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#### Adv 1- Allied terror cooperation:

#### Domestic and international support for the US drone program is collapsing, threatening to shut it down entirely. Reform is key.

Zenko, CFR Fellow, 13 (Micah, is the Douglas Dillon fellow in the Center for Preventive Action (CPA) at the Council on Foreign Relations (CFR)., “Reforming U.S. Drone Strike Policies,” http://www.cfr.org/wars-and-warfare/reforming-us-drone-strike-policies/p29736)

In his Nobel Peace Prize acceptance speech, President Obama declared: “Where force is necessary, we have a moral and strategic interest in binding ourselves to certain rules of conduct. Even as we confront a vicious adversary that abides by no rules, I believe the United States of America must remain a standard bearer in the conduct of war.”63 Under President Obama drone strikes have expanded and intensified, and they will remain a central component of U.S. counterterrorism operations for at least another decade, according to U.S. officials.64 But much as the Bush administration was compelled to reform its controversial counterterrorism practices, it is likely that the United States will ultimately be forced by domestic and international pressure to scale back its drone strike policies. The Obama administration can preempt this pressure by clearly articulating that the rules that govern its drone strikes, like all uses of military force, are based in the laws of armed conflict and international humanitarian law; by engaging with emerging drone powers; and, most important, by matching practice with its stated policy by limiting drone strikes to those individuals it claims are being targeted (which would reduce the likelihood of civilian casualties since the total number of strikes would significantly decrease). The choice the United States faces is not between unfettered drone use and sacrificing freedom of action, but between drone policy reforms by design or drone policy reforms by default. Recent history demonstrates that domestic political pressure could severely limit drone strikes in ways that the CIA or JSOC have not anticipated. In support of its counterterrorism strategy, the Bush administration engaged in the extraordinary rendition of terrorist suspects to third countries, the use of enhanced interrogation techniques, and warrantless wiretapping. Although the Bush administration defended its policies as critical to protecting the U.S. homeland against terrorist attacks, unprecedented domestic political pressure led to significant reforms or termination. Compared to Bush-era counterterrorism policies, drone strikes are vulnerable to similar—albeit still largely untapped—moral outrage, and they are even more susceptible to political constraints because they occur in plain sight. Indeed, a negative trend in U.S. public opinion on drones is already apparent. Between February and June 2012, U.S. support for drone strikes against suspected terrorists fell from 83 percent to 62 percent—which represents less U.S. support than enhanced interrogation techniques maintained in the mid-2000s.65 Finally, U.S. drone strikes are also widely opposed by the citizens of important allies, emerging powers, and the local populations in states where strikes occur.66 States polled reveal overwhelming opposition to U.S. drone strikes: Greece (90 percent), Egypt (89 percent), Turkey (81 percent), Spain (76 percent), Brazil (76 percent), Japan (75 percent), and Pakistan (83 percent).67 This is significant because the United States cannot conduct drone strikes in the most critical corners of the world by itself. Drone strikes require the tacit or overt support of host states or neighbors. If such states decided not to cooperate—or to actively resist—U.S. drone strikes, their effectiveness would be immediately and sharply reduced, and the likelihood of civilian casualties would increase. This danger is not hypothetical. In 2007, the Ethiopian government terminated its U.S. military presence after public revelations that U.S. AC-130 gunships were launching attacks from Ethiopia into Somalia. Similarly, in late 2011, Pakistan evicted all U.S. military and intelligence drones, forcing the United States to completely rely on Afghanistan to serve as a staging ground for drone strikes in Pakistan. The United States could attempt to lessen the need for tacit host-state support by making significant investments in armed drones that can be flown off U.S. Navy ships, conducting electronic warfare or missile attacks on air defenses, allowing downed drones to not be recovered and potentially transferred to China or Russia, and losing access to the human intelligence networks on the ground that are critical for identifying targets. According to U.S. diplomats and military officials, active resistance— such as the Pakistani army shooting down U.S. armed drones— is a legitimate concern. In this case, the United States would need to either end drone sorties or escalate U.S. military involvement by attacking Pakistani radar and antiaircraft sites, thus increasing the likelihood of civilian casualties.68 Beyond where drone strikes currently take place, political pressure could severely limit options for new U.S. drone bases. For example, the Obama administration is debating deploying armed drones to attack al-Qaeda in the Islamic Maghreb (AQIM) in North Africa, which would likely require access to a new airbase in the region. To some extent, anger at U.S. sovereignty violations is an inevitable and necessary trade-off when conducting drone strikes. Nevertheless, in each of these cases, domestic anger would partially or fully abate if the United States modified its drone policy in the ways suggested below.

#### Lack of legal oversight on targeted killing collapses allied cooperation on terrorism, which is critical to intelligence sharing.

Human Rights First 13 (How to Ensure that the U.S. Drone Program does not Undermine Human Rights BLUEPRINT FOR THE NEXT ADMINISTRATION, Updated April 13, http://www.humanrightsfirst.org/wp-content/uploads/pdf/blueprints2012/HRF\_Targeted\_Killing\_blueprint.pdf)

The Obama Administration has dramatically escalated targeted killing by drones as a central feature of its counterterrorism response. Over the past two years, the administration has begun to reveal more about the targeted killing program, including in a leaked Department of Justice White paper on targeted killing1 and in public remarks by several senior officials.2 While this information is welcome, it does not fully address our concerns. Experts and other governments have continued to raise serious concerns about: The precedent that the U.S. targeted killing policy is setting for the rest of the world, including countries that have acquired or are in the process of acquiring drones, yet have long failed to adhere to the rule of law and protect human rights; The impact of the drone program on other U.S. counterterrorism efforts, including whether U.S. allies and other security partners have reduced intelligence-sharing and other forms of counterterrorism cooperation because of the operational and legal concerns expressed by these countries; The impact of drone operations on other aspects of U.S. counterterrorism strategy, especially diplomatic and foreign assistance efforts designed to counter extremism, promote stability and provide economic aid; The number of civilian casualties, including a lack of clarity on who the United States considers a civilian in these situations; and Whether the legal framework for the program that has been publicly asserted so far by the administration comports with international legal requirements. The totality of these concerns, heightened by the lack of public information surrounding the program, require the administration to better explain the program and its legal basis, and to carefully review the policy in light of the global precedent it is setting and serious questions about the effectiveness of the program on the full range of U.S. counterterrorism efforts. While it is expected that elements of the U.S. government’s strategy for targeted killing will be classified, it is in the national interest that the government be more transparent about policy considerations governing its use as well as its legal justification, and that the program be subject to regular oversight. Furthermore, it is in U.S. national security interests to ensure that the rules of engagement are clear and that the program minimizes any unintended negative consequences. How the U.S. operates and publicly explains its targeted killing program will have far-reaching consequences. The manufacture and sale of unmanned aerial vehicles (UAVs) is an increasingly global industry and drone technology is not prohibitively complicated. Some 70 countries already possess UAVs3 —including Russia, Syria and Libya4 —and others are in the process of acquiring them. As White House counterterrorism chief John Brennan stated: the United States is "establishing precedents that other nations may follow, and not all of them will be nations that share our interests or the premium we put on protecting human life, including innocent civilians."5 By declaring that it is in an armed conflict with al Qaeda’s “associated forces” (a term it has not defined) without articulating limits to that armed conflict, the United States is inviting other countries to similarly declare armed conflicts against groups they consider to be security threats for purposes of assuming lethal targeting authority. Moreover, by announcing that all “members” of such groups are legally targetable, the United States is establishing exceedingly broad precedent for who can be targeted, even if it is not utilizing the full scope of this claimed authority.6 As an alternative to armed conflict-based targeting, U.S. officials have claimed targeted killings are justified as self-defense responding to an imminent threat, but have referred to a “flexible” or “elongated” concept of imminence,7 without adequately explaining what that means or how that complies with the requirements of international law. In a white paper leaked to NBC news in February 2013, for example, the Department of Justice adopts what it calls a “broader concept of imminence” that has no basis in law. According to the white paper, an imminent threat need be neither immediate nor specific. This is a dangerous, unprecedented and unwarranted expansion of widely-accepted understandings of international law.8 It is also not clear that the current broad targeted killing policy serves U.S. long-term strategic interests in combating international terrorism. Although it has been reported that some high-level operational leaders of al Qaeda have been killed in drone attacks, studies show that the vast majority of victims are not high-level terrorist leaders.9 National security analysts and former U.S. military officials increasingly argue that such tactical gains are outweighed by the substantial costs of the targeted killing program, including growing antiAmerican sentiment and recruiting support for al Qaeda. 10 General Stanley McChrystal has said: “What scares me about drone strikes is how they are perceived around the world. The resentment created by American use of unmanned strikes ... is much greater than the average American appreciates.”11 The broad targeted killing program has already strained U.S. relations with its allies and thereby impeded the flow of critical intelligence about terrorist operations.12

#### Drone policy is more important than the spying and data scandal to European partners-threatens allied intelligence cooperation.

Dworkin 7/17/13 (Anthony, Senior Policy Fellow at the European Council on Foreign Relations, “Actually, drones worry Europe more than spying” <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. For a start, it should cut back the number of drone strikes and be much more open about the reasons for the attacks it conducts and the process for reviewing them after the fact. It should also elaborate its criteria for determining who poses an imminent threat in a way that keeps attacks within tight limits. And, as U.S. forces prepare to withdraw from Afghanistan in 2014, it should keep in mind the possibility of declaring the war against al Qaeda to be over. All this said, Europe also has some tough decisions to make, and it is unclear whether European countries are ready to take a hard look at their views about drone strikes, addressing any weaknesses or inconsistencies in their own position. If they are, the next few years could offer a breakthrough in developing international standards for the use of this new kind of weapon, before the regular use of drones spreads across the globe.

#### Allied cooperation on intelligence is critical to effective counterterrorism

McGill and Gray 12 (Anna-Katherine Staser McGill, David H. Gray, “Challenges to International Counterterrorism Intelligence Sharing,” Global Security Studies, Summer 2012, Volume 3, Issue 3, http://globalsecuritystudies.com/McGill%20Intel%20Share.pdf)

In his article “Old Allies and New Friends: Intelligence-Sharing in the War on Terror”, Derek Reveron states “the war on terror requires high levels of intelligence to identify a threat relative to the amount of force required to neutralize it” as opposed to the Cold War where the opposite was true (455). As a result, intelligence is the cornerstone of effective counterterrorism operations in the post 9/11 world. Though the United States has the most robust intelligence community in the world with immense capability, skills, and technology, its efficiency in counterterrorism issues depends on coalitions of both traditional allies and new allies. Traditional allies offer a certain degree of dependability through a tried and tested relationship based on similar values; however, newly cultivated allies in the war on terrorism offer invaluable insight into groups operating in their own back yard. The US can not act unilaterally in the global fight against terrorism. It doesn’t have the resources to monitor every potential terrorist hide-out nor does it have the time or capability to cultivate the cultural, linguistic, and CT knowledge that its new allies have readily available. The Department of Defense’s 2005 Quadrennial Review clearly states that the United States "cannot meet today's complex challenges alone. Success requires unified statecraft: the ability of the U.S. government to bring to, bear all elements of national power at home and to work in close cooperation with allies and partners abroad" (qtd in Reveron, 467). The importance of coalition building for the war on terrorism is not lost on US decision-makers as seen by efforts made in the post 9/11 climate to strengthen old relationships and build new ones; however, as seen in the following sections, the possible hindrances to effective, long term CT alliances must also be addressed in order to sustain current operations.

