that governments follow transparent, clearly defined and universally applicable laws and procedures. The goal of the rule of law is to ensure predictability and stability, and to prevent the arbitrary exercise of power. In a society committed to the rule of law, the government cannot fine you, lock you up, or kill you on a whim -- it can restrict your liberty or take your property or life only in accordance with pre-established processes and rules that reflect basic notions of justice, humanity and fairness.

Precisely what constitutes a fair process is debatable, but most would agree that at a minimum, fairness requires that individuals have reasonable notice of what constitutes the applicable law, reasonable notice that they are suspected of violating the law, a reasonable opportunity to rebut any allegations against them, and a reasonable opportunity to have the outcome of any procedures or actions against them reviewed by some objective person or body. These core values are enshrined both in the US Constitution and in international human rights law instruments such as the International Covenant on Civil and Political Rights, to which the United States is a party.

In ordinary circumstances, this bundle of universally acknowledged rights (together with international law principles of sovereignty) means it is clearly unlawful for one state to target and kill an individual inside the borders of another state. Recall, for instance, the 1976 killing of Chilean dissident Orlando Letelier in Washington DC. When Chilean government intelligence operatives planted a car bomb in the car used by Letelier, killing him and a US citizen accompanying him, the United States government called this an act of murder—an unlawful political assassination.

B. Targeted Killing and the Law of Armed Conflict

Of course, sometimes the “ordinary” legal rules do not apply. In war, the willful killing of human beings is permitted, whether the means of killing is a gun, a bomb, or a long-distance drone strike. The law of armed conflict permits a wide range of behaviors that would be unlawful in the absence of an armed conflict. Generally speaking, the intentional destruction of private property and severe restrictions on individual liberties are impermissible in peacetime, but acceptable in wartime, for instance. Even actions that a combatant knows will cause civilian deaths are lawful when consistent with the principles of necessity, humanity, proportionality,29 and distinction.30

It is worth briefly explaining these principles. The principle of necessity requires parties to a conflict to limit their actions to those that are indispensible for securing the complete submission of the enemy as soon as possible (and that are otherwise permitted by international law). The principle of humanity forbids parties to a conflict to inflict gratuitous violence or employ methods calculated to cause unnecessary suffering. The principle of proportionality requires parties to ensure that the anticipated loss of life or property incidental to an attack is not excessive in relation to the concrete and direct military advantage expected to be gained.

Finally, the principle of discrimination or distinction requires that parties to a conflict direct their actions only against combatants and military objectives, and take appropriate steps to distinguish between combatants and non-combatants.31

This is a radical oversimplification of a very complex body of law.32 But as with the rule of law, the basic idea is pretty simple. When there is no war -- when ordinary, peacetime law applies -- agents of the state aren't supposed to lock people up, take their property or kill them, unless they have jumped through a whole lot of legal hoops first. When there is an armed conflict, however, everything changes. War is not a legal free-for-all33 -- torture, rape are always crimes under the law of war, as is killing that is willful, wanton and not justified by military necessity34 -- but there are far fewer constraints on state behavior.

Technically, the law of war is referred to using the Latin term “lex specialis” – special law. It is applicable in—and only in -- special circumstances (in this case, armed conflict), and in those special circumstances, it supersedes “ordinary law,” or “lex generalis,” the “general law” that prevails in peacetime. We have one set of laws for “normal” situations, and another, more flexible set of laws for “extraordinary” situations, such as armed conflicts.

None of this poses any inherent problem for the rule of law. Having one body of rules that tightly restricts the use of force and another body of rules that is far more permissive does not fundamentally undermine the rule of law, as long as we have a reasonable degree of consensus on what circumstances trigger the “special” law, and as long as the “special law” doesn’t end up undermining the general law.

To put it a little differently, war, with its very different rules, does not challenge ordinary law as long as war is the exception, not the norm -- as long as we can all agree on what constitutes a war -- as long as we can tell when the war begins and ends -- and as long as we all know how to tell the difference between a combatant and a civilian, and between places where there's war and places where there's no war.

Let me return now to the question of drones and targeted killings. When all these distinctions I just mentioned are clear, the use of drones in targeted killings does not necessarily present any great or novel problem. In Libya, for instance, a state of armed conflict clearly existed inside the borders of Libya between Libyan government forces and NATO states. In that context, the use of drones to strike Libyan military targets is no more controversial than the use of manned aircraft.

That is because our core rule of law concerns have mostly been satisfied: we know there is an armed conflict, in part because all parties to it agree that there is an armed conflict, in part because observers (such as international journalists) can easily verify the presence of uniformed military personnel engaged in using force, and in part because the violence is, from an objective perspective, widespread and sustained: it is not a mere skirmish or riot or criminal law enforcement situation that got out of control. We know who the “enemy” is: Libyan government forces. We know where the conflict is and is not: the conflict was in Libya, but not in neighboring Algeria or Egypt. We know when the conflict began, we know who authorized the use of force (the UN Security Council) and, just as crucially, we know whom to hold accountable in the event of error or abuse (the various governments involved).35

Once you take targeted killings outside hot battlefields, it’s a different story. The Obama Administration is currently using drones to strike terror suspects in Pakistan, Somalia, Yemen, and –perhaps—Mali and the Philippines as well. Defenders of the administration's increasing reliance on drone strikes in such places assert that the US is in an armed conflict with “al Qaeda and its associates,” and on that basis, they assert that the law of war is applicable -- in any place and at any time -- with regard to any person the administration deems a combatant.

The trouble is, no one outside a very small group within the US executive branch has any ability to evaluate who is and who isn’t a combatant. The war against al Qaeda and its associates is not like World War II, or Libya, or even Afghanistan: it is an open-ended conflict with an inchoate, undefined adversary (who exactly are al Qaeda’s “associates”?). What is more, targeting decisions in this nebulous “war” are based largely on classified intelligence reporting. As a result, Administration assertions about who is a combatant and what constitutes a threat are entirely non-falsifiable, because they're based wholly on undisclosed evidence. Add to this still another problem: most of these strikes are considered covert action, so although the US sometimes takes public credit for the deaths of alleged terrorist leaders, most of the time, the US will not even officially acknowledge targeted killings.

This leaves all the key rule-of-law questions related to the ongoing war against al Qaeda and its "associates" unanswered.36 Based on what criteria might someone be considered a combatant or directly participating in hostilities? What constitutes “hostilities” in the context of an armed conflict against a non-state actor, and what does it mean to participate in them? And just where is the war? Does the war (and thus the law of war) somehow "travel" with combatants? Does the US have a “right” to target enemy combatants anywhere on earth, or does it depend on the consent of the state at issue? Who in the United States government is authorized to make such determinations, and what is the precise chain of command for such decisions?

I think the rule of law problem here is obvious: when “armed conflict” becomes a term flexible enough to be applied both to World War II and to the relations between the United States and “associates” of al Qaeda such as Somalia’s al Shabaab, the concept of armed conflict is not very useful anymore. And when we lack clarity and consensus on how to recognize “armed conflict,” we no longer have a clear or principled basis for deciding how to categorize US targeted killings. Are they, as the US government argues, legal under the laws of war? Or are they, as some human rights groups have argued, unlawful murder?

C. Targeted Killing and the International Law of Self-Defense

When faced with criticisms of the law of war framework as a justification for targeted killing, Obama Administration representatives often shift tack, arguing that international law rules on national self-defense provide an alternative or additional legal justification for US targeted killings. Here, the argument is that if a person located in a foreign state poses an "imminent threat of violent attack" against the United States, the US can lawfully use force in self-defense, provided that the defensive force used is otherwise consistent with law of war principles.

Like law of war-based arguments, this general principle is superficially uncontroversial: if someone overseas is about to launch a nuclear weapon at New York City, no one can doubt that the United States has a perfect right (and the president has a constitutional duty) to use force if needed to prevent that attack, regardless of the attacker's nationality.

But once again, the devil is in the details. To start with, what constitutes an "imminent" threat? Traditionally, both international law and domestic criminal law understand that term narrowly: 37 to be "imminent," a threat cannot be distant or speculative.38 But much like the Bush Administration before it, the Obama Administration has put forward an interpretation of the word “imminent” that bears little relation to traditional legal concepts.

According to a leaked 2011 Justice Department white paper39—the most detailed legal justification that has yet become public-- the requirement of imminence "does not require the United States to have clear evidence that a specific attack on U.S. persons and interests will take place in the immediate future." This seems, in itself, like a substantial departure from accepted international law definitions of imminence.

But the White Paper goes even further, stating that "certain members of al Qaeda are continually plotting attacks...and would engage in such attacks regularly [if] they were able to do so, [and] the US government may not be aware of all... plots as they are developing and thus cannot be confident that none is about to occur." For this reason, it concludes, anyone deemed to be an operational leader of al Qaeda or its "associated forces" presents, by definition, an imminent threat even in the absence of any evidence whatsoever relating to immediate or future attack plans. In effect, the concept of "imminent threat" (part of the international law relating to self-defense) becomes conflated with identity or status (a familiar part of the law of armed conflict).

That concept of imminence has been called Orwellian, and although that is an overused epithet, in this context it seems fairly appropriate. According to the Obama Administration, “imminent” no longer means “immediate,” and in fact the very absence of clear evidence indicating specific present or future attack plans becomes, paradoxically, the basis for assuming that attack may perpetually be “imminent.”

The 2011 Justice Department White Paper notes that the use of force in self-defense must comply with general law of war principles of necessity, proportionality, humanity, and distinction. The White Paper offers no guidance on the specific criteria for determining when an individual is a combatant (or a civilian participating directly in hostilities), however. It also offers no guidance on how to determine if a use of force is necessary or proportionate.

From a traditional international law perspective, this necessity and proportionality inquiry relates both to imminence and to the gravity of the threat itself, but so far there has been no public Administration statement as to how the administration interprets these requirements. Is any threat of "violent attack" sufficient to justify killing someone in a foreign country, including a U.S. citizen? Is every potential suicide bomber targetable, or does it depend on the gravity of the threat? Are we justified in drone strikes against targets who might, if they get a chance at some unspecified future point, place an IED that might, if successful, kill one person? Ten people? Twenty? 2,000? How grave a threat must there be to justify the use of lethal force against an American citizen abroad -- or against non-citizens, for that matter?

As I have noted, it is impossible for outsiders to fully evaluate US drone strikes, since so much vital information remains classified. In most cases, we know little about the identities; activities or future plans of those targeted. Nevertheless, given the increased frequency of US targeted killings in recent years, it seems reasonable to wonder whether the Administration conducts a rigorous necessity or proportionality analysis in all cases.

So far, the leaked 2011 Justice Department White Paper represents the most detailed legal analysis of targeted killings available to the public. It is worth noting, incidentally, that this White Paper addresses only the question of whether and when it is lawful for the US government to target US citizens abroad. We do not know what legal standards the Administration believes apply to the targeting of non-citizens. It seems reasonable to assume, however, that the standards applicable to non-citizens are less exacting than those the Administration views as applicable to citizens.

Defenders of administration targeted killing policy acknowledge that the criteria for determining how to answer these many questions have not been made public, but insist that this should not be cause for concern. The Administration has reportedly developed a detailed “playbook” outlining the targeting criteria and procedures,40, and insiders insist that executive branch officials go through an elaborate process in which they carefully consider every possible issue before determining that a drone strike is lawful.41

No doubt they do, but this is somewhat cold comfort. Formal processes tend to further normalize once-exceptional activities -- and "trust us" is a rather shaky foundation for the rule of law. Indeed, the whole point of the rule of law is that individual lives and freedom should not depend solely on the good faith and benevolence of government officials.

As with law of war arguments, stating that US targeted killings are clearly legal under traditional self-defense principles requires some significant cognitive dissonance. Law exists to restrain untrammeled power. It is no doubt possible to make a plausible legal argument justifying each and every U.S. drone strike -- but this merely suggests that we are working with a legal framework that has begun to outlive its usefulness.

The real question isn't whether U.S. drone strikes are "legal." The real question is this: Do we really want to live in a world in which the U.S. government's justification for killing is so malleable?

5. Setting Troubling International Precedents

Here is an additional reason to worry about the U.S. overreliance on drone strikes: Other states will follow America's example, and the results are not likely to be pretty. Consider once again the Letelier murder, which was an international scandal in 1976: If the Letelier assassination took place today, the Chilean authorities would presumably insist on their national right to engage in “targeted killings” of individuals deemed to pose imminent threats to Chilean national security -- and they would justify such killings using precisely the same legal theories the US currently uses to justify targeted killings in Yemen or Somalia. We should assume that governments around the world—including those with less than stellar human rights records, such as Russia and China—are taking notice.

Right now, the United States has a decided technological advantage when it comes to armed drones, but that will not last long. We should use this window to advance a robust legal and normative framework that will help protect against abuses by those states whose leaders can rarely be trusted. Unfortunately, we are doing the exact opposite: Instead of articulating norms about transparency and accountability, the United States is effectively handing China, Russia, and every other repressive state a playbook for how to foment instability and –literally -- get away with murder.

Take the issue of sovereignty. Sovereignty has long been a core concept of the Westphalian international legal order.42 In the international arena, all sovereign states are formally considered equal and possessed of the right to control their own internal affairs free of interference from other states. That's what we call the principle of non-intervention -- and it means, among other things, that it is generally prohibited for one state to use force inside the borders of another sovereign state. There are some well-established exceptions, but they are few in number. A state can lawfully use force inside another sovereign state with that state's invitation or consent, or when force is authorized by the U.N. Security Council, pursuant to the U.N. Charter,43 or in self-defense "in the event of an armed attack."

The 2011 Justice Department White Paper asserts that targeted killings carried out by the United States don't violate another state's sovereignty as long as that state either consents or is "unwilling or unable to suppress the threat posed by the individual being targeted." That sounds superficially plausible, but since the United States views itself as the sole arbiter of whether a state is "unwilling or unable" to suppress that threat, the logic is in fact circular.

It goes like this: The United States -- using its own malleable definition of "imminent" -- decides that Person X, residing in sovereign State Y, poses a threat to the United States and requires killing. Once the United States decides that Person X can be targeted, the principle of sovereignty presents no barriers, because either 1) State Y will consent to the U.S. use of force inside its borders, in which case the use of force presents no sovereignty problems or 2) State Y will not consent to the U.S. use of force inside its borders, in which case, by definition, the United States will deem State Y to be "unwilling or unable to suppress the threat" posed by Person X and the use of force again presents no problem.

This is a legal theory that more or less eviscerates traditional notions of sovereignty, and has the potential to significantly destabilize the already shaky collective security regime created by the U.N. Charter.44 If the US is the sole arbiter of whether and when it can use force inside the borders of another state, any other state strong enough to get away with it is likely to claim similar prerogatives. And, of course, if the US executive branch is the sole arbiter of what constitutes an imminent t hreat and who constitutes a targetable enemy combatant in an ill- defined war, why shouldn’t other states make identical arguments—and use them to justify the killing of dissidents, rivals, or unwanted minorities?

#### That lowers the threshold for agression and undermines strategy

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But the advantages of drones are as overstated and misunderstood as the problems they pose — and in some ways, their very perceived advantages cause new problems. Drone technologies temptingly lower or disguise the costs of lethal force, but their availability can blind us to the potentially dangerous longer - term costs and consequences of our strategic choices. Armed drones lower the perceived costs of using lethal force in at least three ways. First, drones reduce the dollar cost of using lethal force inside foreign countries. 13 Most drones are economical compared with the available alternatives. 14 Manned aircraft, for instance, are quite expensive: 15 Lockheed Martin's F - 22 fighter jets cost about $150 million each; F - 35s are $90 million; and F - 16s are $55 million. But the 2011 price of a Reaper drone was approximately $28.4 million, while Predator drones cost only about $5 million to make. 16 As with so many things, putting a dollar figure on drones is difficult; it depends what costs are counted, and what time frame is used. Nevertheless, drones continue to be perceived as cheaper by government decision - makers. Second, relying on drone strikes rather than alternative means reduces the domestic political costs of using lethal force. Sending manned aircraft or special operations forces after a suspected terrorist places the lives of U.S. personnel at risk, and full - scale invasions and occupations endanger even more American lives. In contrast, using armed drones eliminates all short - term risks to the lives of U.S. personnel involved in the operations. Third, by reducing accidental civilian casualties, 17 precision drone technologies reduce the perceived moral and reputational costs of using lethal force. The US government is extraordinarily concerned about avoiding unnecessary civilian casualties, and rightly so. There are moral and legal reasons for this concern, and there are also pragmatic reasons: civilian casualties cause pain and resentment within local populations and host - country governments and alienate the international community It is of course not a bad thing to possess military technologies that are cost little, protect American lives and enable us to minimize civilian casualties. When new technologies appear to reduce the costs of using lethal force, however, the threshold for deciding to use lethal force correspondingly drops, and officials will be tempted to use lethal force with greater frequency and less wisdom. Over the last decade, we have seen US drone strikes evolve from a tool used in extremely limited circumstances to go after specifically identified high - ranking al Qaeda officials to a tool relied on in an increasing number of countries to go after an eternally lengthening list of putative bad actors, with increasingly tenuous links to grave or imminent threats to the United States. Some of these suspected terrorists have been identified by name and specifically targeted, while others are increasingly targeted on the basis of suspicious behavior patterns. Increasingly, drones strikes have targeted militants who are lower and lower down the terrorist food chain, 18 rather than terrorist masterminds. 19 Although drone strikes are believed to have killed more than 3,000 people since 2004, 20 analysis by the New America Foundation and more recently by a the McClatchy newspaper s suggests that only a small fraction of the dead appear to have been so - called "high - value targets." 21 What’s more, drone strikes have spread ever further from "hot" battlefields, migrating from Pakistan to Yemen to Somalia (and perhaps to Mali 22 and the Philippines as well). 23

#### Results in great power war—traditional checks don’t apply

Eric Posner 13, a professor at the University of Chicago Law School, May 15th, 2013, "The Killer Robot War is Coming," Slate, www.slate.com/articles/news\_and\_politics/view\_from\_chicago/2013/05/drone\_warfare\_and\_spying\_we\_need\_new\_laws.html

Drones have existed for decades, but in recent years they have become ubiquitous. Some people celebrate drones as an effective and humane weapon because they can be used with precision to slay enemies and spare civilians, and argue that they pose no special risks that cannot be handled by existing law. Indeed, drones, far more than any other weapon, enable governments to comply with international humanitarian law by avoiding civilian casualties when attacking enemies. Drone defenders also mocked Rand Paul for demanding that the Obama administration declare whether it believed that it could kill people with drones on American territory. Existing law permits the police to shoot criminals who pose an imminent threat to others; if police can gun down hostage takers and rampaging shooters, why can’t they drone them down too? While there is much to be said in favor of these arguments, drone technology poses a paradox that its defenders have not confronted. Because drones are cheap, effective, riskless for their operators, and adept at minimizing civilian casualties, governments may be tempted to use them too frequently. Indeed, a panic has already arisen that the government will use drones to place the public under surveillance. Many municipalities have passed laws prohibiting such spying even though it has not yet taken place. Why can’t we just assume that existing privacy laws and constitutional rights are sufficient to prevent abuses? To see why, consider U.S. v. Jones, a 2012 case in which the Supreme Court held that the police must get a search warrant before attaching a GPS tracking device to a car, because the physical attachment of the device trespassed on property rights. Justice Samuel Alito argued that this protection was insufficient, because the government could still spy on people from the air. While piloted aircraft are too expensive to use routinely, drones are not, or will not be. One might argue that if the police can observe and follow you in public without obtaining a search warrant, they should be able to do the same thing with drones. But when the cost of surveillance declines, more surveillance takes place. If police face manpower limits, then they will spy only when strong suspicions justify the intrusion on targets’ privacy. If police can launch limitless drones, then we may fear that police will be tempted to shadow ordinary people without good reason. Similarly, we may be comfortable with giving the president authority to use military force on his own when he must put soldiers into harm’s way, knowing that he will not risk lives lightly. Presidents have learned through hard experience that the public will not tolerate even a handful of casualties if it does not believe that the mission is justified. But when drones eliminate the risk of casualties, the president is more likely to launch wars too often. The same problem arises internationally. The international laws that predate drones assume that military intervention across borders risks significant casualties. Since that check normally kept the peace, international law could give a lot of leeway for using military force to chase down terrorists. But if the risk of casualties disappears, then nations might too eagerly attack, resulting in blowback and retaliation. Ironically, the reduced threat to civilians in tactical operations could wind up destabilizing relationships between countries, including even major powers like the United States and China, making the long-term threat to human life much greater. These three scenarios illustrate the same lesson: that law and technology work in tandem. When technological barriers limit the risk of government abuse, legal restrictions on governmental action can be looser. When those technological barriers fall, legal restrictions may need to be tightened.

#### These conflicts go nuclear

Michael J Boyle 13, Assistant Professor of Political Science at La Salle University, former Lecturer in International Relations and Research Fellow at the Centre for the Study of Terrorism and Political Violence at the University of St Andrews, PhD from Cambridge University, January 2013, “The costs and consequences of drone warfare,” International Affairs 89: 1 (2013) 1–29, http://www.chathamhouse.org/sites/default/files/public/International%20Affairs/2013/89\_1/89\_1Boyle.pdf

A second consequence of the spread of drones is that many of the traditional concepts which have underwritten stability in the international system will be radically reshaped by drone technology. For example, much of the stability among the Great Powers in the international system is driven by deterrence, specifically nuclear deterrence.135 Deterrence operates with informal rules of the game and tacit bargains that govern what states, particularly those holding nuclear weapons, may and may not do to one another.136 While it is widely understood that nuclear-capable states will conduct aerial surveillance and spy on one another, overt military confrontations between nuclear powers are rare because they are assumed to be costly and prone to escalation. One open question is whether these states will exercise the same level of restraint with drone surveillance, which is unmanned, low cost, and possibly deniable. States may be more willing to engage in drone overflights which test the resolve of their rivals, or engage in ‘salami tactics’ to see what kind of drone-led incursion, if any, will motivate a response.137 This may have been Hezbollah’s logic in sending a drone into Israeli airspace in October 2012, possibly to relay information on Israel’s nuclear capabilities.138 After the incursion, both Hezbollah and Iran boasted that the drone incident demonstrated their military capabilities.139 One could imagine two rival states—for example, India and Pakistan—deploying drones to test each other’s capability and resolve, with untold consequences if such a probe were misinterpreted by the other as an attack. As drones get physically smaller and more precise, and as they develop a greater flying range, the temptation to use them to spy on a rival’s nuclear programme or military installations might prove too strong to resist. If this were to happen, drones might gradually erode the deterrent relationships that exist between nuclear powers, thus magnifying the risks of a spiral of conflict between them.