#### Terrorists have means and motive for nuclear attacks, now-expertise and materials are widespread and multiple attempts prove.

**Jaspal, Quaid-i-Azam University IR professor, 2012**

(Zafar, “Nuclear/Radiological Terrorism: Myth or Reality?”, Journal of Political Studies, <http://pu.edu.pk/images/journal/pols/pdf-files/Nuclear%20Radiological%20terrorism%20Jaspa_Vol_19_Issue_1_2012.pdf>, ldg)

The misperception, miscalculation and above all ignorance of the ruling elite about security puzzles are perilous for the national security of a state. Indeed, in an age of transnational terrorism and unprecedented dissemination of dual-use nuclear technology, ignoring nuclear terrorism threat is an imprudent policy choice. The incapability of terrorist organizations to engineer fissile material does not eliminate completely the possibility of nuclear terrorism. At the same time, the absence of an example or precedent of a nuclear/ radiological terrorism does not qualify the assertion that the nuclear/radiological terrorism ought to be remained a myth.x Farsighted rationality obligates that one should not miscalculate transnational terrorist groups — whose behavior suggests that they have a death wish — of acquiring nuclear, radiological, chemical and biological material producing capabilities. In addition, one could be sensible about the published information that huge amount of nuclear material is spread around the globe. According to estimate it is enough to build more than 120,000 Hiroshima-sized nuclear bombs (Fissile Material Working Group, 2010, April 1). The alarming fact is that a few storage sites of nuclear/radiological materials are inadequately secured and continue to be accumulated in unstable regions (Sambaiew, 2010, February). Attempts at stealing fissile material had already been discovered (Din & Zhiwei, 2003: 18). Numerous evidences confirm that terrorist groups had aspired to acquire fissile material for their terrorist acts. Late Osama bin Laden, the founder of al Qaeda stated that acquiring nuclear weapons was a“religious duty” (Yusufzai, 1999, January 11). The IAEA also reported that “al-Qaeda was actively seeking an atomic bomb.” Jamal Ahmad al-Fadl, a dissenter of Al Qaeda, in his trial testimony had “revealed his extensive but unsuccessful efforts to acquire enriched uranium for al-Qaeda” (Allison, 2010, January: 11). On November 9, 2001, Osama bin Laden claimed that “we have chemical and nuclear weapons as a deterrent and if America used them against us we reserve the right to use them (Mir, 2001, November 10).” On May 28, 2010, Sultan Bashiruddin Mahmood, a Pakistani nuclear scientist confessed that he met Osama bin Laden. He claimed that “I met Osama bin Laden before 9/11 not to give him nuclear know-how, but to seek funds for establishing a technical college in Kabul (Syed, 2010, May 29).” He was arrested in 2003 and after extensive interrogation by American and Pakistani intelligence agencies he was released (Syed, 2010, May 29). Agreed, Mr. Mahmood did not share nuclear know-how with Al Qaeda, but his meeting with Osama establishes the fact that the terrorist organization was in contact with nuclear scientists. Second, the terrorist group has sympathizers in the nuclear scientific bureaucracies. It also authenticates bin Laden’s Deputy Ayman Zawahiri’s claim which he made in December 2001: “If you have $30 million, go to the black market in the central Asia, contact any disgruntled Soviet scientist and a lot of dozens of smart briefcase bombs are available (Allison, 2010, January: 2).” The covert meetings between nuclear scientists and al Qaeda members could not be interpreted as idle threats and thereby the threat of nuclear/radiological terrorism is real. The 33Defense Secretary Robert Gates admitted in 2008 that “what keeps every senior government leader awake at night is the thought of a terrorist ending up with a weapon of mass destruction, especially nuclear (Mueller, 2011, August 2).” Indeed, the nuclear deterrence strategy cannot deter the transnational terrorist syndicate from nuclear/radiological terrorist attacks. Daniel Whiteneck pointed out: “Evidence suggests, for example, that al Qaeda might not only use WMD simply to demonstrate the magnitude of its capability but that it might actually welcome the escalation of a strong U.S. response, especially if it included catalytic effects on governments and societies in the Muslim world. An adversary that prefers escalation regardless of the consequences cannot be deterred” (Whiteneck, 2005, Summer: 187)

#### And, Nuclear terrorism attacks escalate and cause extinction.

**Morgan, Hankuk University of Foreign Studies, 2009**

(Dennis, World on fire: two scenarios of the destruction of human civilization and possible extinction of the human race Futures, Volume 41, Issue 10, December, ldg)

In a remarkable website on nuclear war, Carol Moore asks the question “Is Nuclear War Inevitable??” In Section , Moore points out what most terrorists obviously already know about the nuclear tensions between powerful countries. No doubt, they’ve figured out that the best way to escalate these tensions into nuclear war is to set off a nuclear exchange. As Moore points out, all that militant terrorists would have to do is get their hands on one small nuclear bomb and explode it on either Moscow or Israel. Because of the Russian “dead hand” system, “where regional nuclear commanders would be given full powers should Moscow be destroyed,” it is likely that any attack would be blamed on the United States” Israeli leaders and Zionist supporters have, likewise, stated for years that if Israel were to suffer a nuclear attack, whether from terrorists or a nation state, it would retaliate with the suicidal “Samson option” against all major Muslim cities in the Middle East. Furthermore, the Israeli Samson option would also include attacks on Russia and even “anti-Semitic” European cities In that case, of course, Russia would retaliate, and the U.S. would then retaliate against Russia. China would probably be involved as well, as thousands, if not tens of thousands, of nuclear warheads, many of them much more powerful than those used at Hiroshima and Nagasaki, would rain upon most of the major cities in the Northern Hemisphere. Afterwards, for years to come, massive radioactive clouds would drift throughout the Earth in the nuclear fallout, bringing death or else radiation disease that would be genetically transmitted to future generations in a nuclear winter that could last as long as a 100 years, taking a savage toll upon the environment and fragile ecosphere as well. And what many people fail to realize is what a precarious, hair-trigger basis the nuclear web rests on. Any accident, mistaken communication, false signal or “lone wolf’ act of sabotage or treason could, in a matter of a few minutes, unleash the use of nuclear weapons, and once a weapon is used, then the likelihood of a rapid escalation of nuclear attacks is quite high while the likelihood of a limited nuclear war is actually less probable since each country would act under the “use them or lose them” strategy and psychology; restraint by one power would be interpreted as a weakness by the other, which could be exploited as a window of opportunity to “win” the war. In other words, once Pandora's Box is opened, it will spread quickly, as it will be the signal for permission for anyone to use them. Moore compares swift nuclear escalation to a room full of people embarrassed to cough. Once one does, however, “everyone else feels free to do so. The bottom line is that as long as large nation states use internal and external war to keep their disparate factions glued together and to satisfy elites’ needs for power and plunder, these nations will attempt to obtain, keep, and inevitably use nuclear weapons. And as long as large nations oppress groups who seek self-determination, some of those groups will look for any means to fight their oppressors” In other words, as long as war and aggression are backed up by the implicit threat of nuclear arms, it is only a matter of time before the escalation of violent conflict leads to the actual use of nuclear weapons, and once even just one is used, it is very likely that many, if not all, will be used, leading to horrific scenarios of global death and the destruction of much of human civilization while condemning a mutant human remnant, if there is such a remnant, to a life of unimaginable misery and suffering in a nuclear winter. In “Scenarios,” Moore summarizes the various ways a nuclear war could begin: Such a war could start through a reaction to terrorist attacks, or through the need to protect against overwhelming military opposition, or through the use of small battle field tactical nuclear weapons meant to destroy hardened targets. It might quickly move on to the use of strategic nuclear weapons delivered by short-range or inter-continental missiles or long-range bombers. These could deliver high altitude bursts whose electromagnetic pulse knocks out electrical circuits for hundreds of square miles. Or they could deliver nuclear bombs to destroy nuclear and/or non-nuclear military facilities, nuclear power plants, important industrial sites and cities. Or it could skip all those steps and start through the accidental or reckless use of strategic weapons

#### Only judicial ex post review provides the accountability necessary to solve confidence in targeting—key to viability of the program

Corey, Army Colonel, 12 (Colonel Ian G. Corey, “Citizens in the Crosshairs: Ready, Aim, Hold Your Fire?,” http://www.dtic.mil/cgi-bin/GetTRDoc?AD=ADA561582)

Alternatively, targeted killing decisions could be subjected to judicial review. 103 Attorney General Holder rejected ex ante judicial review out of hand, citing the Constitution’s allocation of national security operations to the executive branch and the need for timely action.104 Courts are indeed reluctant to stray into the realm of political questions, as evidenced by the district court’s dismissal of the ACLU and CCR lawsuit. On the other hand, a model for a special court that operates in secret already exists: the Foreign Intelligence Surveillance Court (FISC) that oversees requests for surveillance warrants for suspected foreign agents. While ex ante judicial review would provide the most robust form of oversight, ex post review by a court like the FISC would nonetheless serve as a significant check on executive power.105 Regardless of the type of oversight implemented, some form of independent review is necessary to demonstrate accountability and bolster confidence in the targeted killing process. Conclusion The United States has increasingly relied on targeted killing as an important tactic in its war on terror and will continue to do so for the foreseeable future.106 This is entirely reasonable given current budgetary constraints and the appeal of targeted killing, especially UAS strikes, as an alternative to the use of conventional forces. Moreover, the United States will likely again seek to employ the tactic against U.S. citizens assessed to be operational leaders of AQAM. As demonstrated above, one can make a good faith argument that doing so is entirely permissible under both international and domestic law as the Obama Administration claims, the opinions of some prominent legal scholars notwithstanding. The viability of future lethal targeting of U.S. citizens is questionable, however, if the government fails to address legitimate issues of transparency and accountability. While the administration has recently made progress on the transparency front, much more remains to be done, including the release in some form of the legal analysis contained in OLC’s 2010 opinion. Moreover, the administration must be able to articulate to the American people how it selects U.S. citizens for targeted killing and the safeguards in place to mitigate the risk of error and abuse. Finally, these targeting decisions must be subject to some form of independent review that will both satisfy due process and boost public confidence.

#### Accountability is impossible from executive internal measures- no one trusts Obama on drones—Court action is key.

Goldsmith 13 (Jack Goldsmith teaches at Harvard Law School and is a member of the Hoover Institution Task Force on National Security and Law, “How Obama Undermined the War on Terror,” http://www.newrepublic.com/article/112964/obamas-secrecy-destroying-american-support-counterterrorism)

For official secrecy abroad to work, the secrets must be kept at home as well. In speeches, interviews, and leaks, Obama's team has tried to explain why its operations abroad are lawful and prudent. But to comply with rules of classified information and covert action, the explanations are conveyed in limited, abstract, and often awkward terms. They usually raise more questions than they answer—and secrecy rules often preclude the administration from responding to follow-up questions, criticisms, and charges. ¶ As a result, much of what the administration says about its secret war—about civilian casualties, or the validity of its legal analysis, or the quality of its internal deliberations—seems incomplete, self-serving, and ultimately non-credible. These trust-destroying tendencies are exacerbated by its persistent resistance to transparency demands from Congress, from the press, and from organizations such as the aclu that have sought to know more about the way of the knife through Freedom of Information Act requests.¶ A related sin is the Obama administration's surprising failure to secure formal congressional support. Nearly every element of Obama's secret war rests on laws—especially the congressional authorization of force (2001) and the covert action statute (1991)—designed for different tasks. The administration could have worked with Congress to update these laws, thereby forcing members of Congress to accept responsibility and take a stand, and putting the secret war on a firmer political and legal foundation. But doing so would have required extended political efforts, public argument, and the possibility that Congress might not give the president precisely what he wants.¶ The administration that embraced the way of the knife in order to lower the political costs of counterterrorism abroad found it easier to avoid political costs at home as well. But this choice deprived it of the many benefits of public argumentation and congressional support. What Donald Rumsfeld said self-critically of Bush-era unilateralism applies to Obama's unilateralism as well: it fails to "take fully into account the broader picture—the complete set of strategic considerations of a president fighting a protracted, unprecedented and unfamiliar war for which he would need sustained domestic and international support." ¶ Instead of seeking contemporary congressional support, the administration has relied mostly on government lawyers' secret interpretive extensions of the old laws to authorize new operations against new enemies in more and more countries. The administration has great self-confidence in the quality of its stealth legal judgments. But as the Bush administration learned, secret legal interpretations are invariably more persuasive within the dark circle of executive branch secrecy than when exposed to public sunlight. On issues ranging from proper targeting standards, to the legality of killing American citizens, to what counts as an "imminent" attack warranting self-defensive measures, these secret legal interpretations—so reminiscent of the Bushian sin of unilateral legalism—have been less convincing in public, further contributing to presidential mistrust.¶ Feeling the heat from these developments, President Obama promised in his recent State of the Union address "to engage with 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." So far, this promise, like similar previous ones, remains unfulfilled. ¶ The administration has floated the idea of "[shifting] the CIA's lethal targeting program to the Defense Department," as The Daily Beast reported last month. Among other potential virtues, this move might allow greater public transparency about the way of the knife to the extent that it would eliminate the covert action bar to public discussion. But JSOC's non-covert targeted killing program is no less secretive than the CIA's, and its congressional oversight is, if anything, less robust. ¶ A bigger problem with this proposed fix is that it contemplates executive branch reorganization followed, in a best-case scenario, by more executive branch speeches and testimony about what it is doing in its stealth war. The proposal fails to grapple altogether with the growing mistrust of the administration's oblique representations about secret war. The president cannot establish trust in the way of the knife through internal moves and more words. Rather, he must take advantage of the separation of powers. Military detention, military commissions, and warrantless surveillance became more legitimate and less controversial during the Bush era because adversarial branches of government assessed the president's policies before altering and then approving them. President Obama should ask Congress to do the same with the way of the knife, even if it means that secret war abroad is harder to conduct.

### 2

#### Advantage 2- Imminence:

#### The executive’s current definition of imminence is so vague and broad it makes overuse and abuse of the drone program inevitable.

Greenwald 13 (Glenn, J.D. from NYU, award-winning journalist, February 5th, 2013, "Chilling legal memo from Obama DOJ justifies assassination of US citizens," www.theguardian.com/commentisfree/2013/feb/05/obama-kill-list-doj-memo)

4. Expanding the concept of "imminence" beyond recognition The memo claims that the president's assassination power applies to a senior al-Qaida member who "poses an imminent threat of violent attack against the United States". That is designed to convince citizens to accept this power by leading them to believe it's similar to common and familiar domestic uses of lethal force on US soil: if, for instance, an armed criminal is in the process of robbing a bank or is about to shoot hostages, then the "imminence" of the threat he poses justifies the use of lethal force against him by the police. But this rhetorical tactic is totally misleading. The memo is authorizing assassinations against citizens in circumstances far beyond this understanding of "imminence". Indeed, the memo expressly states that it is inventing "a broader concept of imminence" than is typically used in domestic law. Specifically, the president's assassination power "does not require that the US have clear evidence that a specific attack . . . will take place in the immediate future". The US routinely assassinates its targets not when they are engaged in or plotting attacks but when they are at home, with family members, riding in a car, at work, at funerals, rescuing other drone victims, etc. Many of the early objections to this new memo have focused on this warped and incredibly broad definition of "imminence". The ACLU's Jameel Jaffer told Isikoff that the memo "redefines the word imminence in a way that deprives the word of its ordinary meaning". Law Professor Kevin Jon Heller called Jaffer's objection "an understatement", noting that the memo's understanding of "imminence" is "wildly overbroad" under international law. Crucially, Heller points out what I noted above: once you accept the memo's reasoning - that the US is engaged in a global war, that the world is a battlefield, and the president has the power to assassinate any member of al-Qaida or associated forces - then there is no way coherent way to limit this power to places where capture is infeasible or to persons posing an "imminent" threat. The legal framework adopted by the memo means the president can kill anyone he claims is a member of al-Qaida regardless of where they are found or what they are doing. The only reason to add these limitations of "imminence" and "feasibility of capture" is, as Heller said, purely political: to make the theories more politically palatable. But the definitions for these terms are so vague and broad that they provide no real limits on the president's assassination power. As the ACLU's Jaffer says: "This is a chilling document" because "it argues that the government has the right to carry out the extrajudicial killing of an American citizen" and the purported limits "are elastic and vaguely defined, and it's easy to see how they could be manipulated."

#### 2 Impacts- first, Pakistan

#### This broad definition of imminence has increased the frequency of attacks and the scope of who can be targeted, which decreases the program’s effectiveness because it reduces the ratio of high-value decapitations to accidental kills

Hudson 11 (Leila Hudson is associate professor of anthropology and history in the School of Middle Eastern & North African Studies at the University of Arizona and director of the Southwest Initiative for the Study of Middle East Conflicts, “Drone Warfare: Blowback From the New American Way of War,” Middle East Policy, <http://www.mepc.org/journal/middle-east-policy-archives/drone-warfare-blowback-new-american-way-war>)

The Bush administration's increased reliance on the program started in 2008; however, it is with the Obama administration that we see the most rapid proliferation of attacks. The final phase of the drone program is characterized by an even greater increase in attack frequency and an expansion of the target list to include targets of opportunity and unidentified militants of dubious rank — and funerals.12 As of May 2011, the CIA under the Obama administration has conducted nearly 200 drone strikes. This suggests that the drone target list now includes targets of opportunity, likely including some selected in consultation with the Pakistani authorities in order to facilitate the increasingly unpopular program. This development, in turn, has now decreased the effectiveness of the program when assessed in terms of the ratio of high-value to accidental kills. As Figure 2 shows, the steady increase in drone attacks conducted in Pakistan between 2004 and 2010 has resulted in a far higher number of deaths overall, but a lower rate of successful killings of high-value militant leaders who command, control and inspire organizations. If we define a high-value target as an organizational leader known to intelligence sources and the international media prior to attack and not someone whose death is justified with a posthumous militant status, we see fewer and fewer such hits — the alleged killing of al-Qaeda commander Ilyas al-Kashmiri in 2009 and again in June 2011 notwithstanding.13 Data analysis shows that at the beginning of the drone program (2002-04), five or six people were killed for each defined high-value target. As part of that high-value target's immediate entourage, they were much more likely to be militants than civilians. By 2010, one high-value target was killed per 147 total deaths. The increased lethality of each attack is due to larger payloads, broader target sets such as funeral processions, and probable new targeting guidelines (including targets of opportunity).14 Over time, these more deadly drone attacks have failed to effectively decapitate the leadership of anti-U.S. organizations but have killed hundreds of other people subsequently alleged to be militants; many were civilians.15 The rapidly growing population of survivors and witnesses of these brutal attacks have emotional and social needs and incentives to join the ranks of groups that access and attack U.S. targets in Afghanistan across the porous border. Drone attacks themselves deliver a politically satisfying short-term "bang for the buck" for U.S. constituencies ignorant of and indifferent to those affected by drone warfare or the phenomenon of blowback. In the Pakistani and Afghan contexts, they inflame the populations and destabilize the institutions that drive regional development. In addition to taking on an unacceptable and extrajudicial toll in human life, the drone strikes in unintended ways complicate the U.S. strategic mission in Afghanistan, as well as the fragile relationship with Pakistan. As a result, the U.S. military's counterinsurgency project in Afghanistan becomes a victim of the first two forms of blowback.