#### Unrestricted drone use causes war in the Caucuses

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Armenia and Azerbaijan could soon be at war if drone proliferation on both sides of the border continues. In a region where a fragile peace holds over three frozen conflicts, the nations of the South Caucasus are buzzing with drones they use to probe one another’s defenses and spy on disputed territories. The region is also host to strategic oil and gas pipelines and a tangled web of alliances and precious resources that observers say threaten to quickly escalate the border skirmishes and airspace violations to a wider regional conflict triggered by Armenia and Azerbaijan that could potentially pull in Israel, Russia and Iran. To some extent, these countries are already being pulled towards conflict. Last September, Armenia shot down an Israeli-made Azerbaijani drone over Nagorno-Karabakh and the government claims that drones have been spotted ahead of recent incursions by Azerbaijani troops into Armenian-held territory. Richard Giragosian, director of the Regional Studies Center in Yerevan, said in a briefing that attacks this summer showed that Azerbaijan is eager to “play with its new toys” and its forces showed “impressive tactical and operational improvement.” The International Crisis Group warned that as the tit-for-tat incidents become more deadly, “there is a growing risk that the increasing frontline tensions could lead to an accidental war.” “Everyone is now saying that the war is coming. We know that it could start at any moment.” ~Grush Agbaryan, mayor of Voskepar With this in mind, the UN and the Organization for Security and Co-operation in Europe (OSCE) have long imposed a non-binding arms embargo on both countries, and both are under a de facto arms ban from the United States. But, according to the Stockholm International Peace Research Institute (SIPRI), this has not stopped Israel and Russia from selling to them. After fighting a bloody war in the early 1990s over the disputed territory of Nagorno-Karabakh, Armenia and Azerbaijan have been locked in a stalemate with an oft-violated ceasefire holding a tenuous peace between them. And drones are the latest addition to the battlefield. In March, Azerbaijan signed a $1.6 billion arms deal with Israel, which consisted largely of advanced drones and an air defense system. Through this and other deals, Azerbaijan is currently amassing a squadron of over 100 drones from all three of Israel’s top defense manufacturers. Armenia, meanwhile, employs only a small number of domestically produced models. Intelligence gathering is just one use for drones, which are also used to spot targets for artillery, and, if armed, strike targets themselves. Armenian and Azerbaijani forces routinely snipe and engage one another along the front, each typically blaming the other for violating the ceasefire. At least 60 people have been killed in ceasefire violations in the last two years, and the Brussels-based International Crisis Group claimed in a report published in February 2011 that the sporadic violence has claimed hundreds of lives. “Each (Armenia and Azerbaijan) is apparently using the clashes and the threat of a new war to pressure its opponent at the negotiations table, while also preparing for the possibility of a full-scale conflict in the event of a complete breakdown in the peace talks,” the report said. Alexander Iskandaryan, director of the Caucasus Institute in the Armenian capital, Yerevan, said that the arms buildup on both sides makes the situation more dangerous but also said that the clashes are calculated actions, with higher death tolls becoming a negotiating tactic. “This isn’t Somalia or Afghanistan. These aren’t independent units. The Armenian, Azerbaijani and Karabakh armed forces have a rigid chain of command so it’s not a question of a sergeant or a lieutenant randomly giving the order to open fire. These are absolutely synchronized political attacks,” Iskandaryan said. The deadliest recent uptick in violence along the Armenian-Azerbaijani border and the line of contact around Karabakh came in early June as US Secretary of State Hillary Clinton was on a visit to the region. While death tolls varied, at least two dozen soldiers were killed or wounded in a series of shootouts along the front. The year before, at least four Armenian soldiers were killed in an alleged border incursion by Azerbaijani troops one day after a peace summit between the Armenian, Azerbaijani and Russian presidents in St. Petersburg, Russia. “No one slept for two or three days [during the June skirmishes],” said Grush Agbaryan, the mayor of the border village of Voskepar for a total of 27 years off and on over the past three decades. “Everyone is now saying that the war is coming. We know that it could start at any moment." Azerbaijan refused to issue accreditation to GlobalPost’s correspondent to enter the country to report on the shootings and Azerbaijan’s military modernization. Flush with cash from energy exports, Azerbaijan has increased its annual defense budget from an estimated $160 million in 2003 to $3.6 billion in 2012. SIPRI said in a report that largely as a result of its blockbuster drone deal with Israel, Azerbaijan’s defense budget jumped 88 percent this year — the biggest military spending increase in the world. Israel has long used arms deals to gain strategic leverage over its rivals in the region. Although difficult to confirm, many security analysts believe Israel’s deals with Russia have played heavily into Moscow’s suspension of a series of contracts with Iran and Syria that would have provided them with more advanced air defense systems and fighter jets. Stephen Blank, a research professor at the United States Army War College, said that preventing arms supplies to Syria and Iran — particularly Russian S-300 air defense systems — has been among Israel’s top goals with the deals. “There’s always a quid pro quo,” Blank said. “Nobody sells arms just for cash.” In Azerbaijan in particular, Israel has traded its highly demanded drone technology for intelligence arrangements and covert footholds against Iran. In a January 2009 US diplomatic cable released by WikiLeaks, a US diplomat reported that in a closed-door conversation, Azerbaijani President Ilham Aliyev compared his country’s relationship with Israel to an iceberg — nine-tenths of it is below the surface. Although the Jewish state and Azerbaijan, a conservative Muslim country, may seem like an odd couple, the cable asserts, “Each country finds it easy to identify with the other’s geopolitical difficulties, and both rank Iran as an existential security threat.” Quarrels between Azerbaijan and Iran run the gamut of territorial, religious and geo-political disputes and Tehran has repeatedly threatened to “destroy” the country over its support for secular governance and NATO integration. In the end, “Israel’s main goal is to preserve Azerbaijan as an ally against Iran, a platform for reconnaissance of that country and as a market for military hardware,” the diplomatic cable reads. But, while these ties had indeed remained below the surface for most of the past decade, a series of leaks this year exposed the extent of their cooperation as Israel ramped up its covert war with the Islamic Republic. In February, the Times of London quoted a source the publication said was an active Mossad agent in Azerbaijan as saying the country was “ground zero for intelligence work.” This came amid accusations from Tehran that Azerbaijan had aided Israeli agents in assassinating an Iranian nuclear scientist in January. Then, just as Baku had begun to cool tensions with the Islamic Republic, Foreign Policy magazine published an article citing Washington intelligence officials who claimed that Israel had signed agreements to use Azerbaijani airfields as a part of a potential bombing campaign against Iran’s nuclear sites. Baku strongly denied the claims, but in September, Azerbaijani officials and military sources told Reuters that the country would figure in Israel’s contingencies for a potential attack against Iran. "Israel has a problem in that if it is going to bomb Iran, its nuclear sites, it lacks refueling," Rasim Musabayov, a member of the Azerbiajani parliamentary foreign relations committee told Reuters. “I think their plan includes some use of Azerbaijan access. We have (bases) fully equipped with modern navigation, anti-aircraft defenses and personnel trained by Americans and if necessary they can be used without any preparations." He went on to say that the drones Israel sold to Azerbaijan allow it to “indirectly watch what's happening in Iran.” According to SIPRI, Azerbaijan had acquired about 30 drones from Israeli firms Aeronautics Ltd. and Elbit Systems by the end of 2011, including at least 25 medium-sized Hermes-450 and Aerostar drones. In October 2011, Azerbaijan signed a deal to license and domestically produce an additional 60 Aerostar and Orbiter 2M drones. Its most recent purchase from Israel Aeronautics Industries (IAI) in March reportedly included 10 high altitude Heron-TP drones — the most advanced Israeli drone in service — according to Oxford Analytica. Collectively, these purchases have netted Azerbaijan 50 or more drones that are similar in class, size and capabilities to American Predator and Reaper-type drones, which are the workhorses of the United States’ campaign of drone strikes in Pakistan and Yemen. Although Israel may have sold the drones to Azerbaijan with Iran in mind, Baku has said publicly that it intends to use its new hardware to retake territory it lost to Armenia. So far, Azerbaijan’s drone fleet is not armed, but industry experts say the models it employs could carry munitions and be programmed to strike targets. Drones are a tempting tool to use in frozen conflicts, because, while their presence raises tensions, international law remains vague at best on the legality of using them. In 2008, several Georgian drones were shot down over its rebel region of Abkhazia. A UN investigation found that at least one of the drones was downed by a fighter jet from Russia, which maintained a peacekeeping presence in the territory. While it was ruled that Russia violated the terms of the ceasefire by entering aircraft into the conflict zone, Georgia also violated the ceasefire for sending the drone on a “military operation” into the conflict zone. The incident spiked tensions between Russia and Georgia, both of which saw it as evidence the other was preparing to attack. Three months later, they fought a brief, but destructive war that killed hundreds. The legality of drones in Nagorno-Karabakh is even less clear because the conflict was stopped in 1994 by a simple ceasefire that halted hostilities but did not stipulate a withdrawal of military forces from the area. Furthermore, analysts believe that all-out war between Armenia and Azerbaijan would be longer and more difficult to contain than the five-day Russian-Georgian conflict. While Russia was able to quickly rout the Georgian army with a much superior force, analysts say that Armenia and Azerbaijan are much more evenly matched and therefore the conflict would be prolonged and costly in lives and resources. Blank said that renewed war would be “a very catastrophic event” with “a recipe for a very quick escalation to the international level.” Armenia is militarily allied with Russia and hosts a base of 5,000 Russian troops on its territory. After the summer’s border clashes, Russia announced it was stepping up its patrols of Armenian airspace by 20 percent. Iran also supports Armenia and has important business ties in the country, which analysts say Tehran uses as a “proxy” to circumvent international sanctions. Blank said Israel has made a risky move by supplying Azerbaijan with drones and other high tech equipment, given the tenuous balance of power between the heavily fortified Armenian positions and the more numerous and technologically superior Azerbaijani forces. If ignited, he said, “[an Armenian-Azerbaijani war] will not be small. That’s the one thing I’m sure of.”

#### Nuclear war

Blank 2k—Stephen, Prof. Research at Strategic Studies Inst. @ US Army War College [“U.S. Military Engagement with Transcaucasia and Central Asia”, www.strategicstudiesinstitute.army.mil/pdffiles/pub113.pdf]

Washington’s burgeoning military-political-economic involvement seeks, inter alia, to demonstrate the U.S. ability to project military power even into this region or for that matter, into Ukraine where NATO recently held exercises that clearly originated as an anti-Russian scenario. Secretary of Defense William Cohen has discussed strengthening U.S.-Azerbaijani military cooperation and even training the Azerbaijani army, certainly alarming Armenia and Russia.69 And Washington is also training Georgia’s new Coast Guard. 70 However, Washington’s well-known ambivalence about committing force to Third World ethnopolitical conflicts suggests that U.S. military power will not be easily committed to saving its economic investment. But this ambivalence about committing forces and the dangerous situation, where Turkey is allied to Azerbaijan and Armenia is bound to Russia, create the potential for wider and more protracted regional conflicts among local forces. In that connection, Azerbaijan and Georgia’s growing efforts to secure NATO’s lasting involvement in the region, coupled with Russia’s determination to exclude other rivals, foster a polarization along very traditional lines.71 In 1993 Moscow even threatened World War III to deter Turkish intervention on behalf of Azerbaijan. Yet the new Russo-Armenian Treaty and Azeri-Turkish treaty suggest that Russia and Turkey could be dragged into a confrontation to rescue their allies from defeat. 72 Thus many of the conditions for conventional war or protracted ethnic conflict in which third parties intervene are present in the Transcaucasus. For example, many Third World conflicts generated by local structural factors have a great potential for unintended escalation. Big powers often feel obliged to rescue their lesser proteges and proxies. One or another big power may fail to grasp the other side’s stakes since interests here are not as clear as in Europe. Hence commitments involving the use of nuclear weapons to prevent a client’s defeat are not as well established or apparent. Clarity about the nature of the threat could prevent the kind of rapid and almost uncontrolled escalation we saw in 1993 when Turkish noises about intervening on behalf of Azerbaijan led Russian leaders to threaten a nuclear war in that case. 73 Precisely because Turkey is a NATO ally, Russian nuclear threats could trigger a potential nuclear blow (not a small possibility given the erratic nature of Russia’s declared nuclear strategies). The real threat of a Russian nuclear strike against Turkey to defend Moscow’s interests and forces in the Transcaucasus makes the danger of major war there higher than almost everywhere else. As Richard Betts has observed, The greatest danger lies in areas where (1) the potential for serious instability is high; (2) both superpowers perceive vital interests; (3) neither recognizes that the other’s perceived interest or commitment is as great as its own; (4) both have the capability to inject conventional forces; and, (5) neither has willing proxies capable of settling the situation.74 that preclude its easy attainment of regional hegemony. And even the perceptions of waning power are difficult to accept and translate into Russian policy. In many cases, Russia still has not truly or fully accepted how limited its capabilities for securing its vital interests are. 76 While this hardly means that Russia can succeed at will regionally, it does mean that for any regional balance, either on energy or other major security issues, to be realized, someone else must lend power to the smaller Caspian littoral states to anchor that balance. Whoever effects that balance must be willing to play a protracted and potentially even military role in the region for a long time and risk the kind of conflict which Betts described. There is little to suggest that the United States can or will play this role, yet that is what we are now attempting to do. This suggests that ultimately its bluff can be called. That is, Russia could sabotage many if not all of the forthcoming energy projects by relatively simple and tested means and there is not much we could do absent a strong and lasting regional commitment.

#### Plan solves—explicit legal distinctions foster international consensus-building

Daskal 13 [Copyright (c) 2013 University of Pennsylvania Law Review University of Pennsylvania Law Review April, 2013 University of Pennsylvania Law Review 161 U. Pa. L. Rev. 1165 LENGTH: 24961 words ARTICLE: THE GEOGRAPHY OF THE BATTLEFIELD: A FRAMEWORK FOR DETENTION AND TARGETING OUTSIDE THE "HOT" CONFLICT ZONE NAME: Jennifer C. Daskal, p. lexis]

Conclusion Legal scholars, policymakers, and state actors are embroiled in a heated debate about whether the conflict with al Qaeda is concentrated within specific geographic boundaries or extends to wherever al Qaeda members and associated forces may go. The United States' expansive view of the conflict, coupled with its broad definition of the enemy, has led to a legitimate concern about the creep of war. Conversely, the European and human rights view, which confines the conflict to a limited geographic region, ignores the potentially global nature of the threat and unduly constrains the state's ability to respond. Neither the law of international armed conflict (governing conflicts between states) nor the law of noninternational armed conflict (traditionally understood to govern intrastate conflicts) provides the answers that are so desperately needed. The zone approach proposed by this Article fills the international law gap, effectively mediating the multifaceted liberty and security interests at stake. It recognizes the broad sweep of the conflict, but distinguishes between zones of active hostilities and other areas in determining which rules apply. Specifically, it offers a set of standards that would both limit and legitimize the use of out-of-battlefield targeted killings and law of war-based detentions, subjecting their use to an individualized threat assessment, a least-harmful-means test, and significant procedural safeguards. This [\*1234] approach confines the use of out-of-battlefield targeted killings and detention without charge to extraordinary situations in which the security of the state so demands. It thus limits the use of force as a first resort, protects against the unnecessary erosion of peacetime norms and institutions, and safeguards individual liberty. At the same time, the zone approach ensures that the state can effectively respond to grave threats to its security, wherever those threats are based. The United States has already adopted a number of policies that distinguish between zones of active hostilities and elsewhere, implicitly recognizing the importance of this distinction. By adopting the proposed framework as a matter of law, the United States can begin to set the standards and build an international consensus as to the rules that ought to apply, not only to this conflict, but to future conflicts. The likely reputational, security, and foreign policy gains make acceptance of this framework a worthy endeavor.

### Europe advantage

#### Plan is already squo policy - but only legal codification solves European cooperation and international norms

Dworkin 12

Anthony Dworkin is a Senior Policy Fellow at the European Council on Foreign Relations, European Council on Foreign Relations, June 19, 2012, "Obama’s Drone Attacks: How the EU Should Respond", http://ecfr.eu/content/entry/commentary\_obamas\_drone\_attacks\_how\_the\_eu\_should\_respond

Obama’s Concession to European Views

In a speech on the subject last autumn, Obama’s chief counter-terrorism advisor John Brennan gave a glimpse into the administration’s discussions with some of its European allies. Brennan acknowledged that a number of the United States’ closest partners took a different view about the scope of the armed conflict against al-Qaeda, rejecting the use of force outside battlefield situations except when it was the only way to prevent the imminent threat of a terrorist attack. He went on to say that the United States depended on the assistance and cooperation of its allies in fighting terrorism, and that this was much easier to obtain when there was a convergence between their respective legal views. Increasingly, Brennan argued, such convergence was taking place as a matter of practice, as the United States chose to pursue an approach to targeting that was aligned with its partners’ vision.

In a further speech this year, Brennan developed this point. He said that even though the United States believed in general it had a legal right under the laws of war to shoot to kill anyone who was part of al-Qaeda, the Taliban or associated forces, in practice it followed a more restrictive approach. “We do not engage in lethal action in order to eliminate every single member of al-Qaeda in the world,” Brennan said. “Rather, we conduct targeted strikes because they are necessary to mitigate an actual ongoing threat – to stop plots, prevent future attacks, and save American lives.” In other words, the Obama administration presents itself as following a policy of voluntary restraint – deliberately confining its use of targeted killing to those cases where officials believe it is necessary to prevent an imminent attack, in part out of respect for its allies’ sensibilities and to make cooperation easier.

There are two reasons why this concession, on its own, is unlikely to – and ought not to – satisfy European concerns. It is true that many European states would accept that the use of lethal force is permissible when it is the only way to prevent the imminent loss of innocent life. Indeed the European Court of Human Rights endorsed such a standard several years ago in an influential ruling on the shooting by British special forces of three IRA members in Gibraltar. But if the United States is indeed following the principle of imminent threat in making targeting decisions outside the “hot battlefield” of Afghanistan and the Pakistani border region, it seems to interpret the concept of imminence in a rather more permissive way than most Europeans would be comfortable with. The sheer number of strikes testifies to the accommodating nature of the administration’s analysis: the New America Foundation estimates that there have been 265 drone strikes in Pakistan and 28 in Yemen since Obama took office. Moreover, in both Pakistan and now Yemen, Obama has reportedly given permission for so-called “signature strikes” in which attacks are carried against targets on the basis of a pattern of behavior that is indicative of terrorist activity without identifying the individuals involved – a policy that seems particularly hard to justify under an imminence test outside battlefield conditions.

Over time, the United States and its European allies might be able move closer to a common understanding of the concept of imminence through a process of discussion. But in any case there is an independent reason why the Obama administration’s policy of claiming expansive legal powers, while limiting them in practice on a voluntary basis, is a dangerous one. Precisely because he has greater international credibility than President Bush, the claims that Obama makes are likely to be influential in setting global standards for the use of the use of this new and potentially widely available technology. The United States is currently the only country that uses armed drones for targeted killing outside the battlefield, but several other countries already have remotely controlled pilotless aircraft or are in the process of acquiring them. The United States is unlikely to remain alone in this practice for long. At the same time, there have been several other examples in recent years of countries engaging in military campaigns against non-state groups outside their borders – as with Israel in Lebanon and Ethiopia in Somalia. For this reason, there is a strong international interest in trying to establish clear and agreed legal rules (not merely a kind of pragmatic best practice) to govern the use of targeted killing of non-state fighters.

#### T-TIP is uniquely vulnerable. EU concerns about US counterterror strategy will get drawn into the negotiations

Levanti 13 – Masters in European Public Affairs @ Maastricht University [Natasha Marie Levanti , “The Transatlantic Journey – TTIP & Cautious Optimism,” Bursting the Bubble, 2 September 2013, http://www.europeanpublicaffairs.eu/the-transatlantic-journey-ttip-cautious-optimism/]

Transatlantic economic cooperation has been something on the minds of those on both sides of the Atlantic before the recent economic woes. For instance, the Transatlantic Economic Council (TEC) was formed in 2007 to deal with increasing regulatory cooperation, as well as aid in addressing non-tariff barriers to transatlantic trade. With the economic situations in both Europe and the United States, starting in 2008 with the housing market collapse, the two entities were more concerned about their individual recovery than cooperation between the two. Yet at the same time, the situation proved for many individuals that now is the time to pursue closer transatlantic trade and investment cooperation.

Data protection and surveillance was recently brought to light as a major issue between the U.S., and the EU. One which almost delayed the transatlantic trade talks due to, most notably, German and French objections after knowledge of possible U.S. surveillance tactics came to light. After some U.S. promises, the trade talks will continue as planned, but this is a glimpse of the extensive number of policy differences which will require discussion during this process. The intention and common belief is that the trade talks will go smoothly, creating a broad spectrum trade relationship between two of the world’s largest regional economies. Yet, with recent events one would think the talks are already off to a rocky start. Therefore, it is important to be aware of some of the issues or perspectives concerning E.U. / U.S. relations before they formally appear in the trade talks that are underway. While not all of these will specifically be discussed as part of the trade negotiations, as is seen with the recent occurrence about data protections, some of these issues may in fact be drawn into the talks surrounding the greater European Union relations with the United States.

After recent events, Data Protection is definitely an issue. Data protection issues have been recurrent between the two since the terror attacks of 9/11, though most recently brought to light again due to accusations of the U.S. tapping into various E.U. offices. In order to prevent this recent development from completely derailing the upcoming trade negotiations, the United States has offered to create ‘working groups’ on the subject.

A hot topic recently has been Cybersecurity. This is mainly due to the court cases surrounding U.S. based companies such as Google and Facebook. Yet despite the fact that there are, and probably will remain to be differences in the regulation of cybersecurity, both sides do appear willing to increase cooperation on this front in order to help counter cybercrime.

The European Union Trading System (ETS) is also a touchy subject, a system put in place to have airlines purchase carbon allowances in an effort to offset CO2 emissions by encouraging airlines to invest in more environmentally friendly aircraft. The E.U., under pressure from international relations has stopped, at least for the moment, the system’s international implementation. Part of this ‘international’ pressure was undoubtedly derived from a piece of legislation passed by U.S. Congress in 2012 that ‘prohibits’ U.S. aircraft operators from actively engaging in the European ETS. This matter has currently been taken up by the U.N.’s International Civil Aviation Organization, which promised in November of 2012 that this would be an issue addressed within the coming year.

Periodically, officials from the U.S. will bring up European energy security as an issue, or at least something that, with deeper trade relations, is considered to be a U.S. interest. Part of this issue is the diversification of European energy resources, since currently it is fairly reliant on Russian supplies. Also of concern in the energy sector is the increase of sustainable energy and the consolidation of the EU’s internal energy market.

The fight against terror and the future of NATO are not likely to be discussed at the trade talks; however these two issues need to be considered when looking at the current level of general cooperation between Europe and the United States. Both have been led by joint U.S. / European forces and since September 11, 2001, there has most assuredly been a deeper level of communication and cooperation. This is linked in part to other issues such as cybersecurity and data protection, and was, at least in part, some of the reasoning behind recent developments in those two sectors.

#### T-TIP reduces US dependence on China. They can’t win offense because more US-European trade is inevitable.

Kelly 13 - PhD Candidate with the Centre for the Study of European Governance @ University of Nottingham [Katrina Kelly, “An American perspective on the EU: The United States should work to ensure European stability,” London School of Economics, February 23, 2013, http://blogs.lse.ac.uk/europpblog/2013/02/23/an-american-perspective-on-the-eu-the-united-states-should-work-to-ensure-european-stability/]

Eurosceptiscm is gaining attention and support in the UK, and perhaps throughout Europe. Although this appears to be a European problem, any wavering in the stability of the European Union will have widespread effects on the global political economy. In this post I examine eurosceptiscm from an American standpoint, and assesses how and why the United States must continue, if not increase, its support for unity within the European Union.