#### Overuse of drones in Pakistan empowers militants and destabilizes the government

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>

The escalation of drone strikes in Pakistan to its current tempo—one every few days—directly contradicts the long-term American strategic goal of boosting the capacity and legitimacy of the government in Islamabad. Drone attacks are more than just temporary incidents that erase all traces of an enemy. They have lasting political effects that can weaken existing governments, undermine their legitimacy and add to the ranks of their enemies. These political effects come about because drones provide a powerful signal to the population of a targeted state that the perpetrator considers the sovereignty of their government to be negligible. The popular perception that a government is powerless to stop drone attacks on its territory can be crippling to the incumbent regime, and can embolden its domestic rivals to challenge it through violence. Such continual violations of the territorial integrity of a state also have direct consequences for the legitimacy of its government. Following a meeting with General David Petraeus, Pakistani President Asif Ali Zardari described the political costs of drones succinctly, saying that ‘continuing drone attacks on our country, which result in loss of precious lives or property, are counterproductive and difficult to explain by a democratically elected government. It is creating a credibility gap.’75 Similarly, the Pakistani High Commissioner to London Wajid Shamsul Hasan said in August 2012 that¶ what has been the whole outcome of these drone attacks is that you have directly or indirectly contributed to destabilizing or undermining the democratic government. Because people really make fun of the democratic government—when you pass a resolution against drone attacks in the parliament and nothing happens. The Americans don’t listen to you, and they continue to violate your territory.76¶ The appearance of powerlessness in the face of drones is corrosive to the appearance of competence and legitimacy of the Pakistani government. The growing perception that the Pakistani civilian government is unable to stop drone attacks is particularly dangerous in a context where 87 per cent of all Pakistanis are dissatisfied with the direction of the country and where the military, which has launched coups before, remains a popular force.77

#### Pakistan collapse risks war with India and loose nukes

Twining 13 (Daniel Twining is Senior Fellow for Asia at the German Marshall Fund, Pakistan and the Nuclear Nightmare, Sept 4, http://shadow.foreignpolicy.com/posts/2013/09/04/pakistan\_and\_the\_nuclear\_nightmare)

The Washington Post has revealed the intense concern of the U.S. intelligence community about Pakistan's nuclear weapons program. In addition to gaps in U.S. information about nuclear weapons storage and safeguards, American analysts are worried about the risk of terrorist attacks against nuclear facilities in Pakistan as well as the risk that individual Pakistani nuclear weapons handlers could go rogue in ways that endanger unified national control over these weapons of mass destruction. These concerns raise a wider question for a U.S. national security establishment whose worst nightmares include the collapse of the Pakistani state -- with all its implications for empowerment of terrorists, a regional explosion of violent extremism, war with India, and loss of control over the country's nuclear weapons. That larger question is: Does Pakistan's nuclear arsenal promote the country's unity or its disaggregation? This is a complicated puzzle, in part because nuclear war in South Asia may be more likely as long as nuclear weapons help hold Pakistan together and embolden its military leaders to pursue foreign adventures under the nuclear umbrella. So if we argue that nuclear weapons help maintain Pakistan's integrity as a state -- by empowering and cohering the Pakistani Army -- they may at the same time undermine regional stability and security by making regional war more likely. As South Asia scholar Christine Fair of Georgetown University has argued, the Pakistani military's sponsorship of "jihad under the nuclear umbrella" has gravely undermined the security of Pakistan's neighborhood -- making possible war with India over Kargil in 1999, the terrorist attack on the Indian Parliament in 2001, the terrorist attack on Mumbai in 2008, and Pakistan's ongoing support for the Afghan Taliban, the Haqqani network, Lashkar-e-Taiba, and other violent extremists. Moreover, Pakistan's proliferation of nuclear technologies has seeded extra-regional instability by boosting "rogue state" nuclear weapons programs as far afield as North Korea, Libya, Iran, and Syria. Worryingly, rather than pursuing a policy of minimal deterrence along Indian lines, Pakistan's military leaders are banking on the future benefits of nuclear weapons by overseeing the proportionately biggest nuclear buildup of any power, developing tactical (battlefield) nuclear weapons, and dispersing the nuclear arsenal to ensure its survivability in the event of attack by either the United States or India. (Note that most Pakistanis identify the United States, not India, as their country's primary adversary, despite an alliance dating to 1954 and nearly $30 billion in American assistance since 2001.) The nuclear arsenal sustains Pakistan's unbalanced internal power structure, underwriting Army dominance over elected politicians and neutering civilian control of national security policy; civilian leaders have no practical authority over Pakistan's nuclear weapons program. Whether one believes the arsenal's governance implications generate stability or instability within Pakistan depends on whether one believes that Army domination of the country is a stabilizing or destabilizing factor. A similarly split opinion derives from whether one deems the Pakistan Army the country's most competent institution and therefore the best steward of weapons whose fall into the wrong hands could lead to global crisis -- or whether one views the Army's history of reckless risk-taking, from sponsoring terrorist attacks against the United States and India to launching multiple wars against India that it had no hope of winning, as a flashing "DANGER" sign suggesting that nuclear weapons are far more likely to be used "rationally" by the armed forces in pursuit of Pakistan's traditional policies of keeping its neighbors off balance. There is no question that the seizure of power by a radicalized group of generals with a revolutionary anti-Indian, anti-American, and social-transformation agenda within Pakistan becomes a far more dangerous scenario in the context of nuclear weapons. Similarly, the geographical dispersal of the country's nuclear arsenal and the relatively low level of authority a battlefield commander would require to employ tactical nuclear weapons raise the risk of their use outside the chain of command. This also raises the risk that the Pakistani Taliban, even if it cannot seize the commanding heights of state institutions, could seize either by force or through infiltration a nuclear warhead at an individual installation and use it to hold the country -- and the world -- to ransom. American intelligence analysts covering Pakistan will continue to lose sleep for a long time to come.

#### Miscalculation means this could escalate to nuclear winter and extinction

Hundley 12 (TOM HUNDLEY, Senior Editor-Pulitzer Center, “Pakistan and India: Race to the End,” http://pulitzercenter.org/reporting/pakistan-nuclear-weapons-battlefield-india-arms-race-energy-cold-war)

Nevertheless, military analysts from both countries still say that a nuclear exchange triggered by miscalculation, miscommunication, or panic is far more likely than terrorists stealing a weapon -- and, significantly, that the odds of such an exchange increase with the deployment of battlefield nukes. As these ready-to-use weapons are maneuvered closer to enemy lines, the chain of command and control would be stretched and more authority necessarily delegated to field officers. And, if they have weapons designed to repel a conventional attack, there is obviously a reasonable chance they will use them for that purpose. "It lowers the threshold," said Hoodbhoy. "The idea that tactical nukes could be used against Indian tanks on Pakistan's territory creates the kind of atmosphere that greatly shortens the distance to apocalypse." Both sides speak of the possibility of a limited nuclear war. But even those who speak in these terms seem to understand that this is fantasy -- that once started, a nuclear exchange would be almost impossible to limit or contain. "The only move that you have control over is your first move; you have no control over the nth move in a nuclear exchange," said Carnegie's Tellis. The first launch would create hysteria; communication lines would break down, and events would rapidly cascade out of control. Some of the world's most densely populated cities could find themselves under nuclear attack, and an estimated 20 million people could die almost immediately. What's more, the resulting firestorms would put 5 million to 7 million metric tons of smoke into the upper atmosphere, according to a new model developed by climate scientists at Rutgers University and the University of Colorado. Within weeks, skies around the world would be permanently overcast, and the condition vividly described by Carl Sagan as "nuclear winter" would be upon us. The darkness would likely last about a decade. The Earth's temperature would drop, agriculture around the globe would collapse, and a billion or more humans who already live on the margins of subsistence could starve. This is the real nuclear threat that is festering in South Asia. It is a threat to all countries, including the United States, not just India and Pakistan. Both sides acknowledge it, but neither seems able to slow their dangerous race to annihilation.

#### Scenario 2- Yemen and Somalia:

#### Drone overuse wrecks stability in Yemen—errors and collateral damage are high now.

Greenfield and Kramer 13 (DANYA GREENFIELD & DAVID J KRAMER, Time to curb American drones, April 5,

http://www.nation.com.pk/pakistan-news-newspaper-daily-english-online/international/05-Apr-2013/time-to-curb-american-drones)

The US has played a significant role in Yemen’s transition, which ensured the exit of former president Ali Abdullah Saleh, in exchange for immunity, and inaugurated a unity government and consensus president overseeing a national dialogue launched last month. The US has pledged support for the dialogue, which will lead to a constitutional referendum and new elections. To many Yemenis, however, Washington is narrowly focused on the short-term security concerns and the fight against terrorism. The US, they think, cares little about real political change. As Yemen’s transition enters a critical stage, Washington has an opportunity to change this image by redirecting its policy to greater emphasis on stability, prosperity and democracy, which will advance both US and Yemeni interests. Despite considerable US humanitarian aid and development support to their government, most Yemenis associate US engagement with the ongoing drone campaign to destroy Al-Qaeda in the Arabian Peninsula (AQAP) and they see it as having little regard for its effect on civilians. A number of former US military and intelligence officials argue that the drone programme’s costs may exceed its benefits. Retired General Stanley McChrystal has articulated the hazards of overreliance on drones, and General James E Cartwright, former vice-chairman of the Joint Chiefs-of-Staff, cautioned last month against unintended consequences, arguing that no matter how precise drone strikes may be, they breed animosity among targeted communities and threaten US efforts to curb extremism. With drone attacks breeding discontent and anti-American sentiment, the Barack Obama administration must rethink how the US can advance its objectives without letting tactics dictate strategy. Washington seeks to balance multiple priorities in Yemen: Supporting stability in the Arabian Peninsula, disrupting terrorist networks, securing waterways and aiding Yemen’s transition to democracy. By focusing primarily on acute, short-term threats, the US risks the long-term security that benefits both nations and can be achieved only through a sustained investment in the humanitarian, economic and political development of the Yemeni people. Thirty-one foreign policy experts and former diplomats sent a letter to President Obama last week that said the administration’s expansive use of unmanned drones in Yemen is proving counterproductive to US security objectives: As faulty intelligence leads to collateral damage, extremist groups ultimately win more support. The lack of transparency and accountability behind the drone policy set a dangerous global precedent and damage Washington’s ability to influence positive change in Yemen and the region. Drone strikes heighten animosity towards the US and Yemen President Abd Rabbo Mansour Hadi’s government for compromising Yemeni sovereignty. The US, the letter counselled, should reduce its reliance on drone strikes and instead invest in a long-term security agenda. This will include strengthening institutions that enhance the capacity and professionalism of Yemen’s security forces - not only counterterrorism units - to address threats to internal security. Washington already supports the restructuring of Yemen’s military, a step mandated by the transition agreement, but the Defence and State departments should ensure that America’s military assistance does not repeat the mistakes made during Saleh’s tenure - such as ignoring power concentrated in the hands of elites or not prosecuting human rights abuses. And building a capable police force recruited from residents in partnership with local communities is essential to securing this territory. Americans and Yemenis have a strong shared interest in combating extremism, as Al-Qaeda and its local affiliate, Ansar Al Sharia, spread out in the south and pledge acts of terrorism against both Yemeni and US targets. The US should not ignore this threat, but beyond the security portfolio, Yemenis need to feel that Washington is committed to supporting democratic institutions and the prosperity of the Yemeni people. Although the State Department and the US Agency for International Development are engaging Hadi’s government on development and humanitarian issues, most Yemenis feel only the negative effects of US counterterrorism policy. Rather than the steady stream of military delegations, a more robust economic assistance programme and public diplomacy strategy - including a visit by Secretary of State John Kerry and other high-level diplomats - will signal support for Yemen’s transition and its democratic aspirations. Yemen’s national dialogue is an ideal opportunity to break with a legacy of corrupt leaders who sought personal gain at the nation’s expense. The Obama administration can encourage this process by providing international cover for the difficult decisions delegates must make to craft a new political system based on equitable power-sharing, active citizenship and tolerance. This requires the administration to examine its own policies and shift course where the status quo undermines America’s shared interests. Despite negative attitudes towards US policy, Yemenis are eager to have an authentic partnership with the US - built on transparency, accountability and a demonstrated commitment to their future.