The cold war officially ended in 1991. Despite this, the United States has remained skeptical that there is not, nor will be, a future military threat from the Eastern hemisphere. If this statement was once considered debatable, such doubts were surely quelled in the spring of 2006 when the United States began negotiations with both the Czech Republic and Poland to determine the best site for the future installation of an anti-ballistic missile site.

The United States has been an aggressive military nation since, or perhaps because of, its initial creation. We are a nation that profits and rarely shirks from military interference and must be realistic about future military engagements. The rationale for defending the EU solely for its appropriateness as a missile defense system against nations like Iran and North Korea only begins to touch on the benefits that the European Union provides for the United States. By combining 27 nations in unity the European Union provides the strongest ally in defense for the United States. We no longer have to address, nor stress, individual diplomatic relations in Europe, but can instead be sure of support from 27 of the world’s strongest nations. The benefits of having strong diplomatic ties with so many nations versus individual nations surely need no further explanation.

In the United Kingdom there is often a tendency to address only the western European nations when discussing the effectiveness of the European Union. In the United States, we must not adopt the British tendency to dismiss the Union as individual nations and study only the effectiveness of the EU as a whole. The Union is a federal state made up 27 member-states, 17 of which use the euro, and must constantly be examined as such. The benefits of the European Union lie not only in the diplomatic solidarity provided by a unity of such a large number of nations, but also in the economic stability provided by such a vast joining of nations.

Growing from the position as a strong “supporter” of European integration; the US/EU now holds the largest economic relationship in the world. In 2010 $1,537.4 billion flowed between the European Union and the United States. Today, the EU counts for 18.7% of exports from the US. Including services, and not including $131.9 billion of direct investments, the EU makes up more than 31% of all US trade relations. When looking at the increasing trend towards globalization, this relationship will only continue to grow as trade relations continue to dissolve international barriers. At least, this is one scenario. On the opposing side the relationship could completely dissolve, not through choice, but through inevitability.

The economic climate today has forced nations to reconsider their spending habits. In Europe, where the recession has caused some nations, specifically southern nations, to hover on the brink of bankruptcy, spending has been scrutinized to the point that each spending measure has become politicized. Eurosceptiscm, or criticism of the EU, is an act of opposition to the process of European integration. The idea centers on the thought that integration weakens the nation-state and claims that it is undemocratic (on the most-extreme side) or argues that the EU is too bureaucratic and costly (the most common argument). Whereas at one time the EU was considered a highly popular institution, today only 31.9% of citizens polled in a Eurobarometer test believe that the EU views the EU positively.

In the UK this view is especially strong. What used to be a notion of the Conservative Party is now a policy initiative that David Cameron recently delivered a speech on. In an age of increased austerity, Cameron has addressed the concern that the EU’s recent demand of a 6.8% increase in UK spending in the EU is unwarranted. What once seemed to be a mere financial grumbling of the Conservatives has become a popular prediction for some economists.

While the British are considering decreased relations with Europe, it may be useful to consider what increasing our relations with Europe could do for both the American and global economy. For the past year, a free-trade agreement between the US and Europe has become more attainable than any discussions in the past decade have alluded to. Both leaders of the private and public sector seem to agree that a free-trade agreement between the two continents could result in the stimulus that economists have been searching for since the 2008 crisis. Although tariffs between the US and EU are already low, the companies that do the most transatlantic trade argue that a decrease in the 3% average would mean huge savings for the firms.  As an agreement like this would boost the earnings of firms without have repercussions on the taxpayer, increasing support for EU/US relations to mature in a NAFTA-like agreement seems to be a feasible idea.

A free-trade agreement would not only act as a stimulus, but would help to weaken the growing American dependence on the Chinese. China has dominated the political debate in the US, which may or may not be accurate, but in reality trade with Europe is much larger than trade with China. Increasing our support for the EU would help to set a positive curve for demand and help to decrease the rate of acceleration of dependence on the Chinese. At the same time, Europe is considering the same type of agreement with China, as they recognize and need, the stimulus benefits from such a trade agreement. If we do not act then surely, as the past decade has shown, the Chinese will be quick to make an agreement with the EU. The Chinese know that fluctuation in the Yuan is always a concern and they would be quick to seal a deal that would help to increase stability in export and imports.

In order to benefit from such a trade agreement, a decision must be taken quickly on European and American trade relations. Without it the natural dissolution of trade barriers will allow this to happen inevitably, but in a slow process that would not act as a stimulus to growth on either side of the Atlantic.

#### Trade imbalance encourages China bashing that undermines US-China relations.

Ramirez & Rong 12 – Professors of Economics @ George Mason University [Carlos D. Ramirez & Rong Rong “China Bashing: Does Trade Drive the “Bad” News about China in the USA?,” Review of International Economics, 20(2), 2012, pg. 350–363]

Trade between the USA and China has been growing at a substantial rate over the last two decades (1990–2010). In 1990, total bilateral trade stood at US$20 billion. By 2008 this figure had risen to US$409 billion, implying an annual growth rate of over 4% in real terms—a rate faster than that of the US economy over the same period.1 It is very likely that Sino-American trade relations will continue to grow in the foreseeable future, although perhaps not at the same rate, given the gravity of the 2007–09 recession in the USA.

Despite the phenomenal rate of growth, trade relations between the two countries have been anything but smooth. Trade disputes have frequently surfaced, and over the years, as the size of the bilateral trade deficit has widened, economic relations have become tense: since 2005, the growing bilateral deficit has been linked to a variety of issues, including currency exchange manipulation, health and safety standards, and discriminatory regulation. Indeed, between 1990 and 2010, the tense trade relations have lead to the introduction of numerous bills in Congress with explicit grievances against China.2

Intertwined with these trade-related complaints are other grievances that, though not necessarily directly related to trade issues, nonetheless form part of Sino-American relations. These other grievances relate to China’s political system, human rights, Tibet, repression, and so forth, and are frequently reported on in US media outlets, more often than not with a slant unfavorable to China.

The purpose of this paper is to investigate empirically the extent to which news reports of US grievances against China that are not necessarily directly related to trade (e.g. on the subject of human rights) are driven by cycles in the US–China trade deficit. Many scholars of Sino-American relations suspect that there is such a link. For example, these scholars see an ulterior motive behind the US preoccupation with China’s record on human rights (Wang, 2002).

To conduct this investigation, a China “bad news” index is constructed for the period January 1990–December 2008.3 To develop the index, a count is made of articles that talk about China in connection with one of the following grievance issues: “human rights,” “Tibet,” “child labor,” “democracy,” and “repression.”4 This paper then makes use of a parsimonious transfer model to examine the extent to which unexpected changes in the trade deficit explain movements in the bad news index. The results indicate that 3–4 months after an unexpected widening of the bilateral trade deficit, the frequency of bad news rises sharply, before subsiding in subsequent months. It is found that the likelihood of this relationship’s being purely coincidental is relatively low— about 1%. The relationship is robust to the choice of the model specification as well as to a variety of assumptions about the behavior of the lag structure.

Explaining the relationship between an unexpected widening of the bilateral trade deficit and an increased frequency of bad news is actually quite straightforward and does not rely on esoteric conspiracy theories. The timing of a decision to publish bad news about China can be explained by a publisher’s interest in readership and therefore in revenues. As the bilateral trade deficit unexpectedly widens, many US members of Congress respond to pressure groups by voicing their misgivings and trepidations on the subject. Indeed, this paper finds empirical support for this last argument. In particular, a positive and statistically significant correlation between the annual number of Congressional hearings on China and the US–China bilateral trade deficit is detected. A regression analysis reveals that this relationship is robust to different functional forms.

The fact that Congress becomes more preoccupied about China, in combination with the fact that China is one of the largest US trading partners, makes China a more salient topic of discussion, so that the media find it more worthwhile to run stories about China with a negative slant. The old adage “there is no news like bad news” is illustrative in this regard. The notion that the US media, in deciding what is newsworthy, operate as profit-maximizing enterprises should not be controversial. Indeed, a substantial amount of research finds that this is the case.5

The results lend evidence to the proposition that the reporting of negative news about China may indeed be influenced by tensions arising from the widening bilateral trade deficit. This investigation gives empirical support to the suspicion of many Sino- American scholars that “China bashing” is, at least in part, a reaction to the widening US–China trade deficit. To the present authors’ knowledge, this is the first paper that empirically evaluates the linkage between US–China trade deficits and news— specifically bad news. Given that relations between the two countries are often at the center of attention in US politics, it is believed that this is an important issue that needs to be elucidated. Pg. 350-351

#### Bashing risks nuclear war

Gross 12 - Senior associate of Pacific Forum CSIS [Donald Gross (A former State Department official who developed diplomatic strategy toward East Asia. Counselor of the U.S. Arms Control and Disarmament Agency and director of legislative affairs at the National Security Council in the White House), “Quit bashing Beijing — China’s rise is good for America,” Salon, Monday, Oct 22, 2012 03:30 PM EDT, pg. http://www.salon.com/2012/10/22/quit\_bashing\_beijing\_chinas\_rise\_is\_good\_for\_america/

The routine scapegoating of China — which no less a figure than Henry Kissinger, the architect of U.S. rapprochement with Beijing in the 1970s, has called “extremely deplorable” — is targeted at vulnerable people who have suffered deeply from the effects of the economic recession.

It is easier for both campaigns to shift blame to foreigners than to remind voters that the global financial crisis began on Wall Street, not in Beijing.  Or to point out that trade with China – America’s third-largest export market – has helped pull the United States out of the global financial crisis.

Demagogic attacks by both campaigns on China are particularly dangerous since they play into often unspoken but prevalent anti-Asian racial prejudices in various parts of the United States.  American leaders should try to overcome the sad history of anti-Asian prejudice, not exploit it for political gain.

Perhaps the only consolation one can take in this season of China bashing is that it may finally force a badly needed national debate on U.S. policy toward China.

With respect to national security, the Obama administration benignly describes its large-scale military buildup in the Pacific as a “strategic pivot” to Asia or “rebalancing” U.S. forces.  Both terms are euphemisms that mask the reality of current policy.  We are now implementing an aggressive containment strategy that stimulates China’s military modernization and its own preparations for war.

Increased tensions with China could have a number of dire outcomes.  They could lead to serious military conflict over Taiwan’s political status, over whether Japan or China holds sovereignty to several uninhabitable islands in the East China Sea, or over the ownership of small islands and energy resources in the South China Sea.  In a worst case, those conflicts could escalate, by accident or design, to a nuclear exchange.

#### AND, ignoring European concerns forces it to become a counterweight. We will also control the internal link to every impact in the debate

Stivachtis 10 – Director of International Studies Program @ Virginia Polytechnic Institute & State University [Dr. Yannis. A. Stivachtis (Professor of Poli Sci & Ph.D. in Politics & International Relations from Lancaster University), THE IMPERATIVE FOR TRANSATLANTIC COOPERATION,” The Research Institute for European and American Studies, 2010, pg. http://www.rieas.gr/research-areas/global-issues/transatlantic-studies/78.html]

There is no doubt that US-European relations are in a period of transition, and that the stresses and strains of globalization are increasing both the number and the seriousness of the challenges that confront transatlantic relations.

The events of 9/11 and the Iraq War have added significantly to these stresses and strains. At the same time, international terrorism, the nuclearization of North Korea and especially Iran, the proliferation of weapons of mass destruction (WMD), the transformation of Russia into a stable and cooperative member of the international community, the growing power of China, the political and economic transformation and integration of the Caucasian and Central Asian states, the integration and stabilization of the Balkan countries, the promotion of peace and stability in the Middle East, poverty, climate change, AIDS and other emergent problems and situations require further cooperation among countries at the regional, global and institutional levels.

Therefore, cooperation between the U.S. and Europe is more imperative than ever to deal effectively with these problems. It is fair to say that the challenges of crafting a new relationship between the U.S. and the EU as well as between the U.S. and NATO are more regional than global, but the implications of success or failure will be global.

The transatlantic relationship is still in crisis, despite efforts to improve it since the Iraq War. This is not to say that differences between the two sides of the Atlantic did not exist before the war. Actually, post-1945 relations between Europe and the U.S. were fraught with disagreements and never free of crisis since the Suez crisis of 1956. Moreover, despite trans-Atlantic proclamations of solidarity in the aftermath of 9/11, the U.S. and Europe parted ways on issues from global warming and biotechnology to peacekeeping and national missile defense.

Questions such as, the future role of NATO and its relationship to the common European Security and Defense policy (ESDP), or what constitutes terrorism and what the rights of captured suspected terrorists are, have been added to the list of US-European disagreements.

There are two reasons for concern regarding the transatlantic rift. First, if European leaders conclude that Europe must become counterweight to the U.S., rather than a partner, it will be difficult to engage in the kind of open search for a common ground than an elective partnership requires. Second, there is a risk that public opinion in both the U.S. and Europe will make it difficult even for leaders who want to forge a new relationship to make the necessary accommodations.

If both sides would actively work to heal the breach, a new opportunity could be created. A vibrant transatlantic partnership remains a real possibility, but only if both sides make the necessary political commitment.

There are strong reasons to believe that the security challenges facing the U.S. and Europe are more shared than divergent. The most dramatic case is terrorism. Closely related is the common interest in halting the spread of weapons of mass destruction and the nuclearization of Iran and North Korea. This commonality of threats is clearly perceived by publics on both sides of the Atlantic.

Actually, Americans and Europeans see eye to eye on more issues than one would expect from reading newspapers and magazines. But while elites on both sides of the Atlantic bemoan a largely illusory gap over the use of military force, biotechnology, and global warming, surveys of American and European public opinion highlight sharp differences over global leadership, defense spending, and the Middle East that threaten the future of the last century’s most successful alliance.

There are other important, shared interests as well. The transformation of Russia into a stable cooperative member of the international community is a priority both for the U.S. and Europe. They also have an interest in promoting a stable regime in Ukraine. It is necessary for the U.S. and EU to form a united front to meet these challenges because first, there is a risk that dangerous materials related to WMD will fall into the wrong hands; and second, the spread of conflict along those countries’ periphery could destabilize neighboring countries and provide safe havens for terrorists and other international criminal organizations. Likewise, in the Caucasus and Central Asia both sides share a stake in promoting political and economic transformation and integrating these states into larger communities such as the OSCE.

This would also minimize the risk of instability spreading and prevent those countries of becoming havens for international terrorists and criminals. Similarly, there is a common interest in integrating the Balkans politically and economically. Dealing with Iran, Iraq, Lebanon, and the Israeli-Palestinian conflict as well as other political issues in the Middle East are also of a great concern for both sides although the U.S. plays a dominant role in the region. Finally, US-European cooperation will be more effective in dealing with the rising power of China through engagement but also containment.

The post Iraq War realities have shown that it is no longer simply a question of adapting transatlantic institutions to new realities. The changing structure of relations between the U.S. and Europe implies that a new basis for the relationship must be found if transatlantic cooperation and partnership is to continue. The future course of relations will be determined above all by U.S. policy towards Europe and the Atlantic Alliance.

Wise policy can help forge a new, more enduring strategic partnership, through which the two sides of the Atlantic cooperate in meeting the many major challenges and opportunities of the evolving world together. But a policy that takes Europe for granted and routinely ignores or even belittles European concerns, may force Europe to conclude that the costs of continued alliance outweigh its benefits.

#### AND, statutory codification of Obama’s policy solves. Failure allows the issue to quickly fester and undermine relations

Dworkin 13 - Senior policy fellow @ European Council on Foreign Relations [Anthony Dworkin (Web editor of the Crimes of War Project which a site dedicated to raising public awareness of the laws of war), “Actually, drones worry Europe more than spying,” CNN’s Global Public Square, July 17th, 2013, 10:31 AM ET, pg. http://globalpublicsquare.blogs.cnn.com/2013/07/17/actually-drones-worry-europe-more-than-spying/)

Relations between the United States and Europe hit a low point following revelations that Washington was spying on European Union buildings and harvesting foreign email messages.

Behind the scenes, though, it is not data protection and surveillance that produces the most complications for the transatlantic intelligence relationship, but rather America's use of armed drones to kill terrorist suspects away from the battlefield. Incidents such as the recent killing of at least 17 people in Pakistan are therefore only likely to heighten European unease.

In public, European governments have displayed a curiously passive approach to American drone strikes, even as their number has escalated under Barack Obama’s presidency. Many Europeans believe that the majority of these strikes are unlawful, but their governments have maintained an uneasy silence on the issue. This is partly because of the uncomfortable fact that information provided by European intelligence services may have been used to identify some targets. It is also because of a reluctance to accuse a close ally of having violated international law. And it is partly because European countries have not worked out exactly what they think about the use of drones and how far they agree within the European Union on the question. Now, however, Europe’s muted stance on drone strikes looks likely to change.

Why? For one thing, many European countries are now trying to acquire armed drones themselves, and this gives them an incentive to spell out clearer rules for their use. More importantly, perhaps, Europeans have noticed that drones are proliferating rapidly, and that countries like China, Russia and Saudi Arabia are soon likely to possess them. There is a clear European interest in trying to establish some restrictive standards on drone use before it is too late. For all these reasons, many European countries are now conducting internal reviews of their policy on drones, and discussions are also likely to start at a pan-European level.

But as Europeans begin to articulate their policy on the use of drones, a bigger question looms. Can Europe and the United States come together to agree on when drone strikes are permissible? Until now, that would have seemed impossible. Since the September 11 attacks, the United States has based its counterterrorism operations on the claim that it is engaged in a worldwide armed conflict with al Qaeda and associated forces — an idea that President Obama inherited from President George W. Bush and has been kept as the basis for an expanded drone strike campaign. European countries have generally rejected this claim.

However, the changes to American policy that President Obama announced in May could open the way to at least the possibility of a dialogue. Obama suggested that he anticipated a time in the not-too-distant future when the armed conflict against al Qaeda might come to an end. More substantially, he made clear that his administration was in the process of switching its policy so that, outside zones of hostilities, it would only use drone strikes against individuals who posed a continuing and imminent threat to the U.S. That is a more restrictive standard than the claim that any member of al Qaeda or an associated force could lawfully be killed with a drone strike at any time.

European countries might be more willing to accept an approach based on this kind of “self-defense” idea. However, there remain some big stumbling blocks.

First, a good deal about Obama’s new standards is still unclear. How does he define a “zone of hostilities,” where the new rules will not apply? And what is his understanding of an “imminent” threat? European countries are likely to interpret these key terms in a much narrower way than the United States.

Second, Obama’s new approach only applies as a policy choice. His more expansive legal claims remain in the background so that he is free to return to them if he wishes.

But if the United States is serious about working toward international standards on drone strikes, as Obama and his officials have sometimes suggested, then Europe is the obvious place to start. And there are a number of steps the administration could take to make an agreement with European countries more likely.

### Plan/solvency

#### The United States Federal Government should restrict the President’s war powers authority for targeted killing as a first resort outside zones of active hostilities.

#### Only congressional action on the scope of hostilities sends a clear signal that the US abides by the laws of armed conflict

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• First, the United States government urgently needs publicly to declare the legal rationale behind its use of drones, and defend that legal rationale in the international community, which is increasingly convinced that parts, if not all, of its use is a violation of international law.

• Second, the legal rationale offered by the United States government needs to take account, not only of the use of drones on traditional battlefields by the US military, but also of the Obama administration’s signature use of drones by the CIA in operations outside of traditionally conceived zones of armed conflict, whether in Pakistan, or further afield, in Somalia or Yemen or beyond. This legal rationale must be certain to protect, in plain and unmistakable language, the lawfulness of the CIA’s participation in drone-related uses of force as it takes place today, and to protect officials and personnel from moves, in the United States or abroad, to treat them as engaged in unlawful activity. It must also be broad enough to encompass the use of drones (under the statutory arrangements long set forth in United States domestic law) by covert civilian agents of the CIA, in operations in the future, involving future presidents, future conflicts, and future reasons for using force that have no relationship to the current situation.

• Third, the proper legal rationale for the use of force in drone operations in special, sometimes covert, operations outside of traditional zones of armed conflict is the customary international law doctrine of self-defense, rather than the narrower law of armed conflict.

• Fourth, Congress has vital roles to play here, mostly in asserting the legality of the use of drones. These include: (i) Plain assertion of the legality of the programs as currently used by the Obama administration, as a signal to courts in the US as well as the international community and other interested actors, that the two political branches are united on an issue of vital national security and foreign policy. (ii) Congressional oversight mechanisms should also be strengthened in ensuring Congress’s meaningful knowledge and ability to make its views known. (iii) Congress also should consider legislation to clarify once and for all that that covert use of force is lawful under US law and international law of self-defense, and undertake legislation to make clear the legal protection of individual officers. (iv) Congress should also strongly encourage the administration to put a public position on the record. In my view, that public justification ought to be something (self-defense, in my view) that will ensure the availability of targeted killing for future administrations outside the context of conflict with Al Qaeda – and protect against its legal erosion by acquiescing or agreeing to interpretations of international law that would accept, even by implication, that targeted killing by the civilian CIA using drones is per se an unlawful act of extrajudicial execution.

The Multiple Strategic Uses of Drones and Their Legal Rationales

4. Seen through the lens of legal policy, drones as a mechanism for using force are evolving in several different strategic and technological directions, with different legal implications for their regulation and lawful use. From my conversations and research with various actors involved in drone warfare, the situation is a little bit like the blind men and the elephant – each sees only the part, including the legal regulation, that pertains to a particular kind of use, and assumes that it covers the whole. The whole, however, is more complicated and heterogeneous. They range from traditional tactical battlefield uses in overt war to covert strikes against non-state terrorist actors hidden in failed states, ungoverned, or hostile states in the world providing safe haven to terrorist groups. They include use by uniformed military in ordinary battle but also use by the covert civilian service.

5. Although well-known, perhaps it bears re-stating the when this discussion refers to drones and unmanned vehicle systems, the system is not “unmanned” in the sense that human beings are not in the decision or control loop. Rather, “unmanned” here refers solely to “remote-piloted,” in which the pilot and weapons controllers are not physically on board the aircraft. (“Autonomous” firing systems, in which machines might make decisions about the firing of weapons, raise entirely separate issues not covered by this discussion because they are not at issue in current debates over UA Vs.)

6. Drones on traditional battlefields. The least legally complicated or controversial use of drones is on traditional battlefields, by the uniformed military, in ordinary and traditional roles of air power and air support. From the standpoint of military officers involved in such traditional operations in Afghanistan, for example, the use of drones is functionally identical to the use of missile fired from a standoff fighter plane that is many miles from the target and frequently over-the-horizon. Controllers of UAVs often have a much better idea of targeting than a pilot with limited input in the cockpit. From a legal standpoint, the use of a missile fired from a drone aircraft versus one fired from some remote platform with a human pilot makes no difference in battle as ordinarily understood. The legal rules for assessing the lawfulness of the target and anticipated collateral damage are identical.