#### Executive overreliance causes blowback and instability in Yemen and Somalia- risks violent escalation.

Hudson 11 (Leila Hudson is associate professor of anthropology and history in the School of Middle Eastern & North African Studies at the University of Arizona and director of the Southwest Initiative for the Study of Middle East Conflicts, “Drone Warfare: Blowback From the New American Way of War,” Middle East Policy, <http://www.mepc.org/journal/middle-east-policy-archives/drone-warfare-blowback-new-american-way-war>)

It is possible that the exchange of personnel among the military, the intelligence community and the Department of Defense will clear up the confusion over command and targeting, though this is far from given. The more serious forms of blowback stemming directly from the effects of extrajudicial killing, however, do not seem to have been addressed. If the Pakistani campaign spawned purposeful vengeance, like the Khost bombing, and opportunities for recruitment of noncombatants for retaliatory attacks, then the same purposeful and accidental escalation will most likely occur in the Arabian Peninsula and the Horn of Africa, compounding Yemen's and Somalia's volatility. In many ways, Yemen resembles both Afghanistan and Pakistan, and the undeclared drone war there will share the most dysfunctional characteristics of both sides of the Af/Pak theatre. Like Afghanistan, Yemen is a fragmented tribal society ideally suited for harboring pockets of militancy in a de-centered system with strong social ties.33 Like Pakistan, Yemen's military and the other institutions of a failing state may still function well enough to both channel counterterror funds from the United States and apply them according to its own interests and criteria.34 Another whisky-swilling military steeped in hypocrisy and addicted to counterterror as a way to make a living is hardly the ideal local spotter for U.S. attacks from the skies.35 Drone warfare as it has evolved in the Af/Pak theatre is not the answer to Yemen's unrest. The lessons of drone warfare in Pakistan are clear. First, if extrajudicial dispatching of high-value targets is a goal, such targets are best dealt with as Osama bin Laden was — through face-to-face assaults by crack JSOC troops based on reliable intelligence. Second, chronic testing of national sovereignty through an undeclared war of drone attacks puts fragile governing structures in the target country under enormous pressure while exacerbating social volatility, a recipe for unpredictable outcomes.36 Third, the complacency engendered in the American public, which is largely blind to the costs and consequences of, and anesthetized to, the legal and moral issues of drone warfare, precludes recognition, let alone discussion of this new form of warfare. Finally, a trend in increasing "collateral damage" ­— in which thousands of noncombatants may be extrajudicially killed, traumatized and materially damaged — fuels instability and escalates violent retaliation against convenient targets. With Yemen and Somalia as the east-west axis of a maritime system that unites South Asia with the Horn of Africa through one of the world's most sensitive and pirate-infested shipping channels, counterterror measures must be both precise and well-reasoned. The Pakistani model is neither. Drone strikes leave little scope for the civic reform that the Arab Spring in Yemen demands.37

#### Instability in Yemen and Somalia makes maritime terrorism in critical chokepoints around the Horn of Africa inevitable.

Ulrichsen 11 (Kristian Coates, The Geopolitics of Insecurity in the Horn of Africa and the Arabian Peninsula, Middle East Policy Council, http://www.mepc.org/journal/middle-east-policy-archives/geopolitics-insecurity-horn-africa-and-arabian-peninsula?print)

Multiple fault lines have thus opened up, facilitated by (and accelerating) processes of state weakness and the relative empowerment of non-state actors. The result is more political violence and endemic criminality in and off the coast of Somalia and the Horn. Nevertheless, the new dimension to this nexus of terrorism, piracy, gun-running and people-smuggling is its growing transregional dimension. This defines the core challenge facing the regional and global security agenda, in addition to attempts at diplomatic mediation and conflict resolution throughout the area. Intensifying illicit networks and rent-seeking criminality are part of a broader pressure on fragile state structures. They are already struggling to control and adapt to pressures arising from the accelerated flows of information, communication and migration in a rapidly globalizing environment. The coincidence of these processes in Somalia and Yemen is changing the geopolitics of insecurity in the Horn of Africa and the Arabian Peninsula, as the following sections detail. MARITIME AND ENERGY SECURITY The problem of fragile and collapsed states on both sides of the Bab al-Mandab introduces potent new elements of maritime and energy security into the regional — and global — equation. The incidence of maritime piracy in the Gulf of Aden and the Red Sea more than doubled in 2008-09, and their operational reach steadily increased. Much of the piracy was launched from the semi-autonomous region of Puntland, on Somalia's tip of the Horn, where patterns of rent-seeking and gangsterism converge with the absence of effective state authority and licit sources of income. Moreover, at least one of the seven different groups of pirates operating off the Somali coast is believed to be based in the Socotra archipelago in Yemen, while at least some of the financial proceeds are believed to pass through money-laundering channels in Dubai and Kenya.44 This underlines the growing regional and international risk from both maritime piracy and maritime terrorism. Incidents such as the seizure of the Sirius Star by Somali-based pirates in November 2008 and the attack on the Japanese supertanker M Star in the Strait of Hormuz in July 2010 illustrate both phenomena. Maritime commerce and international shipping that link the oil-exporting Gulf states to Western economies must navigate two regional chokepoints, the Strait of Hormuz and the Bab el-Mandab, in addition to the hazardous waters of the Gulf of Aden and the Red Sea. Pirates' growing aggressiveness has centered on this geostrategically and commercially vital region. It reflects the interlocking dangers stemming from a crisis of governance and spreading conflicts. In 2009, the International Maritime Board recorded a total of 406 actual and attempted attacks, the majority of which occurred in the Gulf of Aden and off the Somali coast.45 However, due to underreporting, often for fear of higher insurance premiums, the figures may be much higher. Numerous factors underlie the rise in maritime piracy off the Somali coast. These include opportunistic motivations, which are among the principal drivers of pirate groups, as well as the ready availability of targets (through high volumes of trade passing by) and means (including inadequate law enforcement and ready access to weaponry). It is contextualized by the impact of conflict, poverty and weak state capacity.46 Indeed, in the Somali case, state collapse is a major determinant of piracy. Piracy declined sharply during the short-lived projection of power and authority by the UIC in 2006 and subsequently resurged following their removal through the reappearance of pirate groups operating under warlord protection.47 With the TFG unable to control its territory, let alone its coastline and territorial waters, increased naval patrolling activity by external actors (including the EU, NATO, China, Russia, India and Iran) may offer a degree of protection to shipping but leaves untouched the root causes of piracy as a symptom of state collapse and lack of legitimate economic opportunities. Maritime terrorism presents the second major threat to international security at sea. It has similar causal facilitators to maritime piracy; the erosion of governance in littoral regions creates security gaps that may be exploited by terrorist organizations. The threat from maritime terrorism is low-level yet potentially high-impact. It encompasses subthreats ranging from maritime criminality to better-organized groupings of insurgents or militants who take advantage of the pressure on littoral states to exploit their maritime resources and the fuzzy margins between domestic and international governance of international waterways and shipping lanes. Although the number of maritime terrorist incidents has been relatively small, it does present a challenge to a global supply chain and logistical system increasingly predicated on "just-in-time" deliveries. It also encompasses the role of non-state actors with access to sophisticated weaponry operating in international waters where jurisdiction is unclear and the "seams of globalization" become vulnerable to exploitation.48

#### These attacks risk global economic collapse

Neubauer 13 (Sigurd, Defense and foreign affairs specialist, member of the International Institute for Strategic Studies, Somalia: A Terrorist-Piracy Nexus?, May 22, http://www.huffingtonpost.com/sigurd-neubauer/somalia-piracy\_b\_3320406.html)

Piracy, like terrorism has been a scourge of mankind for centuries and, though its practitioners, real (Blackbeard, Anne Bonny and Henry Morgan) and mythical (Captain Jack Sparrow in the Pirates of the Caribean movie stories) have achieved heroic stature in popular culture, its contemporary manifestations represent a major threat to the global economy and to national security. Significant strides have been made in recent years towards combating piracy, especially off the coast of Somalia, but a robust international grand strategy is urgently needed in order to forestall an ever more dangerous global threat as pirates develop ever more sophisticated organizational structures, many of which are already linked to criminal gangs and even, in some cases to terrorist groups. Their activities already impose heavy financial and human costs not only on the maritime industry but also on the countries from which they operate. Heretofore, the area around Somalia has been the most dangerous area but significant progress has been made in reducing piracy there. Last year, pirates succeeded in capturing 13 vessels, compared to 49 in 2010 and 28 in 2011, according to the International Maritime Organization (IMO). Part of that success can at least be partially explained by the European Union's heavy naval presence around the Horn of Africa, in the Gulf of Aden while improving intelligence sharing with NATO, the Combined Maritime Forces (CMF), the UK Maritime Trade Operations (UKMTO), and the International Maritime Bureau (IMB) Piracy Reporting Center. Additional measures implemented by shipping companies such as providing more armed security aboard merchant vessels while securing the ship's perimeter with razor or barbed wire have also led to the significant decrease in the number of piracy attacks. Equally important, however, was the 2009 implementation of the Djibouti Code of Conduct, a code concerning the repression of piracy and armed robbery against ships. Under the code, aside from committing themselves to abiding by various counter-piracy United Nations Security Council Resolutions, the signatories also pledged to overhaul their domestic counter-piracy legislation. As a result, a record number of pirates were sentenced by local courts around the world last year. The significance of these developments should not, however, be overstated. First, the cost remains enormous -- in 2011, it is estimated that Somali piracy cost the global economy an estimated 7 billion USD through higher insurance premiums, security enhancements, and business disruption and earned the pirates some 160 million USD in ransoms. These figures do not include the psychological burdens borne by the captives or the costs imposed on Somalia. And, the actual costs are probably even higher due to widespread underreporting. Second, while piracy off the coast of Somalia has decreased, pirates are gradually focusing their efforts where patrols are not available for protection, now operating in the wider Indian Ocean. As pirates are extending their reach from Oman to the Maldives, they have also proven to be excellent entrepreneurs, building large well-financed organizations that are able to execute ever more sophisticated attacks such as hijacking oil tankers off the coast of Nigeria and stealing the valuable cargo. Moreover, pirate groups are becoming increasingly international and are extending their reach from national bases to neighbors -- from Nigeria, for example to Benin and the Ivory Coast, usually in cooperation with powerful local elements. Economically speaking, piracy already presents an enormous challenge and it is conceivable that as pirates face stiffer resistance on the high seas by an increasingly stronger international naval presence, their political and ideological motivations could radicalize over time. Currently, terrorist groups already cooperate with criminal gangs to raise funds and piracy could potentially become a lucrative source of income for radical groups. A second plausible scenario is that as pirates struggle to capture more ships, pirates could resort to attacking shipping directly as criminal motivations could subside to radical ideology propagated by al Qaeda and its splinter groups. Hence, it is easy to envision a nightmare scenario wherein terrorists, supported by a pirate group, hijack an oil tanker not just to steal the oil or collect the ransom but to blow it up in a major port with devastating economic consequences across the globe. A separate threat scenario that should not be underestimated entails terrorists capturing a liqueﬁed natural gas carrier that can be used as a ﬂoating bomb, which can either be detonated at a major port or near a flotilla of ships in the open seas. Piracy and terrorism can also be used as means to exert economic warfare against the United States and the international community as maritime attacks oﬀer terrorists an alternate means of causing mass economic destabilization. After all, terrorists have already attacked ships -- al Qaeda, the USS Cole (2000), Abu Sayyaf a ferryboat in the Philippines (2004) and the Mumbai attacks (2008).

#### Nuclear war

Merlini, Senior Fellow – Brookings, 11

[Cesare Merlini, nonresident senior fellow at the Center on the United States and Europe and chairman of the Board of Trustees of the Italian Institute for International Affairs (IAI) in Rome. He served as IAI president from 1979 to 2001. Until 2009, he also occupied the position of executive vice chairman of the Council for the United States and Italy, which he co-founded in 1983. His areas of expertise include transatlantic relations, European integration and nuclear non-proliferation, with particular focus on nuclear science and technology. A Post-Secular World? DOI: 10.1080/00396338.2011.571015 Article Requests: Order Reprints : Request Permissions Published in: journal Survival, Volume 53, Issue 2 April 2011 , pages 117 - 130 Publication Frequency: 6 issues per year Download PDF Download PDF (~357 KB) View Related Articles To cite this Article: Merlini, Cesare 'A Post-Secular World?', Survival, 53:2, 117 – 130]

Two neatly opposed scenarios for the future of the world order illustrate the range of possibilities, albeit at the risk of oversimplification. The first scenario entails the premature crumbling of the post-Westphalian system. One or more of the acute tensions apparent today evolves into an open and traditional conflict between states, perhaps even involving the use of nuclear weapons. The crisis might be triggered by a collapse of the global economic and financial system, the vulnerability of which we have just experienced, and the prospect of a second Great Depression, with consequences for peace and democracy similar to those of the first. Whatever the trigger, the unlimited exercise of national sovereignty, exclusive self-interest and rejection of outside interference would likely be amplified, emptying, perhaps entirely, the half-full glass of multilateralism, including the UN and the European Union. Many of the more likely conflicts, such as between Israel and Iran or India and Pakistan, have potential religious dimensions. Short of war, tensions such as those related to immigration might become unbearable. Familiar issues of creed and identity could be exacerbated. One way or another, the secular rational approach would be sidestepped by a return to theocratic absolutes, competing or converging with secular absolutes such as unbridled nationalism.

#### The plan is key- Ex post review resolves the broad definition of imminence- redress key to check the errors which cause blowback.

Hafetz, former ACLU National Security Project attorney, 13 (Jonathan Hafetz, former senior attorney at the ACLU’s National Security Project, a litigation director at NYU’s Brennan Center for Justice, and a John J. Gibbons Fellow in Public Interest and Constitutional Law at Gibbons, P.C, Reviewing Drones, March 8, http://www.huffingtonpost.com/jonathan-hafetz/reviewing-drones\_b\_2815671.html)

The better course is to ensure meaningful review after the fact. To this end, Congress should authorize federal damages suits by the immediate family members of individuals killed in drone strikes. Such ex post review would serve two main functions: providing judicial scrutiny of the underlying legal basis for targeted killings and affording victims a remedy. It would also give judges more leeway to evaluate the facts without fear that an error on their part might leave a dangerous terrorist at large. For review to be meaningful, judges must not be restricted to deciding whether there is enough evidence in a particular case, as they would likely be under a FISA model. They must also be able to examine the government's legal arguments and, to paraphrase the great Supreme Court chief justice John Marshall, "to say what the law is" on targeted killings. Judicial review through a civil action can achieve that goal. It can thus help resolve the difficult questions raised by the Justice Department white paper, including the permissible scope of the armed conflict with al Qaeda and the legality of the government's broad definition of an "imminent" threat. Judges must also be able to afford a remedy to victims. Mistakes happen and, as a recent report by Columbia Law School and the Center for Civilians in Conflict suggests, they happen more than the U.S. government wants to acknowledge. Errors are not merely devastating for family members and their communities. They also increase radicalization in the affected region and beyond. Drone strikes -- if unchecked -- could ultimately create more terrorists than they eliminate.

#### The plan would result in a balanced definition of imminence. The court would apply a standard that still allows decapitation of high value targets and out-of-battlefield operations– Hamdi proves

Kwoka 11 (Lindsay, J.D. UPenn, “TRIAL BY SNIPER: THE LEGALITY OF TARGETED KILLING IN THE WAR ON TERROR” Accessed at HeinOnline)

But this is not the end of the inquiry. Even if a targeted individual is not located on a field of battle, he may still be a threat, and tar- geted killing may potentially be necessary and appropriate in some circumstances. Applying the reasoning of" Hamdi here, a court would likely find that the use of targeted killing is only "necessary and ap- propriate" if it is the only way to prevent someone like Al-Awlaki from engaging in terrorist activity or otherwise harming the United States. The Hamdi Court was concerned with assuring that the executive used the least intrusive means in achieving its objective of preventing the enemy combatant from returning to battle. The Court made clear that the means used to achieve this objective should be no more intrusive than necessary.7\* It is consistent with the Court's concern to allow targeted killing only when it is the only means available to pre- vent harm to the United States. If the executive can demonstrate that an individual outside of a warzone will harm the United States unless he is killed, targeted kill- ing may be authorized. This is consistent with Hamdi, in which the main concern was preventing future harm to the United States while using the least intrusive means available. This is also consistent with U.S. criminal law, in which the executive branch is permitted to kill an individual if there is no peaceful means left to apprehend him. Such an approach is also consistent with the approach of the Su- preme Court. Even the most stalwart protectors of constitutional rights of alleged terrorists recognize that immediate action by the executive is at times necessary to prevent attacks.7'' An approach that al- lows the executive to use deadly force when it is the only available means of preventing harm effectively balances the need to protect citizen's constitutional rights while affording sufficient deference to the executive.

### 3

#### The United States Federal Judiciary should subject United States’ targeted killing operations to judicial ex post review by allowing a cause of action against the government for damages arising directly out of the constitutional provision allegedly offended.

### 4

#### Judicial review of targeted killing operations increases the quality of executive decision-making-- electoral bias makes unilateral executive action prone to error

Dragu 13 (Tiberiu Dragu, prof of politics at NYU, and Oliver Board, On Judicial Review in a Separation of Powers System, https://files.nyu.edu/tcd224/public/papers/judicial.pdf)