7. Drones used in Pakistan’s border region. Drones used as part of the on-going armed conflict in Afghanistan, in which the fighting has spilled over – by Taliban and Al Qaeda flight to safe havens, particularly – into neighboring areas of Pakistan likewise raise relatively few questions about their use, on the assumption that the armed conflict has spilled, as is often the case of armed conflict, across an international boundary. There are no doubt important international and diplomatic questions raised about the use of force across the border – and that is presumably one of the major reasons why the US and Pakistan have both preferred the use of drones by the CIA with a rather shredded fig leaf, as it were, of deniability, rather than US military presence on the ground in Pakistan. The legal questions are important, but (unless one takes the view that the use of force by the CIA is always and per se illegal under international law, even when treated as part of the armed forces of a state in what is unquestionably an armed conflict) there is nothing legally special about UAVs that would distinguish them from other standoff weapons platforms.

8. Drones used in Pakistan outside of the border region. The use of drones to target Al Qaeda and Taliban leadership outside of places in which it is factually plain that hostilities are underway begins to invoke the current legal debates over drone warfare. From a strategic standpoint, of course, the essence of much fighting against a raiding enemy is to deny it safe haven; as safe havens in the border regions are denied, then the enemy moves to deeper cover. The strategic rationale for targeting these leaders (certainly in the view of the Obama administration) is overwhelming. Within the United States, and even more without, arguments are underway as to whether Pakistan beyond the border regions into which overt fighting has spilled can justify reach to the law of armed conflict as a basis and justification for drone strikes.

9. Drones used against Al Qaeda affiliates outside of AfPak – Somalia, Yemen or beyond. The President, in several major addresses, has stressed that the United States will take the fight to the enemy, and pointedly included places that are outside of any traditionally conceived zone of hostilities in Iraq or AfPak – Somalia and Yemen have each been specifically mentioned. And indeed, the US has undertaken uses of force in those places, either by means of drones or else by human agents. The Obama administration has made clear – entirely correctly, in my view – that it will deny safe haven to terrorists. As the president said in an address at West Point in fall 2009, we “cannot tolerate a safe-haven for terrorists whose location is known, and whose intentions are clear.”1 In this, the President follows the long-standing, traditional view of the US government endorsing, as then-State Department Legal Advisor Abraham Sofaer put it in a speech in 1989, the “right of a State to strike terrorists within the territory of another State where terrorists are using that territory as a location from which to launch terrorist attacks and where the State involved has failed to respond effectively to a demand that the attacks be stopped.”2

10. The United States might assert in these cases that the armed conflict goes where the combatants go, in the case particularly of an armed conflict (with non-state actors) that is already acknowledged to be underway. In that case, those that it targets are, in its view, combats that can lawfully be targeted, subject to the usual armed conflict rules of collateral damage. One says this without knowing for certain whether this is, in fact, the US view – although the Obama administration is under pressure for failing to articulate a public legal view, this was equally the case for the preceding two administrations. In any case, however, that view is sharply contested as a legal matter. The three main contending legal views at this point are as follows:

• One legal view (the traditional view and that presumably taken by the Obama administration, except that we do not know for certain, given its reticence) is that we are in an armed conflict. Wherever the enemy goes, we are entitled to follow and attack him as a combatant. Geography and location – important for diplomatic reasons and raising questions about the territorial integrity of states, true – are irrelevant to the question of whether it is lawful to target under the laws of war; the war goes where the combatant goes. We must do so consistent with the laws of war and attention to collateral damage, and other legal and diplomatic concerns would of course constrain us if, for example, the targets fled to London or Istanbul. But the fundamental right to attack a combatant, other things being equal, surely cannot be at issue.

• A second legal view directly contradicts the first, and says that the legal rights of armed conflict are limited to a particular theatre of hostilities, not to wherever combatants might flee throughout the world. This creates a peculiar question as to how, lawfully, hostilities against a non-state actor might ever get underway. But the general legal policy response is that if there is no geographic constraint consisting of a “theatre” of hostilities, then the very special legal regime of the laws of armed conflict might suddenly, and without any warning, apply – and overturn – ordinary laws of human rights that prohibit extrajudicial execution, and certainly do not allow attacks subject merely to collateral damage rules, with complete surprise and no order to it. Armed conflict is defined by its theatres of hostilities, on this view, as a mechanism for limiting the scope of war and, importantly, the reach of the laws of armed conflict insofar as the displace (with a lower standard of protection) ordinary human rights law. Again, this leaves a deep concern that this view, in effect, empowers the fleeing side, which can flee to some place where, to some extent, it is protected against attack.

• A third legal view (to which I subscribe) says that armed conflict under the laws of war, both treaty law of the Geneva Conventions and customary law, indeed accepts that non-international armed conflict is defined, and therefore limited by, the presence of persistent, sustained, intense hostilities. In that sense, then, an armed conflict to which the laws of war apply exists only in particular places where those conditions are met. That is not the end of the legal story, however. Armed conflict as defined under the Geneva Conventions (common articles 2 and 3) is not the only international law basis for governing the use of force. The international law of self-defense is a broader basis for the use of force in, paradoxically, more limited ways that do not rise to the sustained levels of fighting that legally define hostilities.

• Why is self-defense the appropriate legal doctrine for attacks taking place away from active hostilities? From a strategic perspective, a large reason for ordering a limited, pinprick, covert strike is in order to avoid, if possible, an escalation of the fighting to the level of overt intensity that would invoke the laws of war – the intent of the use of force is to avoid a wider war. Given that application of the laws of war, in other words, requires a certain level of sustained and intense hostilities, that is not always a good thing. It is often bad and precisely what covert action seeks to avoid. The legal basis for such an attack is not armed conflict as a formal legal matter – the fighting with a non-state actor does not rise to the sustained levels required under the law’s threshold definition – but instead the law of self-defense.

• Is self-defense law simply a standardless license wantonly to kill? This invocation of self-defense law should not be construed as meaning that it is without limits or constraining standards. On the contrary, it is not standardless, even though it does not take on all the detailed provisions of the laws of war governing “overt” warfare, including the details of prison camp life and so on. It must conform to the customary law standards of necessity and proportionality – necessity in determining whom to target, and proportionality in considering collateral damage. The standards in those cases should essentially conform to military standards under the law of war, and in some cases the standards should be still higher.

11. The United States government seems, to judge by its lack of public statements, remarkably indifferent to the increasingly vehement and pronounced rejection of the first view, in particular, that the US can simply follow combatants anywhere and attack them. The issue is not simply collateral damage in places where no one had any reason to think there was a war underway; prominent voices in the international legal community question, at a minimum, the lawfulness of even attacking what they regard as merely alleged terrorists. In the view of important voices in international law, the practice outside of a traditional battlefield is a violation of international human rights law guarantees against extrajudicial execution and, at bottom, is just simple murder. On this view, the US has a human rights obligation to seek to arrest and then charge under some law; it cannot simply launch missiles at those it says are its terrorist enemies. It shows increasing impatience with US government silence on this issue, and with the apparent – but quite undeclared – presumption that the armed conflict goes wherever the combatants go.

12. Thus, for example, the UN special rapporteur on extrajudicial execution, NYU law professor Philip Alston, has asked in increasingly strong terms that, at a minimum, the US government explain its legal rationales for targeted killing using drones. The American Civil Liberties Union in February 2010 filed an extensive FOIA request (since re-filed as a lawsuit), seeking information on the legal rationales (but including requests for many operational facts) for all parts of the drones programs, carefully delineating military battlefield programs and CIA programs outside of the ordinary theatres of hostilities. Others have gone much further than simply requests that the US declare its legal views and have condemned them as extrajudicial execution – as Amnesty International did with respect to one of the earliest uses of force by drones, the 2002 Yemen attack on Al Qaeda members. The addition of US citizens to the kill-or-capture list, under the authorization of the President, has raised the stakes still further. The stakes, in this case, are highly unlikely to involve President Obama or Vice-President Biden or senior Obama officials. They are far more likely to involve lower level agency counsel, at the CIA or NSC, who create the target lists and make determinations of lawful engagement in any particular circumstance. It is they who would most likely be investigated, indicted, or prosecuted in a foreign court as, the US should take careful note, has already happened to Israeli officials in connection with operations against Hamas. The reticence of the US government on this matter is frankly hard to justify, at this point; this is not a criticism per se of the Obama administration, because the George W. Bush and Clinton administrations were equally unforthcoming. But this is the Obama administration, and public silence on the legal legitimacy of targeted killings especially in places and ways that are not obviously by the military in obvious battlespaces is increasingly problematic.

13. Drones used in future circumstances by future presidents against new non-state terrorists. A government official with whom I once spoke about drones as used by the CIA to launch pinpoint attacks on targets in far-away places described them, in strategic terms, as the “lightest of the light cavalry.” He noted that if terrorism, understood strategically, is a “raiding strategy” launched largely against “logistical” rather than “combat” targets – treating civilian and political will as a “logistical target” in this strategic sense – then how should we see drone attacks conducted in places like Somalia or Yemen or beyond? We should understand them, he said, as a “counter-raiding” strategy, aimed not at logistical targets, but instead at combat targets, the terrorists themselves. Although I do not regard this use of “combat” as a legal term – because, as suggested above, the proper legal frame for these strikes is self-defense rather than “armed conflict” full-on – as a strategic description, this is apt.

14. This blunt description suggests, however, that it is a profound mistake to think that the importance of drones lies principally on the traditional battlefield, as a tactical support weapon, or even in the “spillover” areas of hostilities. In those situations, it is perhaps cheaper than the alternatives of manned systems, but is mostly a substitute for accepted and existing military capabilities. Drone attacks become genuinely special as a form of strategic, yet paradoxically discrete, air power outside of overt, ordinary, traditional hostilities – the farthest project of discrete force by the lightest of the light cavalry. As these capabilities develop in several different technological direction – on the one hand, smaller vehicles, more contained and limited kinetic weaponry, and improved sensors and, on the other hand, large-scale drone aircraft capable of going after infrastructure targets as the Israelis have done with their Heron UAVs – it is highly likely that they will become a weapon of choice for future presidents, future administrations, in future conflicts and circumstances of self- defense and vital national security of the United States. Not all the enemies of the United States, including transnational terrorists and non-state actors, will be Al Qaeda or the authors of 9/11. Future presidents will need these technologies and strategies – and will need to know that they have sound, publicly and firmly asserted legal defenses of their use, including both their use and their limits in law.

#### That solves global war – US precedent is key

Kristen Roberts 13, news editor for the National Journal, master in security studies from Georgetown, “When the Whole World Has Drones”, March 22, http://www.nationaljournal.com/magazine/when-the-whole-world-has-drones-20130321

The proliferation of drone technology has moved well beyond the control of the United States government and its closest allies. The aircraft are too easy to obtain, with barriers to entry on the production side crumbling too quickly to place limits on the spread of a technology that promises to transform warfare on a global scale. Already, more than 75 countries have remote piloted aircraft. More than 50 nations are building a total of nearly a thousand types. At its last display at a trade show in Beijing, China showed off 25 different unmanned aerial vehicles. Not toys or models, but real flying machines.

It’s a classic and common phase in the life cycle of a military innovation: An advanced country and its weapons developers create a tool, and then others learn how to make their own. But what makes this case rare, and dangerous, is the powerful combination of efficiency and lethality spreading in an environment lacking internationally accepted guidelines on legitimate use. This technology is snowballing through a global arena where the main precedent for its application is the one set by the United States; it’s a precedent Washington does not want anyone following.

America, the world’s leading democracy and a country built on a legal and moral framework unlike any other, has adopted a war-making process that too often bypasses its traditional, regimented, and rigorously overseen military in favor of a secret program never publicly discussed, based on legal advice never properly vetted. The Obama administration has used its executive power to refuse or outright ignore requests by congressional overseers, and it has resisted monitoring by federal courts.

To implement this covert program, the administration has adopted a tool that lowers the threshold for lethal force by reducing the cost and risk of combat. This still-expanding counterterrorism use of drones to kill people, including its own citizens, outside of traditionally defined battlefields and established protocols for warfare, has given friends and foes a green light to employ these aircraft in extraterritorial operations that could not only affect relations between the nation-states involved but also destabilize entire regions and potentially upset geopolitical order.

Hyperbole? Consider this: Iran, with the approval of Damascus, carries out a lethal strike on anti-Syrian forces inside Syria; Russia picks off militants tampering with oil and gas lines in Ukraine or Georgia; Turkey arms a U.S.-provided Predator to kill Kurdish militants in northern Iraq who it believes are planning attacks along the border. Label the targets as terrorists, and in each case, Tehran, Moscow, and Ankara may point toward Washington and say, we learned it by watching you. In Pakistan, Yemen, and Afghanistan.

This is the unintended consequence of American drone warfare. For all of the attention paid to the drone program in recent weeks—about Americans on the target list (there are none at this writing) and the executive branch’s legal authority to kill by drone outside war zones (thin, by officials’ own private admission)—what goes undiscussed is Washington’s deliberate failure to establish clear and demonstrable rules for itself that would at minimum create a globally relevant standard for delineating between legitimate and rogue uses of one of the most awesome military robotics capabilities of this generation.

THE WRONG QUESTION

The United States is the indisputable leader in drone technology and long-range strike. Remote-piloted aircraft have given Washington an extraordinary ability to wage war with far greater precision, improved effect, and fewer unintended casualties than conventional warfare. The drones allow U.S. forces to establish ever greater control over combat areas, and the Pentagon sees the technology as an efficient and judicious force of the future. And it should, given the billions of dollars that have gone into establishing and maintaining such a capability.

That level of superiority leads some national security officials to downplay concerns about other nations’ unmanned systems and to too narrowly define potential threats to the homeland. As proof, they argue that American dominance in drone warfare is due only in part to the aircraft itself, which offers the ability to travel great distances and loiter for long periods, not to mention carry and launch Hellfire missiles. The drone itself, they argue, is just a tool and, yes, one that is being copied aggressively by allies and adversaries alike. The real edge, they say, is in the unparalleled intelligence-collection and data-analysis underpinning the aircraft’s mission.

“There is what I think is just an unconstrained focus on a tool as opposed to the subject of the issue, the tool of remotely piloted aircraft that in fact provide for greater degrees of surety before you employ force than anything else we use,” said retired Lt. Gen. David Deptula, the Air Force’s first deputy chief of staff for intelligence, surveillance, and reconnaissance. “I think people don’t realize that for the medium altitude aircraft—the MQ-1 [Predator] and MQ-9 [Reaper] that are generally written about in the press—there are over 200 people involved in just one orbit of those aircraft.… The majority of those people are analysts who are interpreting the information that’s coming off the sensors on the aircraft.”

The analysts are part of the global architecture that makes precision strikes, and targeted killing, possible. At the front end, obviously, intelligence—military, CIA, and local—inform target decisions. But in as near-real time as technologically possible, intel analysts in Nevada, Texas, Virginia, and other locations watch the data flood in from the aircraft and make calls on what’s happening on target. They monitor the footage, listen to audio, and analyze signals, giving decision-makers time to adjust an operation if the risks (often counted in potential civilian deaths) outweigh the reward (judged by the value of the threat eliminated).

“Is that a shovel or a rifle? Is that a Taliban member or is this a farmer? The way that warfare has advanced is that we are much more exquisite in our ability to discern,” Maj. Gen. Robert Otto, commander of the Air Force Intelligence, Surveillance, and Reconnaissance Agency, told National Journal at Nellis Air Force Base in Nevada. “We’re not overhead for 15 minutes with a fighter that’s about to run out of gas, and we have to make a decision. We can orbit long enough to be pretty sure about our target.”

Other countries, groups, and even individuals can and do fly drones. But no state or group has nearly the sophisticated network of intelligence and data analysis that gives the United States its strategic advantage. Although it would be foolish to dismiss the notion that potential U.S. adversaries aspire to attain that type of war-from-afar, pinpoint-strike capability, they have neither the income nor the perceived need to do so.

That’s true, at least today. It’s also irrelevant. Others who employ drones are likely to carry a different agenda, one more concerned with employing a relatively inexpensive and ruthlessly efficient tool to dispatch an enemy close at hand.

“It would be very difficult for them to create the global-strike architecture we have, to have a control cell in Nevada flying a plane over Afghanistan. The reality is that most nations don’t want or need that,” said Peter Singer, director of the Brookings Institution’s Center for 21st Century Security and Intelligence and one of the foremost experts in advanced military technology. “Turkey’s not looking to conduct strikes into the Philippines.... But Turkey is looking to be able to carry out long-duration surveillance and potentially strike inside and right on its border.”

And that’s a NATO ally seeking the capability to conduct missions that would run afoul of U.S. interests in Iraq and the broader Middle East. Already, Beijing says it considered a strike in Myanmar to kill a drug lord wanted in the deaths of Chinese sailors. What happens if China arms one of its remote-piloted planes and strikes Philippine or Indian trawlers in the South China Sea? Or if India uses the aircraft to strike Lashkar-e-Taiba militants near Kashmir?

“We don’t like other states using lethal force outside their borders. It’s destabilizing. It can lead to a sort of wider escalation of violence between two states,” said Micah Zenko, a security policy and drone expert at the Council on Foreign Relations. “So the proliferation of drones is not just about the protection of the United States. It’s primarily about the likelihood that other states will increasingly use lethal force outside of their borders.”

LOWERING THE BAR

Governments have covertly killed for ages, whether they maintained an official hit list or not. Before the Obama administration’s “disposition matrix,” Israel was among the best-known examples of a state that engaged, and continues to engage, in strikes to eliminate people identified by its intelligence as plotting attacks against it. But Israel certainly is not alone. Turkey has killed Kurds in Northern Iraq. Some American security experts point to Russia as well, although Moscow disputes this.

In the 1960s, the U.S. government was involved to differing levels in plots to assassinate leaders in Congo and the Dominican Republic, and, famously, Fidel Castro in Cuba. The Church Committee’s investigation and subsequent 1975 report on those and other suspected plots led to the standing U.S. ban on assassination. So, from 1976 until the start of President George W. Bush’s “war on terror,” the United States did not conduct targeted killings, because it was considered anathema to American foreign policy. (In fact, until as late as 2001, Washington’s stated policy was to oppose Israel’s targeted killings.)

When America adopted targeted killing again—first under the Bush administration after the September 11 attacks and then expanded by President Obama—the tools of the trade had changed. No longer was the CIA sending poison, pistols, and toxic cigars to assets overseas to kill enemy leaders. Now it could target people throughout al-Qaida’s hierarchy with accuracy, deliver lethal ordnance literally around the world, and watch the mission’s completion in real time.

The United States is smartly using technology to improve combat efficacy, and to make war-fighting more efficient, both in money and manpower. It has been able to conduct more than 400 lethal strikes, killing more than 3,500 people, in Afghanistan, Pakistan, Yemen, Somalia, and North Africa using drones; reducing risk to U.S. personnel; and giving the Pentagon flexibility to use special-forces units elsewhere. And, no matter what human-rights groups say, it’s clear that drone use has reduced the number of civilians killed in combat relative to earlier conflicts. Washington would be foolish not to exploit unmanned aircraft in its long fight against terrorism. In fact, defense hawks and spendthrifts alike would criticize it if it did not.

“If you believe that these folks are legitimate terrorists who are committing acts of aggressive, potential violent acts against the United States or our allies or our citizens overseas, should it matter how we choose to engage in the self-defense of the United States?” asked Rep. Mike Rogers, R-Mich., chairman of the House Intelligence Committee. “Do we have that debate when a special-forces team goes in? Do we have that debate if a tank round does it? Do we have the debate if an aircraft pilot drops a particular bomb?”

But defense analysts argue—and military officials concede—there is a qualitative difference between dropping a team of men into Yemen and green-lighting a Predator flight from Nevada. Drones lower the threshold for military action. That’s why, according to the Council on Foreign Relations, unmanned aircraft have conducted 95 percent of all U.S. targeted killings. Almost certainly, if drones were unavailable, the United States would not have pursued an equivalent number of manned strikes in Pakistan.

And what’s true for the United States will be true as well for other countries that own and arm remote piloted aircraft.

“The drones—the responsiveness, the persistence, and without putting your personnel at risk—is what makes it a different technology,” Zenko said. “When other states have this technology, if they follow U.S. practice, it will lower the threshold for their uses of lethal force outside their borders. So they will be more likely to conduct targeted killings than they have in the past.”

The Obama administration appears to be aware of and concerned about setting precedents through its targeted-strike program. When the development of a disposition matrix to catalog both targets and resources marshaled against the United States was first reported in 2012, officials spoke about it in part as an effort to create a standardized process that would live beyond the current administration, underscoring the long duration of the counterterrorism challenge.

Indeed, the president’s legal and security advisers have put considerable effort into establishing rules to govern the program. Most members of the House and Senate Intelligence committees say they are confident the defense and intelligence communities have set an adequate evidentiary bar for determining when a member of al-Qaida or an affiliated group may be added to the target list, for example, and say that the rigor of the process gives them comfort in the level of program oversight within the executive branch. “They’re not drawing names out of a hat here,” Rogers said. “It is very specific intel-gathering and other things that would lead somebody to be subject for an engagement by the United States government.”

BEHIND CLOSED DOORS

The argument against public debate is easy enough to understand: Operational secrecy is necessary, and total opacity is easier. “I don’t think there is enough transparency and justification so that we remove not the secrecy, but the mystery of these things,” said Dennis Blair, Obama’s former director of national intelligence. “The reason it’s not been undertaken by the administration is that they just make a cold-blooded calculation that it’s better to hunker down and take the criticism than it is to get into the public debate, which is going to be a hard one to win.”

But by keeping legal and policy positions secret, only partially sharing information even with congressional oversight committees, and declining to open a public discussion about drone use, the president and his team are asking the world to just trust that America is getting this right. While some will, many people, especially outside the United States, will see that approach as hypocritical, coming from a government that calls for transparency and the rule of law elsewhere.

“I know these people, and I know how much they really, really attend to the most important details of the job,” said Barry Pavel, a former defense and security official in the Bush and Obama administrations who is director of the Brent Scowcroft Center on International Security at the Atlantic Council. “If I didn’t have that personal knowledge and because there isn’t that much really in the press, then I would be giving you a different rendering, and much more uncertain rendering.”

That’s only part of the problem with the White House’s trust-us approach. The other resides in the vast distance between the criteria and authorization the administration says it uses in the combat drone program and the reality on the ground. For example, according to administration officials, before a person is added to the targeted strike list, specific criteria should be met. The target should be a 1) senior, 2) operational 3) leader of al-Qaida or an affiliated group who presents 4) an imminent threat of violent attack 5) against the United States.

But that’s not who is being targeted.

Setting aside the administration’s redefining of “imminence” beyond all recognition, the majority of the 3,500-plus people killed by U.S. drones worldwide were not leaders of al-Qaida or the Taliban; they were low- or mid-level foot soldiers. Most were not plotting attacks against the United States. In Yemen and North Africa, the Obama administration is deploying weaponized drones to take out targets who are more of a threat to local governments than to Washington, according to defense and regional security experts who closely track unrest in those areas. In some cases, Washington appears to be in the business of using its drone capabilities mostly to assist other countries, not to deter strikes against the United States (another precedent that might be eagerly seized upon in the future).