In this section, we illustrate the applicability of our theory, and its policy implications, in the context of drone strikes and counterterrorism policy more generally. The public debate about the use of unmanned drones to kill suspected terrorists highlights the contending views on the appropriateness of (non-expert) judicial review as a means of checking the contours of (expert) counterterrorism policy.27 Perhaps more than any other counterterrorism pol- icy, targeted killings illustrate the presumed tension between dispensing policy-making to those institutions with superior expertise and the rule-of-law ideal of checking the legality of executive action, or at least one important aspect of it: judicially-enforced due process of law. Since 9/11, the CIA and the military have used unmanned drones to kill individuals sus- pected of terrorist activity in places far from any battlefield, without being charged, without a trial, and without any form of judicial approval. The president makes the determination of who should be targeted and can order the killings of non-citizens and citizens alike without any judicial oversight.28 Lower-level executive officials, working for the intelligence agencies in charge of terrorism prevention, recommend to the president who should be the next to die on the basis of available intelligence. These nominations go to the White House, where the president approves the names on the kill list. The president also decides if (and when) to undertake a drone strike that can result in civilian casualties and makes the final call on "signature strikes," which target suspicious behavior rather than specific terrorist suspects.29 In short, under the current regime, the president is "the prosecutor, the judge, the jury and the executioner, all rolled into one."30 The policy of targeted killings, as implemented, raises important legal questions, even if one accepts that drone strikes are not inherently illegal.31 Because the task of identifying terrorist suspects is inherently riddled with errors, it is impossible to know with certainty whether potential targets are dangerous terrorists or just people with the wrong association. As a result, innocent people can mistakenly be targeted even if lower-level executive officials make their recommendations for the kill list in good faith. And when those targeted to be killed have not been convicted in a court of law, the use of lethal force against non-citizens and citizens might infringe upon their due process rights.32 A drone strike aimed at an American citizen without adequate evidence to show that he or she is a terrorist posing an imminent danger can raise serious constitutional problems.33 Because of the risk of inadvertently killing innocent people by executive fiat and because abuses of power are likely when the executive carries unilaterally such a campaign of deaths, drone policy, some argue, should be subjected to some form of judicial review. A growing number of lawmakers, scholars, and public officials have embraced this idea and proposed an independent court to oversee drone strikes on the account that it would improve the existing status-quo, at least from a legal accountability perspective.31 One of the strongest criticisms against such institutional development is the argument that judicial oversight of drone strikes jeopardizes the effectiveness of the policy because judges lack the necessary expertise to review targeted killing decisions. Former solicitor general, Neal Katyal, has forcefully articulated this expertise rationale against judicial review of drone strikes. Katyal argues that "[t]he drone court idea is a mistake" because "(experts, not generalists" ought to decide on drone strikes.35 In this view, the harm to counterterrorism policy caused by potentially erroneous judicial decisions outweighs the rule-of-law benefits of judicial oversight. Simply put, asymmetric institutional competence makes it desirable, on balance, for the executive to undertake drone strikes without independent judicial oversight. These contending per- spectives on the appropriateness of judicial review are not unique to drone policy but are emblematic of public and scholarly discussions about how to devise counterterrorism policy more generally (Cole 2003, Posner 2006). Our analysis has relevance for existing debates on the scope of judicial review in the con- text of terrorism prevention. The polemic whether drone strikes and other counterterrorism policies should be subjected to judicial oversight is framed as a tradeoff between the legal accountability benefits of judicial oversight and the public policy harms of reviewing expert counterterrorism policy by non-expert judges. But starting the debate on these terms already assumes that (non-expert) judicial review can only have a negative effect on (expert) govern- mental policy. As such, it glosses over the prior question of what is the effect of legal review on the information available for counterterrorism policy-making. To answer this question one needs to assess the counterfactual of how informed counterterrorism policy decisions are in the absence of judicial review as compared to the scenario in which a court can review the legality of those policies. Our game-theoretical analysis provides this counterfactual analysis, an otherwise difficult task to effect, and thus contributes to the current debates regarding the appropriateness of judicial review in the context of terrorism prevention. It suggests that judicial checks can lead to more informed counterterrorism policy-making if one considers the internal structure of the executive and the electoral incentives of the president, conditions which we discuss in more detail below. First, the argument that judicial review of drone strikes, and counterterrorism policy more generally, has a detrimental effect on expert policy-making overlooks the internal ecology of the executive branch. When asserting the superior expertise of the executive branch, scholars and commentators treat the executive as a unitary actor, or perhaps consider its internal structure to be incidental to the expertise rationale for limiting judicial review. However, as the description of the drone policy suggests, there is a separation between expertise and policy-making: the president (and his closest advisers) decides on counterterrorism policy, while lower-level bureaucrats provide the expertise and intelligence to make informed decisions. This separation of expertise from policy-making is not unique to counterterrorism. Rather this is a general fact of modern-day government, and scholars of bureaucratic politics, going back to Max Weber, have attempted to unravel its myriad implications for democratic governance (Rourke 1976; Wilson 1991). Second, the president, like all elected representatives, is a politician making choices un-der the pressure of re-election and public opinion, and such incentives are going to shape his counterterrorism choices. When it comes to the electoral incentives of public officials, scholars have noted that the political costs of not reacting aggressively enough in matters of terrorism prevention and national security are going to be higher than the costs of overre- action (Cole 2008; Fox and Stephenson 2011; Ignatieff 2004; Richardson 2006: Swire 2004). This observation implies that the president and other elected officials have an electoral bias to engage in counterterrorism policies that are more aggressive than what would be neces- sary on the basis of available information regarding the terrorist threat.36 Inside accounts of the decision-making process within executive branch (Goldsmith 2007), empirical analyses (Merolla and Zechmeister 2009), and newspaper reports,37 they all document such electoral incentives to appear tough on terrorism. The former Vice-President Dick Cheney forcefully depicts this electoral bias in his articulation of the so-called one percent doctrine, which states that if there was even a one percent chance of terrorists getting a weapon of mass destruction, then the executive must act as if it were a certainty (Suskind 2007). In Cheney's view, "it is not about analysis; it's about our response... making suspicion, not evidence, the new threshold for action."38 The run-up to the invasion in Iraq provides a stark illus- tration of the one percent doctrine in action, the conflict between intelligence officials and policy-makers, and the issue of politicized expertise in the context of national security (Pillar 2011). Our results suggest that (non-expert) judicial review has the potential to induce more informed counterterrorism decisions when the president makes security policy under the veil of public expectations to respond forcefully to terrorist threats. Courts are not immune to public opinion, of course, but precisely because judges are not elected, they are more insu- lated from public opinion than elected officials. This implies that, all else equal, the courts are less likely to prefer counterterrorism measures that respond to public expectations to be tough on terrorism. Under these conditions,39 our theory suggests a mechanism by which counterterrorism policy-making with judicial oversight can be superior to counterterrorism policy-making without it, even if courts are relatively ill-equipped to review executive deci-sions. Judicial review can serve as a commitment device to better align the preferences of policymakers with their experts, with the effect of inducing more information for countert- errorism decisions. This observation is missing from current public and scholarly discussions about the role of judicial review in the context of drone strikes and other counterterrorism policies. As such, our analysis has policy implications for ongoing debates on how to de- sign the institutional structure of liberal governments when the social objective is terrorism prevention. This expertise rationale for judicial review does not depend on whether the court approves or not a particular counterterrorism action. Critics of judicial review of drone strikes, for example, point to the record of the FISA court -it approves almost all warrants requests- as evidence that a drone court designed on a similar template would be ineffective. That judicial review can have a positive expertise effect is not predicated upon how intensely the court turns down counterterrorism policies, or upon how the court would assess a specific counterterrorism policy on its legal merits. It is based on analyzing the counterfactual of how much information is available for counterterrorism decision-making by comparing the scenario in which a court reviews counterterrorism policy with a scenario in which that policy- making process is free of judicial oversight. It may very well be unnecessary for the court to reject the choices of executive officials because those choices are adjusted in anticipation that drone strikes need to pass the muster of judicial review. What our theory suggests is that, on average, counterterrorism policy-making can be more rigorous on expertise grounds with judicial oversight that in its absence.

#### Jackson and critical terror studies are wrong – no evidence to substantiate their claims and no viable alternative

Jones and Smith, 9 - \* University of Queensland, Queensland, Australia AND \*\* King's College, University of London, London, UK (David and M.L.R.,“We're All Terrorists Now: Critical—or Hypocritical—Studies “on” Terrorism?,” Studies in Conflict & Terrorism, Volume 32, Issue 4 April 2009 , pages 292 **–** 302**,** Taylor and Francis)

The journal, in other words, is not intended, as one might assume, to evaluate critically those state or non-state actors that might have recourse to terrorism as a strategy. Instead, the journal's ambition is to deconstruct what it views as the ambiguity of the word “terror,” its manipulation by ostensibly liberal democratic state actors, and the complicity of “orthodox” terrorism studies in this authoritarian enterprise. Exposing the deficiencies in any field of study is, of course, a legitimate scholarly exercise, but what the symposium introducing the new volume announces questions both the research agenda and academic integrity of journals like *Studies in Conflict and Terrorism* and those who contribute to them. Do these claims, one might wonder, have any substance?

Significantly, the original proposal circulated by the publisher Routledge and one of the editors, Richard Jackson, suggested some uncertainty concerning the preferred title of the journal. *Critical Studies on Terrorism* appeared last on a list where the first choice was *Review of Terror Studies*. Evidently, the concision of a review fails to capture the critical perspective the journal promotes. Criticism, then, is central to the new journal's philosophy and the adjective connotes a distinct ideological and, as shall be seen, far from pluralist and inclusive purpose. So, one might ask, what exactly does a critical approach to terrorism involve?

What it Means to be Critical

The editors and contributors explore what it means to be “critical” in detail, repetition, and opacity, along with an excessive fondness for italics, in the editorial symposium that introduces the first issue, and in a number of subsequent articles. The editors inform us that the study of terrorism is “a growth industry,” observing with a mixture of envy and disapproval that “literally thousands of new books and articles on terrorism are published every year” (pp. l-2). In adding to this literature the editors premise the need for yet another journal on their resistance to what currently constitutes scholarship in the field of terrorism study and its allegedly uncritical acceptance of the Western democratic state's security perspective.

Indeed, to be critical requires a radical reversal of what the journal assumes to be the typical perception of terrorism and the methodology of terrorism research. To focus on the strategies practiced by non-state actors that feature under the conventional denotation “terror” is, for the critical theorist, misplaced. As the symposium explains, “acts of clandestine non-state terrorism are committed by a tiny number of individuals and result in between a few hundred and a few thousand casualties *per year over the entire world*” (original italics) (p. 1). The United States's and its allies' preoccupation with terrorism is, therefore, out of proportion to its effects.1 At the same time, the more pervasive and repressive terror practiced by the state has been “silenced from public and … academic discourse” (p. 1).

The complicity of terrorism studies with the increasingly authoritarian demands of Western, liberal state and media practice, together with the moral and political blindness of established terrorism analysts to this relationship forms the journal's overriding assumption and one that its core contributors repeat ad nauseam. Thus, Michael Stohl, in his contribution “Old Myths, New Fantasies and the Enduring Realities of Terrorism” (pp. 5-16), not only discovers ten “myths” informing the understanding of terrorism, but also finds that these myths reflect a “state centric security focus,” where analysts rarely consider “the violence perpetrated by the state” (p. 5). He complains that the press have become too close to government over the matter. Somewhat contradictorily Stohl subsequently asserts that media reporting is “central to terrorism and counter-terrorism as political action,” that media reportage provides the oxygen of terrorism, and that politicians consider journalists to be “the terrorist's best friend” (p. 7).

Stohl further compounds this incoherence, claiming that “the media are far more likely to focus on the destructive actions, rather than on … grievances or the social conditions that breed [terrorism]—to present episodic rather than thematic stories” (p. 7). He argues that terror attacks between 1968 and 1980 were scarcely reported in the United States, and that reporters do not delve deeply into the sources of conflict (p. 8). All of this is quite contentious, with no direct evidence produced to support such statements. The “media” is after all a very broad term, and to assume that it is monolithic is to replace criticism with conspiracy theory. Moreover, even if it were true that the media always serves as a government propaganda agency, then by Stohl's own logic, terrorism as a method of political communication is clearly futile as no rational actor would engage in a campaign doomed to be endlessly misreported.

Nevertheless, the notion that an inherent pro-state bias vitiates terrorism studies pervades the critical position. Anthony Burke, in “The End of Terrorism Studies” (pp. 37-49), asserts that established analysts like Bruce Hoffman “specifically exclude states as possible perpetrators” of terror. Consequently, the emergence of “critical terrorism studies” “may signal the end of a particular kind of traditionally state-focused and directed 'problem-solving' terrorism studies—at least in terms of its ability to assume that its categories and commitments are immune from challenge and correspond to a stable picture of reality” (p. 42).

Elsewhere, Adrian Guelke, in “Great Whites, Paedophiles and Terrorists: The Need for Critical Thinking in a New Era of Terror” (pp. 17-25), considers British government-induced media “scare-mongering” to have legitimated an “authoritarian approach” to the purported new era of terror (pp. 22-23). Meanwhile, Joseba Zulaika and William A. Douglass, in “The Terrorist Subject: Terrorist Studies and the Absent Subjectivity” (pp. 27-36), find the War on Terror constitutes “*the* single,” all embracing paradigm of analysis where the critical voice is “not allowed to ask: what is the reality itself?” (original italics) (pp. 28-29). The construction of this condition, they further reveal, if somewhat abstrusely, reflects an abstract “desire” that demands terror as “an ever-present threat” (p. 31). In order to sustain this fabrication: “Terrorism experts and commentators” function as “realist policemen”; and not very smart ones at that, who while “gazing at the evidence” are “unable to read the paradoxical logic of the desire that fuels it, whereby *lack* turns to*excess*” (original italics) (p. 32). Finally, Ken Booth, in “The Human Faces of Terror: Reflections in a Cracked Looking Glass” (pp. 65-79), reiterates Richard Jackson's contention that state terrorism “is a much more serious problem than non-state terrorism” (p. 76).