U.S. defense and intelligence officials reject any suggestion that the targets are not legitimate. One thing they do not contest, however, is that the administration’s reliance on the post-9/11 Authorization for Use of Military Force as legal cover for a drone-strike program that has extended well beyond al-Qaida in Afghanistan or Pakistan is dodgy. The threat that the United States is trying to deal with today has an ever more tenuous connection to Sept. 11. (None of the intelligence officials reached for this article would speak on the record.) But instead of asking Congress to consider extending its authorization, as some officials have mulled, the administration’s legal counsel has chosen instead to rely on Nixon administration adviser John Stevenson’s 1970 justification of the bombing of Cambodia during the Vietnam War, an action new Secretary of State John Kerry criticized during his confirmation hearing this year.

Human-rights groups might be loudest in their criticism of both the program and the opaque policy surrounding it, but even the few lawmakers who have access to the intelligence the administration shares have a hard time coping with the dearth of information. “We can’t always assume we’re going to have responsible people with whom we agree and trust in these positions,” said Sen. Angus King, I-Maine, who sits on the Senate Intelligence Committee. “The essence of the Constitution is, it shouldn’t matter who is in charge; they’re still constrained by principles and rules of the Constitution and of the Bill of Rights.”

PEER PRESSURE

Obama promised in his 2013 State of the Union to increase the drone program’s transparency. “In the months ahead, I will continue to engage Congress to ensure not only that our targeting, detention, and prosecution of terrorists remains consistent with our laws and system of checks and balances, but that our efforts are even more transparent to the American people and to the world,” the president said on Feb. 12. Since then, the administration, under pressure from allies on Senate Intelligence, agreed to release all of the legal memos the Justice Department drafted in support of targeted killing.

But, beyond that, it’s not certain Obama will do anything more to shine light on this program. Except in situations where leaks help it tell a politically expedient story of its skill at killing bad guys, the administration has done little to make a case to the public and the world at large for its use of armed drones.

Already, what’s become apparent is that the White House is not interested in changing much about the way it communicates strike policy. (It took Sen. Rand Paul’s 13-hour filibuster of CIA Director John Brennan’s nomination to force the administration to concede that it doesn’t have the right to use drones to kill noncombatant Americans on U.S. soil.) And government officials, as well as their surrogates on security issues, are actively trying to squash expectations that the administration would agree to bring the judicial branch into the oversight mix. Indeed, judicial review of any piece of the program is largely off the table now, according to intelligence officials and committee members.

Under discussion within the administration and on Capitol Hill is a potential program takeover by the Pentagon, removing the CIA from its post-9/11 role of executing military-like strikes. Ostensibly, that shift could help lift the secret-by-association-with-CIA attribute of the program that some officials say has kept them from more freely talking about the legitimate military use of drones for counterterrorism operations. But such a fix would provide no guarantee of greater transparency for the public, or even Congress.

And if the administration is not willing to share with lawmakers who are security-cleared to know, it certainly is not prepared to engage in a sensitive discussion, even among allies, that might begin to set the rules on use for a technology that could upend stability in already fragile and strategically significant places around the globe. Time is running out to do so.

“The history of technology development like this is, you never maintain your lead very long. Somebody always gets it,” said David Berteau, director of the International Security Program at the Center for Strategic and International Studies. “They’re going to become cheaper. They’re going to become easier. They’re going to become interoperable,” he said. “The destabilizing effects are very, very serious.”

Berteau is not alone. Zenko, of the Council on Foreign Relations, has urged officials to quickly establish norms. Singer, at Brookings, argues that the window of opportunity for the United States to create stability-supporting precedent is quickly closing. The problem is, the administration is not thinking far enough down the line, according to a Senate Intelligence aide. Administration officials “are thinking about the next four years, and we’re thinking about the next 40 years. And those two different angles on this question are why you see them in conflict right now.”

That’s in part a symptom of the “technological optimism” that often plagues the U.S. security community when it establishes a lead over its competitors, noted Georgetown University’s Kai-Henrik Barth. After the 1945 bombing of Hiroshima and Nagasaki, the United States was sure it would be decades before the Soviets developed a nuclear-weapon capability. It took four years.

With drones, the question is how long before the dozens of states with the aircraft can arm and then operate a weaponized version. “Pretty much every nation has gone down the pathway of, ‘This is science fiction; we don’t want this stuff,’ to, ‘OK, we want them, but we’ll just use them for surveillance,’ to, ‘Hmm, they’re really useful when you see the bad guy and can do something about it, so we’ll arm them,’ ” Singer said. He listed the countries that have gone that route: the United States, Britain, Italy, Germany, China. “Consistently, nations have gone down the pathway of first only surveillance and then arming.”

The opportunity to write rules that might at least guide, if not restrain, the world’s view of acceptable drone use remains, not least because this is in essence a conventional arms-control issue. The international Missile Technology Control Regime attempts to restrict exports of unmanned vehicles capable of carrying weapons of mass destruction, but it is voluntary and nonbinding, and it’s under attack by the drone industry as a drag on business. Further, the technology itself, especially when coupled with data and real-time analytics, offers the luxury of time and distance that could allow officials to raise the evidentiary bar for strikes—to be closer to certain that their target is the right one.

But even without raising standards, tightening up drone-specific restrictions in the standing control regime, or creating a new control agreement (which is never easy to pull off absent a bad-state actor threatening attack), just the process of lining up U.S. policy with U.S. practice would go a long way toward establishing the kind of precedent on use of this technology that America—in five, 10, or 15 years—might find helpful in arguing against another’s actions.

A not-insignificant faction of U.S. defense and intelligence experts, Dennis Blair among them, thinks norms play little to no role in global security. And they have evidence in support. The missile-technology regime, for example, might be credited with slowing some program development, but it certainly has not stopped non-signatories—North Korea and Iran—from buying, building, and selling missile systems. But norms established by technology-leading countries, even when not written into legal agreements among nations, have shown success in containing the use and spread of some weapons, including land mines, blinding lasers, and nuclear bombs.

Arguably more significant than spotty legal regimes, however, is the behavior of the United States. “History shows that how states adopt and use new military capabilities is often influenced by how other states have—or have not—used them in the past,” Zenko argued. Despite the legal and policy complexity of this issue, it is something the American people have, if slowly, come to care about. Given the attention that Rand Paul’s filibuster garnered, it is not inconceivable that public pressure on drone operations could force the kind of unforeseen change to U.S. policy that it did most recently on “enhanced interrogation” of terrorists.

The case against open, transparent rule-making is that it might only hamstring American options while doing little good elsewhere—as if other countries aren’t closely watching this debate and taking notes for their own future policymaking. But the White House’s refusal to answer questions about its drone use with anything but “no comment” ensures that the rest of the world is free to fill in the blanks where and when it chooses. And the United States will have already surrendered the moment in which it could have provided not just a technical operations manual for other nations but a legal and moral one as well.

#### The executive will comply. Obama is working closely with Congress to size down the AUMF.

Brown 13 [Hayes Brown, "Obama Lays Out Plan To End The War Against Al Qaeda,” Think Progress, May 23, 2013 at 3:52 pm, pg . http://thinkprogress.org/security/2013/05/23/2055331/obama-aumf-repeal/

President Obama delivered a wide ranging speech on Thursday, laying out his vision for countering terrorism in his second term, including announcements on the use of drones, the future closure of the military prison at Guantanamo Bay, and the eventual end of the long war against al Qaeda.

Most importantly, Obama announced that he intends to work closely with Congress to “refine, and ultimately repeal” the 2001 Authorization for the Use of Military Force (AUMF). Passed in the aftermath of 9/11, the AUMF gave the president broad authority to carry out military action against “those nations, organizations, or persons” who “planned, authorized, committed, or aided” the 2001 attack.

“Groups like [Al Qaeda in Arabian Peninsula] must be dealt with, but in the years to come, not every collection of thugs that labels themselves al Qaeda will pose a credible threat to the United States,” Obama said. “Unless we discipline our thinking and our actions, we may be drawn into more wars we don’t need to fight, or continue to grant presidents unbound powers more suited for traditional armed conflicts between nation states.”

Congress recently began its first set of hearings into possible revisions of the AUMF, which is about to enter its twelfth year in force. Currently, there are competing proposals in the Senate and House to either repeal the authorization in its entirety or revise it to allow for the use of force beyond the perpetrators of 9/11. Obama, however, refused to go along with any broadening of the AUMF, saying he “will not sign laws designed to expand this mandate further.”

CAP expert Ken Gude hailed Obama’s commitment to repealing the AUMF as the “beginning of the end” of the war against al Qaeda. While remnants of al Qaeda and new groups remain threats, “the extraordinary military response that followed the attacks of 9/11 embodied in the 2001 Authorization to Use Military Force can now be wound down, the permanent war footing retired, and we can rebalance our efforts to fight terrorism to rely more on our effective and efficient law enforcement and intelligence agencies,” Gude told ThinkProgress.

In his speech today, Obama continued: “Our systematic effort to dismantle terrorist organizations must continue. But this war, like all wars, must end. That’s what history advises. That’s what our democracy demands.” The clear declaration builds upon previous statements from former members of Obama’s administration that the battle against al Qaeda cannot go on indefinitely.

That desire to eventually repeal the AUMF makes up the cornerstone of the counterterrorism strategy Obama laid out today. The current Obama administration approach to conducting targeting killing and other portions that strategy were only just recently codified, as Obama acknowledged in his remarks. In it, the use of drone strikes and other applications of force will be streamlined to a more limited set of targets, with a higher level of scrutiny applied when determining those targets, while a renewed focus on the other elements of preventing terrorism will be implemented.

#### Resolving EU drone backlash is key issue to solve complete alliance collapse

Devin Streeter, Liberty University Strategic Intelligence Society, Director of Activities, Public Relations, and Recruitment, 4/19/2013, http://www.academia.edu/3523639/U.S.\_Drone\_Policy\_Tactical\_Success\_and\_Strategic\_Failure

In essence, the United States has sparked a miniature arms race and has intimidated nations with the threat of a new, superior technology. Governments that have begun pursuing their own UAV programs have shown a notable bitterness to the United States for its unchecked use of drones. 34 Nations such as China, Japan, Russia, and Brazil all disapprove of United States drone policies by over 30 percentage points. 35 To them, the United States seems heavy handed and brutish; holding back technology while indiscriminately using it against our enemies. The lack of consideration and cooperation is a negative influence on world leaders. At the same time, other nations feel that drones violate their airspace and are used without approval from the international community. 36 The majority of these nations fall within the boundaries of the European Union, and while their disapproval is not as notable as the first group, it often reaches the double digits rate. 37 Germany, Great Britain, Poland, and other European Union members do not understand the ‘fire from the hip’ mentality of drone strikes. 38 The European Council on Foreign Relations noted “it [United States] seems to interpret the concept of imminence in a rather more permissive way than most Europeans would be comfortable with.” 39 The European Union fully supports drones in combat support and reconnaissance roles, but has issues with the concept of targeted killings, which often result in collateral damage. 40 European leaders desire an international consensus on how drones should be operated, before more civilians become casualties. 41 The European Council on Foreign Relations further notes: The Obama administration has so far chosen to operate by analogy with inter-state war, but in an era marked by the individualization of conflict, this seems like an outdated approach. 42 Europe does not share the mentality of drone strikes with "acceptable" collateral damage and apolicy that is not accountable to the international community. As a result, relations with Europe have reached a critical point. 43 European nations, alienated by the Obama administration’s progressive dialogue but aggressive drone policy, 44 are ready to try and take the lead in international relations. 45 Germany in particular will be a key nation as it increases in prominence among European states. 46 Hans Kundnani, a well-known journalist and political pundit, notes, “Obama is extremely popular in Germany, but Berlin’s deeply-held views on the use of military force… have the potential to create a Europe-America split.” 47 Kundnani also states, “A ‘special relationship’ is developing between China and Germany.” 48 Because of anti-drone sentiment, long-time U.S. allies grow increasingly distant, to the point of forming new relationships with China. This is a direct threat to the United States’ place in international relations and a direct challenge to its hegemony. If the relations with Europe are to be fixed, a change in drone protocol is needed.

## \*\*\* 2AC

### 2AC China Threat Con

#### Our depictions of China are accurate

Blumenthal et al 11 ( Dan Blumenthal is a current commissioner and former vice chairman of the U.S.-China Economic and Security Review Commission, where he directs efforts to monitor, investigate, and provide recommendations on the national security implications of the economic relationship between the two countries. “Avoiding Armageddon with China” http://shadow.foreignpolicy.com/posts/2011/09/06/avoiding\_armageddon\_with\_china?wpisrc=obinsite)

The balancing and hedging strategy should involve options to avoid what Traub rightfully describes as "Armageddon." We call for a myriad of conventional options short of striking the nuclear-armed PRC, in the hope that such a strategy enhances deterrence in the first place and avoids Armageddon should deterrence fail. The strategy aims to slow escalation rather than quicken it. The idea of a self-fulfilling prophecy -- of turning China into an enemy by treating it as one -- is like a unicorn; it is a make believe creature that still has its believers. The United States has done more than any other country to "turn China into a friend" by welcoming it into the international community. Alas, China has not fulfilled this U.S. "prophesy of friendship." Instead China has built what all credible observers call a destabilizing military that has changed the status quo by holding a gun to Taiwan's head even as Taiwan makes bold attempts at peace, by claiming ever more territory in the South China Sea, and by attempting to bully and intimidate Japan. Traub asks whether our allies and partners will be willing to participate in an "anti-Chinese coalition," as he describes it. As the paper says, all allies, partners, and potential partners are already modernizing their militaries in response to China. And they will continue to do so regardless of whether the U.S. pursues what Traub would see as an "anti-China" strategy. Even laid-back Australia has plans to double its submarine fleet -- it is not doing so to defend against Fiji. The paper argues that it is time for the United States to offer more serious assistance so that matters do not get out of hand. A strong U.S. presence and commitment to the region's security can help avoid a regional nuclear arms race, for example. The United States can be a force multiplier by providing the intelligence, surveillance, and reconnaissance that only Washington possesses, and by training, and equipping our allies and friends. This strategy is one way of beginning to put Asia back in balance as China changes the status quo. Not doing so, we fear, would lead to Armageddon.

### 2AC T – Prohibit

#### Restriction means a limit or qualification, and includes conditions on action

CAA 8,COURT OF APPEALS OF ARIZONA, DIVISION ONE, DEPARTMENT A, STATE OF ARIZONA, Appellee, v. JEREMY RAY WAGNER, Appellant., 2008 Ariz. App. Unpub. LEXIS 613

P10 The term "restriction" is not defined by the Legislature for the purposes of the DUI statutes. See generally A.R.S. § 28-1301 (2004) (providing the "[d]efinitions" section of the DUI statutes). In the absence of a statutory definition of a term, we look to ordinary dictionary definitions and do not construe the word as being a term of art. Lee v. State, 215 Ariz. 540, 544, ¶ 15, 161 P.3d 583, 587 (App. 2007) ("When a statutory term is not explicitly defined, we assume, unless otherwise stated, that the Legislature intended to accord the word its natural and obvious meaning, which may be discerned from its dictionary definition.").

P11 The dictionary definition of "restriction" is "[a] limitation or qualification." Black's Law Dictionary 1341 (8th ed. 1999). In fact, "limited" and "restricted" are considered synonyms. See Webster's II New Collegiate Dictionary 946 (2001). Under these commonly accepted definitions, Wagner's driving privileges were "restrict[ed]" when they were "limited" by the ignition interlock requirement. Wagner was not only [\*7] statutorily required to install an ignition interlock device on all of the vehicles he operated, A.R.S. § 28-1461(A)(1)(b), but he was also prohibited from driving any vehicle that was not equipped with such a device, regardless whether he owned the vehicle or was under the influence of intoxicants, A.R.S. § 28-1464(H). These limitations constituted a restriction on Wagner's privilege to drive, for he was unable to drive in circumstances which were otherwise available to the general driving population. Thus, the rules of statutory construction dictate that the term "restriction" includes the ignition interlock device limitation.

#### Restrictions” are on time, place, and manner – this includes geography

Lobel, professor of law at the University of Pittsburgh, 2008

(Jules, “Conflicts Between the Commander in Chief and Congress: Concurrent Power over the Conduct of War,” Ohio State Law Journal, http://moritzlaw.osu.edu/students/groups/oslj/files/2012/04/69.3.lobel\_.pdf)

Throughout American history, Congress has placed restrictions on the President’s power as Commander in Chief to conduct warfare. On numerous occasions, **Congress has authorized the President to conduct warfare but placed significant restrictions on the time**, **place and manner of warfare**. Congress has regulated the tactics the President could employ, the armed forces he could deploy, the geographical area in which those forces could be utilized, and the time period and specific purposes for which the President was authorized to use force. Its regulations have both swept broadly and set forth detailed instructions and procedures for the President to follow. This historical practice is consistent with the Constitution’s text and Framers’ intent, which made clear that the President was not to have the broad powers of the British King, but was subject to the control and oversight of Congress in the conduct of warfare.

### K

#### Appeals for institutional restrain are a crucial supplement to political resistance to executive power.

David **COLE** Law @ Georgetown **’12** “The Politics of the Rule of Law: The Role of Civil Society in the Surprising Resilience of Human Rights in the Decade after 9/11” http://www.law.uchicago.edu/files/files/Cole%201.12.12.pdf p. 51-53

As I have shown above, while political forces played a significant role in checking President Bush, what was significant was the particular substantive content of that politics; it was not just any political pressure, but pressure to maintain fidelity to the rule of law. Politics standing alone is as likely to fuel as to deter executive abuse; consider the lynch mob, the Nazi Party in Germany, or xenophobia more generally. What we need if we are to check abuses of executive power is a politics that champions the rule of law. Unlike the politics Posner and Vermeule imagine, this type of politics cannot be segregated neatly from the law. On the contrary, it will often coalesce around a distinctly legal challenge, objecting to departures from distinctly legal norms, heard in a court case, as we saw with Guantanamo. Congress’s actions make clear that had Guantanamo been left to the political process, there would have been few if any advances. The litigation generated and concentrated political pressure on claims for a restoration of the values of legality, and, as discussed above, that pressure then played a critical role in the litigation’s outcome, which in turn affected the political pressure for reform. There is, to be sure, something paradoxical about this assessment. The rule of law, the separation of powers, and human rights are designed to discipline and constrain politics, out of a concern that pure majoritarian politics, focused on the short term, is likely to discount the long-term values of these principles. Yet without a critical mass of political support for these legal principles, they are unlikely to be effective checks on abuse, for many of the reasons Posner andVermeule identify. The answer, however, is not to abandon the rule of law for politics, but to develop and nurture a political culture that values the rule of law itself. Civil society organizations devoted to such values, such as Human Rights Watch, the Center for Constitutional Rights, and the American Civil Liberties Union, play a central role in facilitating, informing, and generating that politics. Indeed, they have no alternative. Unlike governmental institutions, civil society groups have no formal authority to impose the limits of law themselves. Their recourse to the law’s limits is necessarily indirect: they can file lawsuits seeking judicial enforcement, lobby Congress for statutory reform or other legislative responses, or seek to influence the executive branch. But they necessarily and simultaneously pursue these goals through political avenues

– by appealing to the public for support, educating the public, exposing abuses, and engaging in public advocacy around rule-of-law values. Unlike ordinary politics, which tends to focus on the preferences of the moment, the politics of the rule of law is committed to a set of long-term principles. Civil society organizations are uniquely situated to bring these long-term interests to bear on the public debate. Much like a constitution itself, civil society groups are institutionally designed to emphasize and reinforce our long-term interests. When the ordinary political process is consumed by the heat of a crisis, organizations like the ACLU, Human Rights First, and the Center for Constitutional Rights, designed to protect the rule of law, are therefore especially important. While Congress and the courts were at best compromised and at worst complicit in the abuses of the post-9/11 period, civil society performed admirably. The Center for Constitutional Rights brought the first lawsuit seeking habeas review at Guantanamo, and went on to coordinate a nationwide network of volunteer attorneys who represented Guantanamo habeas petitioners. The ACLU filed important lawsuits challenging secrecy and government excesses, and succeeded in disclosing many details about the government’s illegal interrogation program. Both the ACLU and CCR filed lawsuits and engaged in public advocacy on behalf of torture and rendition victims, and challenging warrantless wiretapping. Human Rights Watch and Human Rights First wrote important reports on detention, torture, and Guantanamo, and Human Rights First organized former military generals and admirals to speak out in defense of humanitarian law and human rights. These efforts are but a small subset of the broader activities of civil society, at home and abroad, that helped to bring to public attention the Bush administration’s most questionable initiatives, and to portray the initiatives as contrary to the rule of law. At their best, civil society organizations help forge a politics of the rule of law, in which there is a symbiotic relationship between politics and law: the appeal to law informs a particular politics, and that politics reinforces the law’s appeal, in a mutually reinforcing relation. Posner and Vermeule understand the importance of politics as a checking force in the modern world, but fail to see the critical qualification that the politics must be organized around a commitment to fundamental principles of liberty, equality, due process, and the separation of powers – in short, the rule of law. Margulies and Metcalf recognize that politics as much as law determines the reality of rights protections, but fail to identify the unique role that civil society organizations play in that process. It is not that the “rule of politics” has replaced the “rule of law,” but that, properly understood, a politics of law is a critical supplement to the rule of law. We cannot survive as a constitutional democracy true to our principles without both. And our survival turns, not only on a vibrant constitution, but on a vibrant civil society dedicated to reinforcing and defending constitutional values.

#### No root cause of war so changing existing norms alone fails– counter-cultural pressures require political agency that respects the power of dominant systems.

Jack **SNYDER** IR @ Columbia **’12** in *Power and Progress* p. 88-92

The end of the Cold War has given rise to hopes among many international relations scholars and public activists that a dramatic transformation in world politics is now unfolding. They contend that changes in norms, ideas, and culture have the power to tame the historically war-prone nature of international anarchy. ' This analysis and the prescriptions that follow from it exaggerate the autonomy of ideas and culture in shaping behavior in anarchy. A rich body of research on war by anthropologists suggests that ideas and culture are best understood not as autonomous but as embedded in complex social systems shaped by the interaction of material circumstances, institutional arrangements, and strategic choices, as well as by ideas and culture. Cultural prescriptions that ignore these multifaceted interactions will provide a poor road map to guide strategies of global change. Those who foresee substantial opportunities to transform the war-prone international system into a realm governed by benign norms contend that "anarchy is what states make of it."2 In their view, culture, defined as shared knowledge or symbols that create meaning within a social group, determines whether behavior in the absence of a common governing authority is bloody or benign. If more benign ideas and identities are effectively spread across the globe through cultural change and normative persuasion, then "ought" can be transformed into "is". Support for warlike dictators can be undermined, perpetrators of war crimes and atrocities can be held accountable, benign multicultural identities can be fostered, and international and civil wars w ill wane3 These academic concepts have a potent counterpart in the international human rights approach of activist organizations 4 In contrast, skeptics about such transformations argue that anarchy, whether among states coexisting in a self- help system or among contending groups inside collapsed states , gives rise to an inescapable logic of insecurity and competition that culture cannot trump5 These skeptics fear that a transformative attempt to supersede self-help behavior amounts to reckless overreaching that will create backlashes and quagmires. Ironically, in this view, the idealist vanguard of the new world order will need to rely increasingly on old-fashioned military and economic coercion in a futile effort to change world culture for the better.6 This is a debate of compelling intellectual and practical import. It lays bare the most fundamental assumptions about the nature of world politics that underpin real policy choices about the deployment of the vast military, economic, and moral resources of the United States and other wealthy democraci es. However, some of the leading voices in this debate, both in academic and broader public settings, overlook the decisive interplay between situational constraints and the creation of culture. Prophets of transformation sometimes assert that politics in anarchy and society is driven by " ideas almost all the way down." They dismiss as negligible what Alexander Wendt ca lls "rump" material constraints rooted in biology, the physical environment, or other circumstances unalterable through changes in symbolism.7 For them, "agency" by political actors committed to social change consists primarily in working to alter prevailing principled ideas, such as promoting the norm of universal jurisdiction in the case of crimes against humanity. In contrast, working for improved outcomes within existing constraints of material power, for example, by bargaining with still powerful human rights abusers, does not count for them as true "agency"; rather it is mere myopic "problem solving" within constraints8 Conversely, when prophets of continuity discuss culture at all, they treat it as a largely unchangeable force that may have some effect in constituting the units competing for security but that has at most a secondary effect on strategic interactions between those units, which are driven mainly by the logic of the anarchical situation9 This is an unnecessarily truncated menu of possibilities for imagining the relationship between anarchy and culture. Ironically, in light of the ambitiously activist agenda of the proponents of cultural approaches to international relations, their one-dimensional approach limits agents to a peculiarly circumscribed set of tools for promoting political change. A more promising approach would integrate the material, institutional, and cultural aspects of social change, drawing on the insights of theories of complex systems. Robert Jervis reminds us that the elements of complex systems, such as international anarchy, are highly interconnected and consequently the behavior of the system as a whole cannot be understood just by examining its separate parts.10 In a tightly coupled system, a change in one of its aspects, such as norms or ideas, is unlikely to have simple, linear effects . T he consequences of any change can be predicted only by considering its interaction with other attributes of the system. For example, whether the spread of the concept of national self-determination promotes peace or war may depend on the material and institutional setting in which it occurs. Negative feedback may cancel out a change that is at odds with the self-correcting logic of the system as a whole. Conversely, in unstable systems, positive feedback may amplify the effects of small changes. More complicated feedback effects may also be possible, depending on the nature of the system. Actions in a system may have different consequences when carried out in different sequences. In social systems, outcomes of an actor's plans depend on strategic interactions with the choices of other independent decision nl.akers. For example, projects for cultural change are likely to provoke cultural counterprojects from those threatened by them. Even in "games against nature," changes in behavior may transform the material setting in ways that foil actors' expectation s. For all these reasons, system effects are likely to skew or derail transformative efforts that focus narrowly on changing a single aspect of social life, such as norms and ideas. All of these system effects are relevant to understanding the effect of culture on conflict in anarchy. As I describe later, anthropological research on war shows that ideas, norms, and culture are typically interconnected with the material and institutional elements of anarchical social systems in ways that produce the full panoply of Jervis's system effects. In such systems, efforts to promote cultural transformation need to take into account the material and situational preconditions that sustain these developments; otherwise they are likely to produce unintended consequences. Underestimating situational constraints is just as dangerous and unwarranted as reifying them. Testing the effects of culture: insights from the anthropology of war Current debates about anarchy and culture have been carried out largely at the level of abstract philosophy and visceral morality. Ultimately, however, the impact of culture on war in anarchy is an empirical question. What evidence should be examined? To assess the claim that behavior in an anarchical system is what the units and their culture make of it, the obvious methodological move is to vary the culture of the units or of the system as a whole and then assess the effect on behavior. Reasonably enough, some scholars who see anarchical behavior as culturally constructed examine contemporary changes, such as the peaceful end of the Cold War, the emergence of the democratic peace, and the purported current strengthening of human rights norms. 11 In assessing such developments , it is difficult to distinguish the hopes of transitional moments from enduring trends . These kinds of tests, while not irrelevant , are not well designed to disentangle the effects of autonomous changes in ideas and culture from the effects of selfjustifying US hegemonic power, an ideological pattern that was quite familiar in the old world order. Other scholars try to show that the progenitor of the contemporary international system-the historical European balance-of-power system among sovereign states-was itself a by-product of ideas, such as the Protestant Reformation or analogies between sovereignty and individual property rights.12 The implication is that whatever has been established by ideas can also be dismantled by ideas. However, it is not a simple task to disentangle the effects of war, state formation, and ideological change on the emergence of the competitive states system. 13 Arguably, a comparison of the European system with behavior in other anarchical state systems offers a methodologically cleaner way to vary culture and assess its effects. However, when cultural constructivists do look at behavior in anarchies in cultural settings radically different from our own, they sometimes fail to exploit obvious opportunities for focused comparison. For example, Ian Johnston's prominent book Cultural Realism shows how the strategic wisdoms of the anarchical ancient Chinese Warring States system were passed down to future generations to constitute a warlike strategic "culture." His adherence to a cultural account of Chinese strategic practices remains untroubled by the fact that these ideas and practices are similar to those of the anarchic European balance- ofpower system, the ancient Greek city-states, and the ancient Indian states system described by Kautilya, a set of cultures diverse in almost every way except their strategic behavior. 14 At a first approximation, it would seem from this evidence that state behavior in anarchy is not fundamentally altered by variations in culture. This is not to deny that cultural differences may have influenced the meaning the actors imputed to their military behavior, some of the goals for which they fought, and some political features of these anarchical systems. Nonetheless, the evidence from historical state systems strongly suggests that the situational incentives of anarchy have significantly shaped strategic behavior in ways that transcend culture. Constructivists have paid less attention to another body of evidence ideally suited to assessing the effects of variations in culture on behavior in anarchy. For decades, anthropologists have been amassing a theoretically rich, empirically substantial, and methodologically self-aware body of statistical and case- study research on the relationship between war and culture in stateless societies and preindustrial anarchic systems. 15 Many of the causal factors and processes they examine will seem strikingly familiar to students of modern international relations-for example, security fears, economic rivalry between groups, economic interdependence, the institutionalization of cooperative ties across political units, the popular accountability of decision makers, and the nature of identities and cultural symbolism of the political units and of the anarchic system as a whole. Notwithstanding the familiarity of these categories, the kinds of societies anthropologists of war study differ vastly from contemporary, industrialized, bureaucratized societies, and thus research findings on the anthropological history of war can not simply be read off and applied to debates about the construction of culture in today's "new world order." Indeed, a central part of the constructivist claim is that the spread of a new democratic culture may be on the verge of making obsolete all those old cultural patterns, whether those of the Cold War, the ancient Chinese Warring States, or warring villages in the Venezuelan jungle. 16 Moreover, evidence based on technologically primitive societies, some of which lack the minimal economic resources needed for assured survival, may load the dice in favor of explanations based on material pressures. However, following the arguments ofDurkheim or Weber, one could also argue that this type of evidence is biased in favor of cultural explanations on the grounds that social solidarity in such societies is achieved more through cultural rituals than through differentiated, rational- legal institutions

#### The alternative fails and they have to prove the whole aff is bad – other frameworks steal the entire 1ac and simulation is key to education

Crocker, 12 [Copyright (c) 2012 Connecticut Law Review Connecticut Law Review July, 2012 Connecticut Law Review 44 Conn. L. Rev. 1511 LENGTH: 15299 words COMMENTARY: NATIONAL SECURITY: RESPONSE: Who Decides on Liberty? NAME: Thomas P. Crocker\* BIO: \* Associate Professor of Law, University of South Carolina School of Law. J.D. Yale Law School; Ph.D. Vanderbilt University. For helpful conversations on these issues, I would like to thank Josie Brown and Josh Eagle, and for raising the question, I am indebted to Aziz Rana. I am also grateful for the excellent research assistance of William McKinney and Zachary Horan, p. lexis]

The problem may be that **the question of** who decides on security fails **because of its own success.** Taken in isolation, as a question about specific policies regarding resource allocation, intelligence gathering, military deployments, or diplomatic relations, security can be seen as requiring special expertise of executive officials. n129 But as soon as security decisions become inextricably tied to decisions affecting fundamental liberties [\*1538] through tradeoffs, the complex relation between security and liberty undermines executive claims to expertise and deference. If to decide on security is to decide on liberty, then expertise on liberty must entail authority to decide questions of security. In this way, the tradeoff runs in both directions, as does the authority to decide matters of liberty and security. IV. The Fallacy of "Phobia" in Deciding Matters of Liberty and Security Why does the question of who decides on matters of liberty and security matter? What is the state of affairs which American legal institutions are thought to foreclose by purporting to limit the decisional authority of executive officials over liberty? Because of the close relationship between security and liberty, is it plausible to think that no sufficient deprivation of liberty occurs through presidential decisions on matters of security to warrant a strong check on executive authority over both liberty and security? Even absent a tradition recognizing executive authority over questions of liberty, Posner and Vermeuele argue that concern over legally unchecked executive power either "produces no benefits . . . or it produces minimal benefits and substantial costs." n130 Since the founding, American constitutional culture has viewed the threat of tyranny to require institutional and political vigilance. From the Declaration of Independence's "history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States," n131 to Franklin Roosevelt's 1944 State of the Union address's concern that "[p]eople who are hungry and out of a job are the stuff of which dictatorships are made," n132 Americans have adapted institutional design and political practice to address the threat of legally unconstrained executive authority. Viewing the effectiveness of this strain of American constitutional culture with skepticism, Posner and Vermeule argue that Americans suffer from "tyrannophobia"-"the fear of dictatorship" n133 -when they distrust executive officials to decide matters of liberty free from legal constraints. They articulate their position this way: "We suggest that liberal legalists overlook the importance of de facto constraints arising from politics, and thus equate a legally unconstrained executive with one that is unconstrained tout court. The horror of dictatorship that results from this fallacy and that animates liberal legalism is what we call [\*1539] 'tyrannophobia.'" n134 One consequence of Posner and Vermeule's argument is that the question of who decides on liberty is preempted by the claim of tyrannophobia. Civil libertarian concerns are ruled out ex ante as mere "phobias" said to accomplish nothing good, and that may in fact wreak some harm on the polity. The other consequence is that, similar to the asymmetry that exists in Sunstein's dichotomy between national security maximalism and liberty maximalism, n135 rational public discourse is free to fear insufficient provision for security, but irrational to fear illegitimate deprivations of liberty. To illustrate this asymmetry, imagine a people ambivalent about executive power having emerged from a recent history of tyrannical rule. n136 Within the context of a state's duty to provide security, suppose the governing policy were to provide that if there is a one percent chance of tyranny, given the catastrophic consequences for people's political lives and liberties, it must be treated as a near certainty and responded to accordingly with institutional checks and balances governed by law. Could we make sense of such a policy? Would this be tyrannophobia? Would it be illegitimate or unjustified? By contrast, now recall the actual policy of the Bush administration. As described by Ron Suskind, the policy pursued by Vice President Dick Cheney provided that "[e]ven if there's just a one percent chance of the unimaginable coming due, act as if it is a certainty." n137 Ensuing policies treated the unimaginable terrorist attack as certainty and bent policy and law around the expert capacities of executive agents. Were such policies the products of irrational phobias? Whatever one's answer to this question, it is clear that Posner and Vermeule's argument is meant to defend the asymmetry between the phobias of physical insecurity, which are rational matters for executive expertise, and the phobias of political insecurity, which are pathologies to be avoided. But why is it any more rational to adopt policies that might deprive persons of fundamental liberties in pursuit of a one percent chance of insecurity, than it is to adopt policies that might burden some means of pursuing security in pursuit of a one percent chance of future tyranny? Mere recitation of executive expertise over matters of security does not provide an answer. Nor do (probably true) assertions that particular forms of tyranny are unlikely in the United States. [\*1540] Posner and Vermeule argue that dictatorship is not possible in the United States because it is "too wealthy, with a population that is too highly educated." n138 Neither institutional design nor psychological factors are sufficient to explain the low risk of tyranny. Only the nation's wealth and associated politics can account for the absence of executive authoritarianism. From these claims-tyrannophobia does no good, dictatorship is not a real possibility, the only check on executive power is wealth and politics-Posner and Vermeuele conclude that liberal legalism is guilty of a fallacy: "the assumption that the only possible constraints on the executive are de jure constraints." n139 But this conclusion does not follow from the argument. At best, the "tyrannophobia" argument might establish that fear of tyranny has no political or legal efficacy in checking executive power. The argument says nothing at all about the viability of legal constraints on the executive, or the forms that those constraints might take. n140 Legal constraints, though contingently derived from a founding period concerned about tyranny, rely on rational justifications of constitutional and institutional design, as well as past practice. Moreover, the tyrannophobia argument overlooks the role that constitutional culture plays in explaining the absence of tyranny in American political practice. n141 American constitutional culture-in principle and in practice-is committed to resolving political questions through Madisonian frameworks wherein popular conceptions of constitutional rights and governing limits play a distinctive role. Constitutional culture is a means of legal constraint. n142 The unlikely prospect of the United States devolving into [\*1541] tyranny cannot be explained without accounting for the role that constitutional culture plays in advancing shared conceptions of constrained institutions functioning in part to protect constitutional guarantees of liberty. These shared conceptions constitute a collective identity in part through the narratives and conversations about the values, rights, liberties, and powers that constitute the preconditions for political life. n143 It is only through these shared, yet contingent and mutable, conceptions of constitutional meaning-relying on the wide participation of citizens, lawyers, judges, and legal scholars-that the politics on which Posner and Vermeule's thesis relies become possible. n144 Moreover, presidents are bound by their need to justify their policies through the meanings a constitutional culture makes available. The tyrannophobia argument also conflates concern over deprivations of liberty with irrational fears of tyranny. That persons and institutions might be concerned to constrain executive officials from policies that impinge on fundamental liberties does not in any obvious way reflect "irrational beliefs" n145 about the prospects of tyranny. n146 Fear of dictatorship is not the same thing as concern that constitutional design and practice constrain governing officials from interfering with fundamental liberty. Nor are such fears the same as the belief that a president unconstrained by law is more likely to violate the People's liberties. Only by making this further identification-that concern over liberty is also "tyrannophobia"-can we make sense of their further claim that with some frequency welfare-increasing policies "are blocked by 'libertarian panics' and tyrannophobia." n147 With this identification, tyrannophobia becomes [\*1542] the view that constitutional culture-the inter-generational conversation that structures available understandings of the presidential office, and its powers and responsibilities, through constitutional forms that constrain the possibilities for executive discretion-would itself have to be a manifestation of tyrannophobia. Contrary to such a conclusion, it seems clear that American constitutional practice is not under the grips of irrational fear, even as it seeks to channel constraints on executive power through Madisonian constitutional forms. In sum, the tyrannophobia argument attributes irrational phobia to those who adhere to constitutional principles and practices that assign responsibility for liberty to governing institutions other than the executive. On this view, expertise over security is no different from expertise over liberty, constrained not by reference to law or constitutional culture and traditions, but by the political stability of wealth. At root, however, tyrannophobia is a straw-man argument. It substitutes an emotional state-fear-for constitutional principles and practices that value commitment to legal constraint as a constitutive feature of the polity. If tyranny is the limit case for how things might go badly for a democratic republic, there are many lesser forms of executive overreach helpfully constrained by constitutional commitments shared by citizen and governing official alike. One need not posit irrational fear to believe that governing form matters to function, that law is a constitutive feature of our political practices and expectations, and that liberty is not a matter best left to the discretion of the unbounded executive. V. Conclusion By adhering to a living constitutional tradition, Americans distribute authority over liberty-and security-not simply to avoid tyranny, but to embed trust and responsibility for each throughout the polity. Dispersed power creates dispersed **responsibility**. More than responsibility for the politics in which policy is practiced, citizens and courts have a role in establishing the constitutional culture in which particular distributions of liberty and security are possible. The social and political reproduction of what liberty and security mean within the constitutional life of the polity requires widely dispersed participation, even when executive officials at times play a leading role. Because under the tradeoff thesis to decide matters of security is often to decide questions of liberty, better decisions about each become possible through wider participation in crafting policies that attend properly to both. Such a conclusion is necessary because the alternative is untenable within our constitutional tradition. Given the fact that liberty and security tradeoff, to grant unbounded executive authority to decide matters of security would be to grant similar authority over questions of liberty. But nowhere in American constitutional traditions and practice can we find unchecked executive authority over matters of [\*1543] liberty. As a consequence, we should expect institutionally allocated authority over both liberty and security.

#### One speech act doesn’t cause securitization – it’s an ongoing process

**Ghughunishvili 10**

Securitization of Migration in the United States after 9/11: Constructing Muslims and Arabs as Enemies Submitted to Central European University Department of International Relations European Studies In partial fulfillment of the requirements for the degree of Master of Arts Supervisor: Professor Paul Roe <http://www.etd.ceu.hu/2010/ghughunishvili_irina.pdf>

As provided by the Copenhagen School securitization theory is comprised by speech act, acceptance of the audience and facilitating conditions or other non-securitizing actors contribute to a successful securitization. The causality or a one-way relationship between the speech act, the audience and securitizing actor, where politicians use the speech act first to justify exceptional measures, has been criticized by scholars, such as Balzacq. According to him, the one-directional relationship between the three factors, or some of them, is not the best approach. To fully grasp the dynamics, it will be more beneficial to “rather than looking for a one-directional relationship between some or all of the three factors highlighted, it could be profitable to focus on the degree of congruence between them. 26 Among other aspects of the Copenhagen School’s theoretical framework, which he criticizes, the thesis will rely on the criticism of the lack of context and the rejection of a ‘one-way causal’ relationship between the audience and the actor. The process of threat construction, according to him, can be clearer if external context, which stands independently from use of language, can be considered. 27 Balzacq opts for more context-oriented approach when it comes down to securitization through the speech act, where a single speech does not create the discourse, but it is created through a long process, where context is vital. 28 He indicates: In reality, the speech act itself, i.e. literally a single security articulation at a particular point in time, will at best only very rarely explain the entire social process that follows from it. In most cases a security scholar will rather be confronted with a process of articulations creating sequentially a threat text which turns sequentially into a securitization. 29 This type of approach seems more plausible in an empirical study, as it is more likely that a single speech will not be able to securitize an issue, but it is a lengthy process, where a the audience speaks the same language as the securitizing actors and can relate to their speeches.

#### Security as a global public good helps avoid politics dominated by fear. Abandoning liberal security only empowers neocons.

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Faced with such inhospitable conditions, one can easily lapse into fatalistic despair, letting events simply come as they will, or else seek refuge in the consolations offered by the total critique of securitization practices – a path that some critical scholars in criminology and security studies have found all too seductive (e.g. Bigo 2002, 2006; Walters 2003). Or one can, as we have done, supplement social criticism with the hard, uphill, necessarily painstaking work of seeking to specify what it may mean for citizens to live together securely with risk; to think about the social and political arrangements capable of making this possibility more rather than less likely, and to do what one can to nurture practices of collective security shaped not by fugitive market power or by the unfettered actors of (un)civil society, but by an inclusive, democratic politics. Social analysts of crime and security have become highly attuned to, and warned repeatedly of, the illiberal, exclusionary effects of the association between security and political community (Dillon 1996; Hughes 2007). They have not, it should be said, done so without cause, for reasons we set out at some length as the book unfolds. But this sharp sensitivity to the risks of thinking about security through a communitarian lens has itself come at a price, namely, that of failing to address and theorize fully the virtues and social benefits that can flow from members of a political community being able to put and pursue security in common. This, it seems to us, is a failure to heed the implications of the stake that all citizens have in security; to appreciate the closer alignment of self-interest and altruism that can attend the acknowledgement that we are forced to live, as Kant put it, inescapably side-by-side and that individuals simultaneously constitute and threaten one another’s security; and to register the security-enhancing significance and value of the affective bonds of trust and abstract solidarity that political communities depend upon, express and sustain. All this, we think, offers reasons to believe that security offers a conduit, perhaps the best conduit there is, for giving practical meaning to the idea of the public good, for reinventing social democratic politics, even for renewing the activity of politics at all. These, of course, may prove to be naïve hopes, futile whistling in a cold and hostile wind. It is in addition true that the project of civilizing security is ultimately a question not of social theory but of political praxis. But if such a project is ever to be thematized as a politics it requires, or at least can be furthered by, some form of theoretical articulation; one which reminds us, as C. L. R. James (1963) might have said, that those who know only of security of security nothing know. It is with this overarching purpose in mind that we have been moved to write in the way that we have about security today. Our argument in this book is that security is a valuable public good, a constitutive ingredient of the good society, and that the democratic state has a necessary and virtuous role to play in the production of this good. The state, and in particular the forms of public policing governed by it, is, we shall argue, indispensable to the task of fostering and sustaining liveable political communities in the contemporary world. It is, in the words of our title, pivotal to the project of civilizing security. By invoking this phrase we have in mind two ideas, both of which we develop in the course of the book. The first, which is relatively familiar if not uncontroversial, is that security needs civilizing. States – even those that claim with some justification to be ‘liberal’ or ‘democratic’ – have a capacity when self-consciously pursuing a condition called ‘security’ to act in a fashion injurious to it. So too do non-state ‘security’ actors, a point we return to below and throughout the book. They proceed in ways that trample over the basic liberties of citizens; that forge security for some groups while imposing illegitimate burdens of insecurity upon others, or that extend the coercive reach of the state – and security discourse – over social and political life. As monopoly holders of the means of legitimate physical and symbolic violence, modern states possess a built-in, paradoxical tendency to undermine the very liberties and security they are constituted to protect. Under conditions of fear, such as obtain across many parts of the globe today, states and their police forces are prone to deploying their power in precisely such uncivil, insecurity instilling ways. If the state is to perform the ordering and solidarity nourishing work that we argue is vital to the production of secure political communities then it must, consequently, be connected to forms of discursive contestation, democratic scrutiny and constitutional control. The state is a great civilizing force, a necessary and virtuous component of the good society. But if it is to take on this role, the state must itself be civilized – made safe by and for democracy. But our title also has another, less familiar meaning – the idea that security is civilizing. Individuals who live, objectively or subjectively, in a state of anxiety do not make good democratic citizens, as European theorists reflecting upon the dark days of the 1930s and 1940s knew well (Neumann 1957). Fearful citizens tend to be inattentive to, unconcerned about, even enthusiasts for, the erosion of basic freedoms. They often lack openness or sympathy towards others, especially those they apprehend as posing a danger to them. They privilege the known over the unknown, us over them, here over there. They often retreat from public life, seeking refuge in private security ‘solutions’ while at the same time screaming anxiously and angrily from the sidelines for the firm hand of authority – for tough ‘security’ measures against crime, or disorder, or terror. Prolonged episodes of violence, in particular, can erode or destroy people’s will and capacity to exercise political judgement and act in solidarity with others (Keane 2004: 122–3). Fear, in all these ways, is the breeding ground, as well as the stock-in-trade, of authoritarian, uncivil government. But there is more to it than that. Security is also civilizing in a further, more positive sense. Security, we shall argue, is in a sociological sense a ‘thick’ public good, one whose production has irreducibly social dimensions, a good that helps to constitute the very idea of ‘publicness’. Security, in other words, is simultaneously the producer and product of forms of trust and abstract solidarity between intimates and strangers that are prerequisite to democratic political communities. The state, moreover, performs vital cultural and ordering work in fashioning the good of security conceived of in this sense. It can, under the right conditions, create inclusive communities of practice and attachment, while ensuring that these remain rights-regarding, diversity respecting entities. In a world where the state’s pre-eminence in governing security is being questioned by private-sector interests, practices of local communal ordering and transnational policing networks, the constitution of old- and new-fashioned forms of democratic political authority is, we shall argue, indispensable to cultivating and sustaining the civilizing effects of security. Security and its discontents Raising these possibilities is, of course, to invite a whole series of obvious but nonetheless significant questions: what is security? What does it mean to be or to feel secure? Who or what is the proper object of security – individuals, collectivities, states, humanity at large? What social and political arrangements are most conducive to the production of security? It is also to join – in a global age that is now also an age of terror – a highly charged political debate about the meanings and value of security as a good, and about how it may best be pursued. It is these questions, and this debate, that we want to address in this book. Security has become the political vernacular of our times. This has long been so in respect of ‘law and order’ within nation states. Authoritarian regimes are routinely in the habit of using the promise and rhetoric of security as a means of fostering allegiance and sustaining their rule – delivering safe streets while (and by) placing their citizens in fear of the early morning knock at the door (Michnik 1998). Democratic societies too have over the last several decades come to be governed through the prism of crime – a phenomenon especially marked in the USA, Britain and Australasia, though not without resonance in other liberal democratic states (Garland 2001; Simon 2006; see also Newburn and Sparks 2004). But security has also since 9/11, and the ‘war on terror’ waged in response to it, become a pervasive and contested element of world politics, impacting significantly on the ‘interior’ life of states and international and transnational relations in ways, as we shall see, that escalate the breakdown of once settled distinctions between internal and external security, war and crime, policing and soldiering (Kaldor 1999; Bigo 2000a). Today, security politics is riven by disagreements over the pros and cons of self-consciously seeking security using predominantly policing and military means; by disputes about how and whether to ‘balance’ security with such other goods as freedom, justice and democracy; and by conflicts between a conception of security as protection from physical harm and wider formulations of ‘human’ or ‘global’ security. In the face of these debates we are aware that the title and ambitions of this text are likely to meet with one of three possible responses. They will be seen by some as offensive to the benign intentions and purposes of governments and security actors. They may be viewed, alternatively, as the naïve, wrong-headed pursuit of an oxymoron. Or they may be dismissed – by those who share our broad ambition to civilize security – as too limited in their grasp of what the idea of security can and should mean. We want to probe a little further into each of these anticipated reactions. In so doing, we can begin to pinpoint the limitations of certain established dispositions towards, and public discourses about, security, as well as indicating how the debate about security can be moved to a different – we think more fruitful – place.1 The first – currently hegemonic – response issues from a lobby that seeks fairly unambiguously to promote security and that takes exception to the idea that security needs civilizing. Security, on this view, is an unqualified human good. The protection of its people from internal and external threats stands consequently as the first and defining priority of government. Far from needing to be balanced with democratic rights and freedoms, security is a precondition for the enjoyment of such goods. Far from needing ‘civilizing’, security is the foundation stone and hallmark of civilization. Security, moreover, can and should be directly and consciously pursued using what Joseph Nye (2002) calls ‘hard power’ – by enabling, resourcing and enthusiastically backing the military, intelligence agencies and the police. It is these agencies that will protect the state and its citizens, and these agencies whose purposes and effectiveness must not be hamstrung by excessive legal rights and safeguards that give succour to the enemy, or by forms of democratic deliberation that obstruct decisive executive action. This – stripped to its essentials – is the discourse that has animated countless ‘wars on drugs’ and ‘crackdowns’ on crime and disorder in both democratic and authoritarian states over recent decades, and which since 9/11 has fuelled and justified what may turn out to be a permanent ‘war on terror’. This disposition towards, and identification with, security has long antecedents dating back to Jean Bodin and Thomas Hobbes, and is deeply sedimented in the present (Robin 2004). It represents the clearsighted and hard-headed outlook of a good many politicians and police officers. It holds – for anxious citizens – a deep emotional allure. But it is not without some serious shortcomings, two of which warrant an introductory note. It proceeds, first of all, in ways that gloss over the paradoxes that attend the pursuit of security (Berki 1986: ch. 1; Zedner 2003). It has little to say, and rarely pauses to reflect upon, the most profound of these; namely, that the state’s concentration of coercive power makes it simultaneously a guarantor of and a threat to the security of individuals. Security, as Berki (1986: 13) puts it, is inescapably a problem for and a problem of the state – a condition we deal with more fully in later chapters (see also N. Walker 2000: ch. 1). Nor does the security lobby grasp clearly the implications of how human beings are mutually implicated in one another’s in/security – as both an everpresent potential threat to the security of each, and at the same time a necessary precondition for giving effect to such security. Still less does the security lobby register and absorb the fact that security is, in an important sense, destined to remain beyond our grasp – ‘more within us as a yearning, than without us as a fact’ (Ericson and Haggerty 1997: 85). Not only does this mean that there can never – in a paradox rich with implications – be ‘enough’ security measures, which hold out a promise of protection while always also signifying the presence of threat and danger. It also warns us that responding to demands for order in the terms in which they present themselves (i.e. zero-tolerant police, tougher sentencing, more prisons, ‘wars’ against drugs, or crime, or terror) can be little more than a bid to quench the unquenchable. The effacing of paradoxes such as these is closely connected to – indeed a key contributor towards – the second and most deleterious shortcoming of the security lobby. This is its tendency to make security pervasive, to proceed in ways that treat and thereby produce ‘security’ – or, more accurately, security rhetoric and activity – as a dominant, emotionally charged element of political culture and everyday life. Security – as Buzan et al. (1998) usefully remind us – is not only a condition of social existence, a description of social relations marked by order and tranquillity. It is also a political practice, a speech act, one way of framing and naming problems. To call something ‘security’ – to make what Buzan et al. (1998: 25) call a ‘securitizing move’ – is to suggest, and to seek to mobilize audiences behind, the idea that ‘we’ face an existential threat that calls for immediate, decisive, special measures. It is, in other words, to seek to lift the issue at hand – whether it is crime, or drugs, or migration – out of the realm of normal democratic politics, to claim that as an emergency it demands an urgent, even exceptional, response. The security lobby – blessed as it invariably is with ‘blind credulity and passionate certainty’ (Holmes 1993: 250) – makes precisely this move. It connects with and articulates public insecurities about crime, or disorder, or terror in terms that institutionalize anxiety as a feature of everyday life and link security to a conception of political community organized around binary oppositions between us/them, here/there, friends/enemies, inside/outside. In encouraging ‘emotional fusion between ruler and ruled’ around the question of fear (Holmes 1993: 49), it generates a climate that inhibits – even actively deters – critical scrutiny of the state’s claims and practices. By translating security into Security, into a matter of cops chasing robbers, soldiers engaging the enemy, it risks fostering vicious circles of insecurity (atrocity – fear – tough response – atrocity – fear – and so on) that ratchet up police powers, security technologies and their attendant rhetoric in ways that it becomes difficult then to temper or dismantle. In all these ways, the security lobby makes ‘security’ talk and action pervasive, or what we shall call shallow and wide, reproducing ‘security’ on the surface of social consciousness and rendering it dependent on the visible display of executive authority and police power. In so doing, it fails to get close to the heart of what it is that makes individuals objectively (or intersubjectively) and subjectively secure – it is unable, that is, to understand, still less to create, the conditions under which security becomes axiomatic, or deep and narrow. For us, these are vital distinctions, ones that we revisit and develop as our argument unfolds. The second response to our stated ambitions – the one likely to regard the enterprise as hopelessly misplaced – is concerned above all to counter security. This emanates from what we may call the ‘liberty lobby’ which disputes the suggestion that security can be civilized. Security, on this view, is a troubling, dangerous idea. Security politics – especially in the form we have just set out – is seen as authoritarian and potentially barbarous – ‘contrary to civil well-being’ (Keane 2004: 46). It is a politics that privileges state interests (and conceptions of security) over those of individuals; that is inimical to democratic values; that possesses a seductive capacity to trample – in the name, and with the support, of ‘the majority’ – over civil liberties and minority rights; that is, in short, conducive to the very violence that it purports to stamp out. Security, consequently, is something that must either be curbed in the name of liberty and human rights or, given its close police and military associations, abandoned as a value altogether. Let us briefly introduce two strands of this critical disposition. The first – common to human rights movements across the globe – seeks to constrain the power of security by questioning its imperatives, and fencing in its demands, with an insistence on protecting or enhancing the democratic freedoms and individual rights that security politics is indifferent to, throws into a utilitarian calculus, chips away at, or suspends. From this standpoint, habeas corpus, access to legal advice, limits on detention and police interrogative powers, jury trials, rights of appeal and the like are the expression and tools of a desire to preserve a space for individual liberty in the face of the forceful demands of an overweening state and global state system – whether in ‘normal’ or ‘exceptional’ times.2 A second stance – associated with those working under the loose banner of ‘critical security studies’ (Krause andWilliams 1997) – deepens and radicalizes the impulse and insights of the first. This holds that security is irredeemably tainted by its police/military parentage, and by its authoritarian desires for certainty. On this view, security is a political technology that must ‘continue to produce images of insecurity in order to retain its meaning’ (A. Burke 2002: 18) in ways that make it, at a conceptual level, inimical to democratic politics; or else it is a practice deeply tarred by its intimate empirical relation to the formation and reproduction of state-centric interests and xenophobic, anti-democratic political subjectivities and collective identities (R. B. J. Walker 1997). The conclusion in either case is the same. Security, it is claimed, has to be abandoned, the dual analytical and political task being to unsettle and deconstruct security as a category so as to find ways of thinking and acting beyond it (Dillon 1996; Aradau 2004). There is much of value in this critique of uncivil security – a great deal, in fact, which we are sympathetic towards. But these critical stances also share certain lacunae. Each, in particular, expressly or implicitly intimates that security – understood as being and feeling free from the threat of physical harm – is a problem, a conservative sensibility and project that is all too often hostile to the values and institutional practices of democracy and liberty (Huysmans 2002). The result is that each operates as a negative, oppositional force, one that evacuates the terrain that the security lobby so effectively and affectively occupies in favour of a stance that strives either to temper its worst excesses, or to trash and banish the idea altogether – a stance that appeals in part because so few others appear motivated to defend the liberties which are being imperilled. There is, on this view, little or no mileage in seeking to think in constructive terms about the good of security and the kind of good that security is. There is little point in fashioning a theory and praxis that explores the positive – democracy and liberty-enhancing – ways in which security and political community may be coupled; in reflecting upon what it means, and might take, to make security axiomatic to lived social relations. There can, in short, be no politics of civilizing security. Proponents of the third – ‘human’ or ‘social security’ – response share with us both a desire to transcend this received security–liberty dichotomy and, in their own way, an ambition to civilize security. On this view, however, such a project requires that security be rescued from a taken-for-granted association with the ‘threat, use and control of military force’ (Walt 1991: 212), and extended to other domains of social and political life (e.g. de Lint and Virta 2004).3 We can usefully highlight two variants of this position – one international, the other domestic. The former takes its cue from the United Nations Human Development Report 1994, which introduced, and sought to mobilize opinion behind, the concept of ‘human security’, an idea which has subsequently been taken up in further work conducted under the auspices of the United Nations and the European Union (Commission on Human Security 2003; Barcelona Group 2004; cf. Paris 2001). It seeks to decouple security from questions of war and peace and deploy it as a device aimed at urging governments to treat as emergencies such chronic threats as hunger, homelessness, disease and ecological degradation – the latter, for instance, being described by the Commission on Global Governance (1995: 83) as ‘the ultimate security threat’. The domestic version of the argument draws from the insight that there is no policing or penal solution to the problem of order the conclusion that crime control – or harm reduction – is ultimately a matter of, and dissolves into, questions of economic and social policy more generally. This is a commonly held disposition within both sociological criminology and social democratic politics, one which has in recent years informed a critique of situational crime prevention, crime science and other forms of technocratic crime control, and underpinned the promotion of multi-agency, social crime prevention (Crawford 1997; Hope and Karstedt 2003). On this view, security conceived of in a ‘shallow’ manner as freedom from physical harm or threat is both inseparable from a more profound sense of ‘well-being’ or ‘ontological’ security and, therefore, also dependent upon the broader institutions and services of social welfare (Fredman forthcoming). There is, once more, much to applaud in this attempt to extend the meanings and application of the idea of security. It reminds us that freedom from physical coercion is but a part of any rounded conception of human flourishing. And it pinpoints the limited and often counter-productive role that security politics and policing institutions play within this wider project. But there are difficulties with this attempt to broaden and extend security. It too – like the liberty lobby – tends to abandon the contest over how to render individuals and groups free from the threat and fear of physical coercion – in this case by a hasty and undue relegation of the significance of security in its ‘shallow’ sense. But it also, more importantly, transcends the security–liberty opposition in a fashion that risks making security pervasive in new ways. It does so, in respect of intranational crime, by connecting security to better education, full employment, or improved social conditions in a manner that tends to colonize, or ‘criminalize’, public policy such that the latter loses sight of its own values and objectives and comes instead to be thought about, funded and judged as an instrument of crime or harm reduction. The quest for ontological security, in other words, itself risks being ‘securitized’ in ways that render security pervasive in a more expansive sense than already indicated: as simultaneously deep and wide, such that any reconsideration of its preconditions is treated as a threat, prompting both parochial, xenophobic reactions and calls for more security in the shallow – police- and punishment centred – sense. Internationally, human security discourse likewise risks extending the dynamics and dangers of ‘securitization’, with all its antipolitical talk of existential threats and attendant calls for emergency measures, from the military to the political, economic, societal and environmental sectors (Buzan 1991; Buzan et al. 1998). By extending the reach of security in these ways, this position evacuates the terrain of contemporary security politics (and with it the struggle to make security axiomatic) in favour of a politics that risks turning all politics into security politics. In this book we take up the challenge of developing a fourth position – of thinking constructively about the relationship between security and political community through reconceptualizing security not as some kind of eigen-value embracing the whole of politics, but as a more modestly conceived but still ‘thick’ public good. We also indicate how – under conditions of pluralization and globalization – we may realize this revised conception of security in terms of institutional principles and design. In making good on these ambitions, we clearly need to counter the charge that ‘civilizing’ security (or anything else for that matter) inevitably carries with it a class and colonial baggage – amounting to a mission to bring ‘our’ standards and ways of doing things to a backward, barbarian ‘them’, whether at home or abroad. We try to do so as the book unfolds. For now it is sufficient to record the intuition that guides our enquiry: namely, that there is something to be gained from thinking through the connection between a family of words – civil, civility, civilizing, civilization – that have to do with taming violence and fostering respectful dialogue, and another family – politics, polity, policy, police – that have to do with the regulatory and cultural frameworks within which such democratic peace building may best take place (Keane 2004: chs. 3–4).4 Our aim is not to effect a banal compromise, or occupy some implausible middle ground, between the outlooks of the security and liberty lobbies. We want instead to step outside the terms of the confrontation in a bid to move discussion of security to a different place altogether. In his work on authenticity, Charles Taylor describes this as an ‘act of retrieval’, a phrase that captures well the activity we have in mind. A work of retrieval, Taylor says: suggests . . . that we identify and articulate the higher ideal behind the more or less debased practices, and then criticize these practices from the standpoint of their own motivating ideal. In other words, instead of dismissing this culture altogether, or just endorsing it as it is, we ought to attempt to raise its practice by making more palpable to its participants what the ethic they subscribe to really involves. (1991: 72) To engage in such retrieval in respect of security requires neither ‘root and branch condemnation’, nor ‘uncritical praise’, still less ‘a carefully balanced trade-off’ between the received ideas and practices of security and liberty (1991: 23). It demands instead taking security seriously as a ‘moral’ category and engaging in a struggle to define its ‘proper meaning’ as a ‘motivating ideal’ (1991: 73). This requires, or so it seems to us, that we recover and develop two somewhat buried or neglected meanings of security. We need, first of all, to emphasize, as the human security scholars have rightly done, the idea of the individual as the basic moral unit and referent of security – an idea that originates in the political theory of modernity.5 That individuation of security necessarily implies and so alerts us to the irreducibly subjective dimension of security, an idea that led Montesquieu to opine that ‘political freedom consists in security, or at least in the opinion one has of one’s security’ (cited in Rothschild 1995: 61; see also McSweeney 1998: ch. 1). This in turn provides a cue for a second act of retrieval; namely, of the root Latin meaning of securitas as freedom from concern, care or anxiety, a state of self-assurance or well-founded confidence. What this recovered cluster of meanings indicates is that security possesses subjective as well as objective dimensions, and that in both dimensions the ‘surfaces’ of physical security are intricately connected to the ‘depths’ of ontological security. And it is this intimate link between security and generic questions of social connectedness and solidarity that elevates it above terms like order, protection and safety as an orchestrating theme for our enquiry. The sense that security is about the relationship individuals have to the intimates and strangers they dwell among and the political communities they dwell within, and that it may therefore be connected in mutually supportive ways to the values and practices of ‘belonging’ and ‘critical freedom’ (Tully 2002), is what inspires our attempt to construct an alternative theory and praxis of security.

#### Ceding legal restriction leads to authoritarianism – turns their impact.

William **SCHEUERMAN** Poli Sci @ Indiana **‘6** “Survey Article: Emergency Powers and the Rule of

Law After 9/11\*” The Journal of Political Philosophy: Volume 14, Number 1 p. 73-74

By the conclusion of Tushnet’s argument, however, it remains unclear what remains of the rule of law. Like Cole, Tushnet accurately identifies a key tension in Gross’ argument: Gross insists on the extra-legality of emergency action while simultaneously suggesting how various legal mechanisms (e.g., a retrospective judicial condemnation) might work to restrain the executive. Tushnet resolves this tension, however, by systematically eliminating Gross’ residual legalistic impulses. Contra Gross, courts “can neither endorse nor condemn” emergency action, since “extra-constitutional powers are ‘reviewed’—and disciplined—not by law but by a mobilized citizenry.”51 Because Schmitt was right to argue that emergency power and legality do not mix, the only effective restraints on their exercise are somehow non-legal: only “the vigilance of the public acting, as it was put in the era of the American Revolution, ‘out of doors,’” can protect us from potentially abusive forms of emergency rule.52 Tushnet’s proposal is even more vulnerable to some of the criticisms directed against Gross. Most obviously, a model which condones executive crisis measures beyond the bounds of the law while disparaging the possibility of legal controls altogether hardly seems supportive of the rule of law. Tushnet’s radical democratic allusions to a “mobilized citizenry” obviously distinguishes him from Schmitt. Yet his sharp conceptual juxtaposition of democratic politics to traditional elements of liberal legality (e.g., the idea of a people acting “out of [legal] doors”) echoes Schmitt’s attempt to draw a bright line between democracy and liberalism. As has been widely noted in the secondary literature in Schmitt, however, this leaves Schmitt with a portrayal of democracy amounting to little more than mass-based authoritarian rule, in which “the people” become a plaything of their rulers. Democracy without civil liberties, the rule of law, or constitutionalism is not, in fact, democracy, but instead most likely rule of the mob by politically manipulative elites. The same can probably be expected of a democracy in which the citizenry lacks effective legal restrains on executive emergency action. Given Tushnet’s endorsement of some of Schmitt’s ideas, it might be useful for him better to explain how his model of crisis government would help secure us from yet another variety of executive-centered mass rule. Recent political history provides examples galore of political leaders relying on the specter of crises—real or otherwise—to generate “vigilant” public support while undertaking illegal and unconstitutional action. Authoritarian emergency government and some measure of popular mobilization are by no means necessarily opposed.

### Cp

#### Isolated instances of renaming fail to create change

Schram 95 (Sanford F., Associate Professor of Political Science at Macalester College, former Visiting Professor at the La Follette Institute of Public Affairs at the University of Wisconsin and Visiting Affiliate at the Institute for Research on Poverty at the University of Wisconsin, “Discourses of Dependency: The Politics of Euphemism,” Words of Welfare: The Poverty of Social Science and The Social Science of Poverty, Published by The University of Minnesota Press, ISBN 0816625778, p. 21-23)

The deconstruction of prevailing discursive structures helps politicize the institutionalized practices that inhibit alternative ways of constructing social relations.5 Isolated acts of renaming, however, are unlikely to help promote political change if they are not tied to interrogations of the structures that serve as the interpretive context for making sense of new terms.6 This is especially the case when renamings take the form of euphemisms designed to make what is described appear to be consonant with the existing order. In other words, the problems of a politics of renaming are not confined to the left, but are endemic to what amounts to a classic American practice utilized across the political spectrum.7 Homeless, welfare, and family planning provide three examples of how isolated instances of renaming fail in their efforts to make a politics out of sanitizing language. [end page 21] Reconsidering the Politics of Renaming Renaming can do much to indicate respect and sympathy. It may strategically recast concerns so that they can be articulated in ways that are more appealing and less dismissive. Renaming the objects of political contestation may help promote the basis for articulating latent affinities among disparate political constituencies. The relentless march of renamings can help denaturalize and delegitimate ascendant categories and the constraints they place on political possibility. At the moment of fissure, destabilizing renamings have the potential to encourage reconsideration of how biases embedded in names are tied to power relations.8 Yet isolated acts of renaming do not guarantee that audiences will be any more predisposed to treat things differently than they were before. The problem is not limited to the political reality that dominant groups possess greater resources for influencing discourse. Ascendant political economies, such as liberal postindustrial capitalism, whether understood structurally or discursively, operate as institutionalized systems of interpretation that can subvert the most earnest of renamings.9 It is just as dangerous to suggest that paid employment exhausts possibilities for achieving self-sufficiency as to suggest that political action can be meaningfully confined to isolated renamings.10 Neither the workplace nor a name is the definitive venue for effectuating self-worth or political intervention.11 Strategies that accept the prevailing work ethos will continue to marginalize those who cannot work, and increasingly so in a post­ industrial economy that does not require nearly as large a workforce as its industrial predecessor. Exclusive preoccupation with sanitizing names overlooks the fact that names often do not matter to those who live out their lives according to the institutionalized narratives of the broader political economy, whether it is understood structurally or discursively, whether it is monolithically hegemonic or reproduced through allied, if disparate, practices. What is named is always encoded in some publicly accessible and ascendent discourse. 12 Getting the names right will not matter if the names are interpreted according to the institutionalized insistences of organized society.13 Only when those insistences are relaxed does there emerge the possibility for new names to restructure daily practices. Texts, as it now has become notoriously apparent, can be read in many ways, and they are most often read according to how prevailing discursive structures provide an interpretive context for reading them.14 The meanings implied by new names of necessity [end page 22] overflow their categorizations, often to be reinterpreted in terms of available systems of intelligibility (most often tied to existing institutions). Whereas renaming can maneuver change within the interstices of pervasive discursive structures, renaming is limited in reciprocal fashion. Strategies of containment that seek to confine practice to sanitized categories appreciate the discursive character of social life, but insufficiently and wrongheadedly. I do not mean to suggest that discourse is dependent on structure as much as that structures are hegemonic discourses. The operative structures reproduced through a multitude of daily practices and reinforced by the efforts of aligned groups may be nothing more than stabilized ascendent discourses.15 Structure is the alibi for discourse. We need to destabilize this prevailing interpretive context and the power plays that reinforce it, rather than hope that isolated acts of linguistic sanitization will lead to political change. Interrogating structures as discourses can politicize the terms used to fix meaning, produce value, and establish identity. Denaturalizing value as the product of nothing more than fixed interpretations can create new possibilities for creating value in other less insistent and injurious ways. The discursively/structurally reproduced reality of liberal capitalism as deployed by power blocs of aligned groups serves to inform the existentially lived experiences of citizens in the contemporary postindustrial order.16 The powerful get to reproduce a broader context that works to reduce the dissonance between new names and established practices. As long as the prevailing discursive structures of liberal capitalism create value from some practices, experiences, and identities over others, no matter how often new names are insisted upon, some people will continue to be seen as inferior simply because they do not engage in the same practices as those who are currently dominant in positions of influence and prestige. Therefore, as much as there is a need to reconsider the terms of debate, to interrogate the embedded biases of discursive practices, and to resist living out the invidious distinctions that hegemonic categories impose, there are real limits to what isolated instances of renaming can accomplish.

#### Can’t put discursive questions first

Taft-Kaufman 95 (Jill, PF Speech—Central Michigan, “OTHER WAYS: POSTMODERNISM AND PERFORMATIVE PRAXIS”, Southern Communication Journal v60n3 (Spring 1995) 225-6)

To the postmodernist, then, real objects have vanished. So, too, have real people. Smith (1988) suggests that postmodernism has canonized doubt about the availability of the referent to the point that "the real often disappears from consideration" (p. 159). Real individuals become abstractions. Subject positions rather than subjects are the focus. The emphasis on subject positions or construction of the discursive self engenders an accompanying critical sense of irony which recognizes that "all conceptualizations are limited" (Fischer, 1986, p. 224). This postmodern position evokes what Connor (1989) calls "an absolute weightlessness in which anything is imaginatively possible because nothing really matters" (p. 227). Clarke (1991) dubs it a "playfulness that produces emotional and/or political disinvestment: a refusal to be engaged" (p. 103). The luxury of being able to muse about what constitutes the self is a posture in keeping with a critical venue that divorces language from material objects and bodily subjects. The postmodern passwords of "polyvocality," "Otherness," and "difference," unsupported by substantial analysis of the concrete contexts of subjects, creates a solipsistic quagmire. The political sympathies of the new cultural critics, with their ostensible concern for the lack of power experienced by marginalized people, aligns them with the political left. Yet, despite their adversarial posture and talk of opposition, their discourses on intertextuality and inter-referentiality isolate them from and ignore the conditions that have produced leftist politics—conflict, racism, poverty, and injustice. In short, as Clarke (1991) asserts, postmodern emphasis on new subjects conceals the old subjects, those who have limited access to good jobs, food, housing, health care, and transportation, as well as to the media that depict them. Merod (1987) decries this situation as one which leaves no vision, will, or commitment to activism. He notes that academic lip service to the oppositional is underscored by the absence of focused collective or politically active intellectual communities. Provoked by the academic manifestations of this problem Di Leonardo (1990) echoes Merod and laments: Has there ever been a historical era characterized by as little radical analysis or activism and as much radical-chic writing as ours? Maundering on about Otherness: phallocentrism or Eurocentric tropes has become a lazy academic substitute for actual engagement with the detailed histories and contemporary realities///

of Western racial minorities, white women, or any Third World population. (p. 530) Clarke's assessment of the postmodern elevation of language to the "sine qua non" of critical discussion is an even stronger indictment against the trend. Clarke examines Lyotard's (1984) The Postmodern Condition in which Lyotard maintains that virtually all social relations are linguistic, and, therefore, it is through the coercion that threatens speech that we enter the "realm of terror" and society falls apart. To this assertion, Clarke replies: I can think of few more striking indicators of the political and intellectual impoverishment of a view of society that can only recognize the discursive. If the worst terror we can envisage is the threat not to be allowed to speak, we are appallingly ignorant of terror in its elaborate contemporary forms. It may be the intellectual's conception of terror (what else do we do but speak?), but its projection onto the rest of the world would be calamitous....(pp. 2-27) The realm of the discursive is derived from the requisites for human life, which are in the physical world, rather than in a world of ideas or symbols.(4) Nutrition, shelter, and protection are basic human needs that require collective activity for their fulfillment. Postmodern emphasis on the discursive without an accompanying analysis of how the discursive emerges from material circumstances hides the complex task of envisioning and working towards concrete social goals (Merod, 1987). Although the material conditions that create the situation of marginality escape the purview of the postmodernist, the situation and its consequences are not overlooked by scholars from marginalized groups. Robinson (1990) for example, argues that "the justice that working people deserve is economic, not just textual" (p. 571). Lopez (1992) states that "the starting point for organizing the program content of education or political action must be the present existential, concrete situation" (p. 299). West (1988) asserts that borrowing French post-structuralist discourses about "Otherness" blinds us to realities of American difference going on in front of us (p. 170). Unlike postmodern "textual radicals" who Rabinow (1986) acknowledges are "fuzzy about power and the realities of socioeconomic constraints" (p. 255), most writers from marginalized groups are clear about how discourse interweaves with the concrete circumstances that create lived experience. People whose lives form the material for postmodern counter-hegemonic discourse do not share the optimism over the new recognition of their discursive subjectivities, because such an acknowledgment does not address sufficiently their collective historical and current struggles against racism, sexism, homophobia, and economic injustice. They do not appreciate being told they are living in a world in which there are no more real subjects. Ideas have consequences. Emphasizing the discursive self when a person is hungry and homeless represents both a cultural and humane failure. The need to look beyond texts to the perception and attainment of concrete social goals keeps writers from marginalized groups ever-mindful of the specifics of how power works through political agendas, institutions, agencies, and the budgets that fuel them.

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### AT: Gendered Language

#### Fenster

**President’s activism in expanding** his “**war powers**,”

#### The theory of gendered language is fundamentally incorrect – it ignores the fact that words have multiple meanings and the principle of telling people what they mean is totalitarian – links them back to the K

Ross 96 [Kelly Ross – PhD Philosophy @ LAV College; “Against the Theory of "Sexist Language"”; published sometime in 1996, accessed 1/8/13, < http://www.mrbauld.com/sexism.html> ] //pheft

It is common today in public discussion, whether the context is academic, political, or even legal, to take it for granted that using the word "man," in isolation or as a suffix, to refer to all of humanity, or using the pronoun "he" where any person, male or female, may be referred to, is to engage in "sexist language," i.e. language that embodies, affirms, or reinforces discrimination against women or the patriarchal subordination of women to men. Not everyone agrees with this view, and "he" and "man" often seem to creep inappropriately into the speech of even those who consider themselves above such transgressions; but the ideology that there is "sexist language" in ordinary words and in the ordinary use of English gender rarely comes under sustained criticism, even in the intellectual arenas where all things are supposed to be open to free inquiry. Instead, the inquiry is usually strongly inhibited by quick charges of "sexism" and by the other intimidating tactics of political correctness. ¶ Such defensiveness accompanies the widely held conviction that the theory of "sexist language" and the program to institute "gender neutral" language are absolutely fundamental to the social and political project of feminism. The theory of "sexist language," however, is no credit to feminism, for it is deeply flawed both in its understanding of the nature of language and in its understanding of how languages change over time. Since the ideology that there is "sexist language" seeks, indeed, to change linguistic usage as part of the attempt to change society and forms of thought, the latter is particularly significant.¶ First of all, the theory of "sexist language" seems to say that words cannot have more than one meaning: if "man" and "he" in some usage mean males, then they cannot mean both males and females in other usage. This view is absurd enough that there is usually a more subtle take on it: that the use of "man" or "he" to refer to males and to both males and females means that maleness is more fundamental than femaleness, "subordinating" femaleness to maleness, just as in the Book of Genesis the first woman, Eve, is created from Adam's rib for the purpose of being his companion. Now, the implication of the Biblical story may well be precisely that Adam is more fundamental than Eve, but the Bible did not create the language, Hebrew, in which it is written. If we are going to talk about the linguistic structure of Hebrew as distinct from the social ideology of the Bible, it is one thing to argue that the system of grammatical gender allowed the interpretation of gender embodied in the story of Adam and Eve and something very much different to argue that such an interpretive meaning necessarily underlies the original grammar of Hebrew--or Akkadian, Arabic, Greek, French, Spanish, English, Swahili, etc.--or that such a system of grammatical gender requires such an interpretation.¶ What a language with its gender system means is what people use it to mean. It is an evil principle to think that we can tell other people what they mean by what they say, because of some theory we have that makes it mean something in particular to us, even when they obviously mean something else. Nevertheless, there is now a common principle, in feminism and elsewhere (especially flourishing in literary criticism), that meaning is only in the response of the interpreter, not in the mind of the speaker, even if the speaker is to be sued or charged with a crime for the interpreter having the response that they do. There is also on top of this the Marxist theory of "false consciousness," which holds that "true" meaning follows from the underlying economic structure, today usually just called the "power" relationships. Most people are unaware of the power relationships which produce the concepts and language that they use, and so what people think they mean by their own statements and language is an illusion.¶ The implications of these principles are dehumanizing and totalitarian: what individual people think and want is irrelevant and to be disregarded, even by laws and political authorities forcing them to behave, and speak, in certain ways. But they are principles that make it possible to dismiss the common sense view that few people speaking English who said "man" in statements like "man is a rational animal" were referring exclusively to males, even though this usage was clear to all, from the context, for centuries before feminism decided that people didn't "really" mean that. But even if some speakers really did mean that, it is actually irrelevant to the freedom of individuals to mean whatever they intend to mean through language in the conventionally available forms that they choose. What was meant by the gender system in the languages that ultimately gave rise to Hebrew is lost in whatever it was that the speakers of those languages were saying to each other; but what we can say about the functioning of gender systems and about language in general is very different from the claims that the theory of "sexist language" makes.¶ Historically, if a language possesses a gender system and distinguishes between "he" and "she," then one or the other will also tend to be the common gender for when both genders are involved. In English, and most other languages with gender, that falls to "he," and the feminist argument is that this reflects patriarchal dominance and so sexism--a hierarchy in which the masculine is more fundamental. That may even be true in many cultural contexts; but interpretation is separate from the grammatical structure, and the structure allows for interpretation that cuts both ways. Logically, English "he" stands to "she" as "number" stands to "prime." Number, in a sense, is more "fundamental" than primeness, just because it is more general; but prime numbers are certainly no less numbers than any other numbers. Prime numbers are simply marked with a certain property that other numbers do not have. Calling prime numbers "prime" represents the traditional sense that the distinguishing property of prime numbers--that they cannot be evenly divided by any numbers besides one and themselves--is particularly striking and salient.¶ If "she" is logically subsumed under a more general "he," it may then be because the female was regarded as more "marked" than the male. Feminists sometimes notice this, to their irritation, in the structures of the words "female" and "woman" as compared to "male" and "man": each simply adds a syllable. Similarly, Afro-Asiatic (or Hamito-Semitic) languages from Ancient Egyptian and Hebrew to Modern Arabic have added the syllable -at as the mark of feminine nouns (where the t is usually silent and the a often later pronounced as e or i). More subtly, French may represent the same thing through the quality of the vowel in the definite articles: The feminine singular article, la, contains a full and pure vowel, /la/, while the masculine article, le, actually contains a reduced vowel, the indistinct and indefinite "schwa" sound. The full feminine vowel can easily be interepreted as more "marked" than the reduced masculine schwa.¶ Such superadded distinctness, properties, or syllables, of course, could represent something either positive or negative--femaleness could be either more valuable or less valuable than humanity in general. Or the property could be just salient and distinguishing, without being relatively more or less valuable. In any case, this means that the gender system of English is just as amenable to a feminist interpretation that it reflects a primaeval matriarchy as it is to the interpretation of Old Testament patriarchy. Since the gender systems of Indo-European and Afro-Asiatic languages certainly go back to the prehistoric periods where speculation about matriarchies proliferates, it is surprising that such an alternative interpretation has not been advanced by such theorists.¶ The actual positive markedness of the feminine gender could be argued on the basis of the gender systems of Greek and Latin, which display a general characteristic of complete Indo-European gender systems: the most common regular nouns display endings that are mostly identical for the masculine and neuter genders (-o- themes in Greek, like ho oîkos, "the house," masculine, and tò biblíon, "the book," neuter) but quite different for the feminine (-e- themes in Greek, like hee epistoleé, "the letter"). We might interpret this to mean that things with masculine gender are the most like inanimate objects, while things with feminine gender are unmistakably different from inanimate objects. This could mean that the feminine is more markedly human than the masculine. The similarity between the endings of masculine and neuter nouns still occurs in German. On the other hand, other noun endings in Greek and Latin (consonant stems, etc.) do group masculine and feminine together, contrasting them with the neuter, so there is also obviously a sense that both masculine and feminine actually are animate or human. A gender system that distinguishes femaleness as having a salient property, whether positive, negative, or neither, might still be regarded as a kind of sexism, whichever way the property goes; but it is a rather different matter from the usual feminist complaint about the patriarchal conception that we find all the way from Genesis to Aristotle to Freud: that the male is more "marked" and valuable because of the presence of a phallus, while the female is less "marked" and valuable, indeed envious, because of the absence of a phallus. It looks to be essential to the feminist theory of "sexist language" that a gender system where the masculine gender doubles as the common gender causes or reinforces "phallocentrism" and a patriarchal society. The feminine as merely the more "marked" gender, however, makes that unlikely.

#### The word “man” is gender neutral—etymology proves

Stanford Encyclopedia of Philosophy 10 (Stanford Encyclopedia of Philosophy. “Feminist Philosophy of Language” http://plato.stanford.edu/entries/feminism-language/)

Horn and Kleinedler (2000) have disputed the details of this, noting that ‘man’ did not begin its life as gender-specific and then get extended to cover both women and men. Rather, ‘man’ actually began its life as ‘mann’, a gender-neutral term, which only later acquired a gender-specific meaning. The temporal sequence, then, cannot support the claim that a gender-specific term has been extended to cover both genders. Nonetheless, Horn and Kleinedler agree that the use of terms like ‘he’ and ‘man’ as if they were gender-neutral perpetuates the objectionable idea that men are the norm for humanity.

#### Maximizing all lives is the only way to affirm equality

Cummiskey 90—David, Professor of Philosophy, Bates [Kantian Consequentialism, Ethics 100.3, p 601-2, p 606, JSTOR]

We must not obscure the issue by characterizing this type of case as the sacrifice of individuals for some abstract "social entity." It is not a question of some persons having to bear the cost for some elusive "overall social good." Instead, the question is whether some persons must bear the inescapable cost for the sake of other persons. Nozick, for example, argues that "to use a person in this way does not sufficiently respect and take account of the fact that he is a separate person, that his is the only life he has."30 Why, however, is this not equally true of all those that we do not save through our failure to act? By emphasizing solely the one who must bear the cost if we act, one fails to sufficiently respect and take account of the many other separate persons, each with only one life, who will bear the cost of our inaction. In such a situation, what would a conscientious Kantian agent, an agent motivated by the unconditional value of rational beings, choose? We have a duty to promote the conditions necessary for the existence of rational beings, but both choosing to act and choosing not to act will cost the life of a rational being. Since the basis of Kant's principle is "rational nature exists as an end-in-itself' (GMM, p. 429), the reasonable solution to such a dilemma involves promoting, insofar as one can, the conditions necessary for rational beings. If I sacrifice some for the sake of other rational beings, I do not use them arbitrarily and I do not deny the unconditional value of rational beings. Persons may have "dignity, an unconditional and incomparable value" that transcends any market value (GMM, p. 436), but, as rational beings, persons also have a fundamental equality which dictates that some must sometimes give way for the sake of others. The formula of the end-in-itself thus does not support the view that we may never force another to bear some cost in order to benefit others. If one focuses on the equal value of all rational beings, then equal consideration dictates that one sacrifice some to save many. [continues] According to Kant, the objective end of moral action is the existence of rational beings. Respect for rational beings requires that, in deciding what to do, one give appropriate practical consideration to the unconditional value of rational beings and to the conditional value of happiness. Since agent-centered constraints require a non-value-based rationale, the most natural interpretation of the demand that one give equal respect to all rational beings lead to a consequentialist normative theory. We have seen that there is no sound Kantian reason for abandoning this natural consequentialist interpretation. In particular, a consequentialist interpretation does not require sacrifices which a Kantian ought to consider unreasonable, and it does not involve doing evil so that good may come of it. It simply requires an uncompromising commitment to the equal value and equal claims of all rational beings and a recognition that, in the moral consideration of conduct, one's own subjective concerns do not have overriding importance.

#### Patriarchy doesn't explain war.

**Levy ’98** (Jack, Prof. Pol. Sci. – Rutgers, Senior Associate – Saltzman Institute of War and Peace Studies, and Past President – International Studies Association, Annual Review of Political Science, “The Causes of War and the Conditions of Peace”, 1:139-165)

Another exception to the focus on variations in war and peace can be found in some feminist theorizing about the outbreak of war, although most feminist work on war focuses on the consequences of war, particularly for women, rather than on the outbreak of war (Elshtain 1987, Enloe 1990, Peterson 1992, Tickner 1992, Sylvester 1994). The argument is that the gendered nature of states, cultures, and the world system contributes to the persistence of war in world politics. This might provide an alternative (or supplement) to anarchy as an answer to the first question of why violence and war repeatedly occur in international politics, although the fact that peace is more common than war makes it difficult to argue that patriarchy (or anarchy) causes war. Theories of patriarchy might also help answer the second question of variations in war and peace, if they identified differences in the patriarchal structures and gender relations in different international and domestic political systems in different historical conteExt.s, and if they incorporated these differences into empirically testable hypotheses about the outbreak of war. This is a promising research agenda, and one that has engaged some anthropologists. Most current feminist thinking in political science about the outbreak of war, however, treats gendered systems and patriarchal structures in the same way that neorealists treat anarchy—as a constant—and consequently it cannot explain variations in war and peace.

### Word PIK

#### We are war powers—even if tactics are topical we meet their interpretation

Kelly 93—Judge Advocate General's Corps @ US Army [Major Michael P. Kelly (JD from University of California-Davis (87) and Graduate of The Judge Advocate General's School (92), “Fixing The War Powers,” Military Law Review, 141 Mil. L. Rev. 83, Summer 1993]

First, the model for the war powers comports with the framers' intellectual foundations. They divided the powers between two coordinate branches to prevent accumulation of power. 193 They formulated a somewhat unique and experimental' check by dividing the war powers along functional lines-decisional and operational. To exercise the power, the two political branches would have to cooperate. The Congress could authorize war and the Executive would conduct war operations. This division of responsibility advanced the framers' goal of resurrecting balanced government.

Second, the model for the war powers fits the framers' desire to match institutional strengths with specific functions.' 9 5 By nature, the war power could be bifurcated along functional lines; the framers perceived the need for a policy level decision-maker and a responsive commander. From historical antecedents, the framers realized that the legislative branch would be a safe repository for decision-making of such great national importance, 9 6 and that the executive branch would be the ideal executor. Thus, the framers achieved their goal of effective war powers, at least from a functional perspective.

Third, the model for the war powers was politically acceptable to the public, and it increased the Constitution's chances of ratification. The framers were pragmatists; they knew that the most efficient government they could create would probably be unacceptable. 197 Legislative domination of the executive by making the latter subject to the former's decisional power was necessary to secure ratification.

Finally, the model for the war powers divided power along functional lines. The power was not originally concurrent or overlapping, 198 making competition for power each branch's destiny. Each branch had an assigned primary function within the partnership. At the fringes there would be overlap, but not enough to generate interbranch warfare. Thus, the framers did not originally send out "an invitation to struggle," 199 but rather an invitation to cooperate in solving America's national security problems. Pg. 120-121

#### No impact—democracy checks.

O’Kane 97 [“Modernity, the Holocaust, and politics”, Economy and Society, February, ebsco]

Chosen policies cannot be relegated to the position of immediate condition (Nazis in power) in the explanation of the Holocaust. Modern bureaucracy is not ‘intrinsically capable of genocidal action’ (Bauman 1989: 106). Centralized state coercion has no natural move to terror. In the explanation of modern genocides it is chosen policies which play the greatest part, whether in effecting bureaucratic secrecy, organizing forced labour, implementing a system of terror, harnessing science and technology or introducing extermination policies, as means and as ends. As Nazi Germany and Stalin’s USSR have shown, furthermore, those chosen policies of genocidal government turned away from and not towards modernity. The choosing of policies, however, is not independent of circumstances. An analysis of the history of each case plays an important part in explaining where and how genocidal governments come to power and analysis of political institutions and structures also helps towards an understanding of the factors which act as obstacles to modern genocide. But it is not just political factors which stand in the way of another Holocaust in modern society. Modern societies have not only pluralist democratic political systems but also economic pluralism where workers are free to change jobs and bargain wages and where independent firms, each with their own independent bureaucracies, exist in competition with state-controlled enterprises. In modern societies this economic pluralism both promotes and is served by the open scientific method. By ignoring competition and the capacity for people to move between organizations whether economic, political, scientific or social, Bauman overlooks crucial but also very ‘ordinary and common’ attributes of truly modern societies. It is these very ordinary and common attributes of modernity which stand in the way of modern genocides.

#### Sanitizing language backfires—renaming neutralizes language, reifying the harm.

Schram, 95 [Sanford F. Schram, Associate Professor of Political Science at Macalester College, former Visiting Professor at the La Follette Institute of Public Affairs at the University of Wisconsin and Visiting Affiliate at the Institute for Research on Poverty at the University of Wisconsin, 1995, “Discourses of Dependency: The Politics of Euphemism,” *Words of Welfare: The Poverty of Social Science and The Social Science of Poverty*, Published by The University of Minnesota Press, ISBN 0816625778, p. 24-25]

Renaming not only loses credibility but also corrupts the terms used. This danger is ever present, given the limits of language. Because all terms are partial and incomplete characterizations, every new term can be invalidated as not capturing all that needs to be said about any topic.22 With time, the odds increase that a new term will lose its potency as it fails to emphasize neglected dimensions of a problem. As newer concerns replace the ones that helped inspire the terminological shift, newer terms will be introduced to address what has been neglected. Where disabled was once an improvement over handicapped, other terms are now deployed to make society inclusive of [end page 24] all people, however differentially situated. The "disabled" are now "physically challenged" or "mentally challenged." The politics of renaming promotes higher and higher levels of neutralizing language.23 Yet a neutralized language is itself already a partial reading even if it is only implicitly biased in favor of some attributes over others. Neutrality is always relative to the prevailing context. As the context changes, what was once neutral becomes seen as biased. Implicit moves of emphasis and de-emphasis become more visible in a new light. "Physically" and "mentally challenged" already begin to look insufficiently affirmative as efforts intensify to include people with such attributes in all avenues of contemporary life.24