Yet, one searches in vain in these articles for evidence to support the ubiquitous assertion of state bias: assuming this bias in conventional terrorism analysis as a fact seemingly does not require a corresponding concern with evidence of this fact, merely its continual reiteration by conceptual fiat. A critical perspective dispenses not only with terrorism studies but also with the norms of accepted scholarship. Asserting what needs to be demonstrated commits, of course, the elementary logical fallacy *petitio principii*. But critical theory apparently emancipates (to use its favorite verb) its practitioners from the confines of logic, reason, and the usual standards of academic inquiry.

Alleging a constitutive weakness in established scholarship without the necessity of providing proof to support it, therefore, appears to define the critical posture. The unproved “state centricity” of terrorism studies serves as a platform for further unsubstantiated accusations about the state of the discipline. Jackson and his fellow editors, along with later claims by Zulaika and Douglass, and Booth, again assert that “orthodox” analysts rarely bother “to interview or engage with those involved in 'terrorist' activity” (p. 2) or spend any time “on the ground in the areas most affected by conflict” (p. 74). Given that Booth and Jackson spend most of their time on the ground in Aberystwyth, Ceredigion, not a notably terror rich environment if we discount the operations of *Meibion Glyndwr* who would as a matter of principle avoid *pob sais* like Jackson and Booth, this seems a bit like the pot calling the kettle black. It also overlooks the fact that *Studies in Conflict and Terrorism* first advertised the problem of “talking to terrorists” in 2001 and has gone to great lengths to rectify this lacuna, if it is one, regularly publishing articles by analysts with first-hand experience of groups like the Taliban, Al Qaeda and *Jemaah Islamiyah*.

A consequence of avoiding primary research, it is further alleged, leads conventional analysts uncritically to apply psychological and problem-solving approaches to their object of study. This propensity, Booth maintains, occasions another unrecognized weakness in traditional terrorism research, namely, an inability to engage with “the particular dynamics of the political world” (p. 70). Analogously, Stohl claims that “the US and English [sic] media” exhibit a tendency to psychologize terrorist acts, which reduces “structural and political problems” into issues of individual pathology (p. 7). Preoccupied with this problem-solving, psychopathologizing methodology, terrorism analysts have lost the capacity to reflect on both their practice and their research ethics.

By contrast, the critical approach is not only self-reflective, but also and, for good measure, self-reflexive. In fact, the editors and a number of the journal's contributors use these terms interchangeably, treating a reflection and a reflex as synonyms (p. 2). A cursory encounter with the *Shorter Oxford Dictionary* would reveal that they are not. Despite this linguistically challenged misidentification, “reflexivity” is made to do a lot of work in the critical idiom. Reflexivity, the editors inform us, requires a capacity “to challenge dominant knowledge and understandings, is sensitive to the politics of labelling … is transparent about its own values and political standpoints, adheres to a set of responsible research ethics, and is committed to a broadly defined notion of emancipation” (p. 2). This covers a range of not very obviously related but critically approved virtues. Let us examine what reflexivity involves as Stohl, Guelke, Zulaika and Douglass, Burke, and Booth explore, somewhat repetitively, its implications.

Reflexive or Defective?

Firstly, to challenge dominant knowledge and understanding and retain sensitivity to labels leads inevitably to a fixation with language, discourse, the ambiguity of the noun, terror, and its political use and abuse. Terrorism, Booth enlightens the reader unremarkably, is “a politically loaded term” (p. 72). Meanwhile, Zulaika and Douglass consider terror “the dominant tropic [sic] space in contemporary political and journalistic discourse” (p. 30). Faced with the “serious challenge” (Booth p. 72) and pejorative connotation that the noun conveys, critical terrorologists turn to deconstruction and bring the full force of postmodern obscurantism to bear on its use. Thus the editors proclaim that terrorism is “one of the most powerful signifiers in contemporary discourse.” There is, moreover, a “yawning gap between the 'terrorism' signifier and the actual acts signified” (p. 1). “[V]irtually all of this activity,” the editors pronounce *ex cathedra*, “refers to the *response* to acts of political violence not the violence itself” (original italics) (p. 1). Here again they offer no evidence for this curious assertion and assume, it would seem, all conventional terrorism studies address issues of homeland security.

In keeping with this critical orthodoxy that he has done much to define, Anthony Burke also asserts the “instability (and thoroughly politicized nature) of the unifying master-terms of our field: 'terror' and 'terrorism'” (p. 38). To address this he contends that a critical stance requires us to “keep this radical instability and inherent politicization of the concept of terrorism at the forefront of its analysis.” Indeed, “without a conscious reflexivity about the most basic definition of the object, our discourse will not be critical at all” (p. 38). More particularly, drawing on a jargon-infused amalgam of Michel Foucault's identification of a relationship between power and knowledge, the neo-Marxist Frankfurt School's critique of democratic false consciousness, mixed with the existentialism of the Third Reich's favorite philosopher, Martin Heidegger, Burke “*questions the question*.” This intellectual *potpourri* apparently enables the critical theorist to “question the ontological status of a 'problem' before any attempt to map out, study or resolve it” (p. 38).

Interestingly, Burke, Booth, and the symposistahood deny that there might be objective data about violence or that a properly focused strategic study of terrorism would not include any prescriptive goodness or rightness of action. While a strategic theorist or a skeptical social scientist might claim to consider only the complex relational situation that involves as well as the actions, the attitude of human beings to them, the critical theorist's radical questioning of language denies this possibility.

The critical approach to language and its deconstruction of an otherwise useful, if imperfect, political vocabulary has been the source of much confusion and inconsequentiality in the practice of the social sciences. It dates from the relativist pall that French radical post structural philosophers like Gilles Deleuze and Felix Guattari, Foucault, and Jacques Derrida, cast over the social and historical sciences in order to demonstrate that social and political knowledge depended on and underpinned power relations that permeated the landscape of the social and reinforced the liberal democratic state. This radical assault on the possibility of either neutral fact or value ultimately functions unfalsifiably, and as a substitute for philosophy, social science, and a real theory of language.

The problem with the critical approach is that, as the Australian philosopher John Anderson demonstrated, to achieve a genuine study one must either investigate the facts that are talked about or the fact that they are talked about in a certain way. More precisely, as J.L. Mackie explains, “if we concentrate on the uses of language we fall between these two stools, and we are in danger of taking our discoveries about manners of speaking as answers to questions about what is there.”2 Indeed, in so far as an account of the use of language spills over into ontology it is liable to be a confused mixture of what should be two distinct investigations: the study of the facts about which the language is used, and the study of the linguistic phenomena themselves.

It is precisely, however, this confused mixture of fact and discourse that critical thinking seeks to impose on the study of terrorism and infuses the practice of critical theory more generally. From this confused seed no coherent method grows.

What is To Be Done?

This ontological confusion notwithstanding, Ken Booth sees critical theory not only exposing the dubious links between power and knowledge in established terrorism studies, but also offering an ideological agenda that transforms the face of global politics. “[*C*]*ritical knowledge*,” Booth declares, “*involves understandings of the social world that attempt to stand outside prevailing structures, processes, ideologies and orthodoxies while recognizing that all conceptualizations within the ambit of sociality derive from particular social/historical conditions*” (original italics) (p. 78). Helpfully, Booth, assuming the manner of an Old Testament prophet, provides his critical disciples with “*big-picture* navigation aids” (original italics) (p. 66) to achieve this higher knowledge. Booth promulgates fifteen commandments (as Clemenceau remarked of Woodrow Wilson's nineteen points, in a somewhat different context, “God Almighty only gave us ten”). When not stating the staggeringly obvious, the Ken Commandments are hopelessly contradictory. Critical theorists thus should “avoid exceptionalizing the study of terrorism,”3 “recognize that states can be agents of terrorism,” and “keep the long term in sight.” Unexceptional advice to be sure and long recognized by more traditional students of terrorism. The critical student, if not fully conversant with critical doublethink, however, might find the fact that she or he lives within “Powerful theories” that are “constitutive of political, social, and economic life” (6th Commandment, p. 71), sits uneasily with Booth's concluding injunction to “stand outside” prevailing ideologies (p. 78).

In his preferred imperative idiom, Booth further contends that terrorism is best studied in the context of an “academic international relations” whose role “is not only to interpret the world but to change it” (pp. 67-68). Significantly, academic—or more precisely, critical—international relations, holds no place for a realist appreciation of the status quo but approves instead a Marxist ideology of praxis. It is within this transformative praxis that critical theory situates terrorism and terrorists.

The political goals of those non-state entities that choose to practice the tactics of terrorism invariably seek a similar transformative praxis and this leads “critical global theorizing” into a curiously confused empathy with the motives of those engaged in such acts, as well as a disturbing relativism. Thus, Booth again decrees that the gap between “those who hate terrorism and those who carry it out, those who seek to delegitimize the acts of terrorists and those who incite them, and those who abjure terror and those who glorify it—is not as great as is implied or asserted by orthodox terrorism experts, the discourse of governments, or the popular press” (p. 66). The gap “between us/them is a slippery slope, not an unbridgeable political and ethical chasm” (p. 66). So, while “terrorist actions are always—without exception—wrong, they nevertheless might be contingently excusable” (p. 66). From this ultimately relativist perspective gang raping a defenseless woman, an act of terror on any critical or uncritical scale of evaluation, is, it would seem, wrong but potentially excusable.

On the basis of this worrying relativism a further Ken Commandment requires the abolition of the discourse of evil on the somewhat questionable grounds that evil releases agents from responsibility (pp. 74-75). This not only reveals a profound ignorance of theology, it also underestimates what Eric Voeglin identified as a central feature of the appeal of modern political religions from the Third Reich to Al Qaeda. As Voeglin observed in 1938, the Nazis represented an “attractive force.” To understand that force requires not the abolition of evil [so necessary to the relativist] but comprehending its attractiveness. Significantly, as Barry Cooper argues, “its attractiveness, [like that of al Qaeda] cannot fully be understood apart from its evilness.”4

The line of relativist inquiry that critical theorists like Booth evince toward terrorism leads in fact not to moral clarity but an inspissated moral confusion. This is paradoxical given that the editors make much in the journal's introductory symposium of their “responsible research ethics.” The paradox is resolved when one realizes that critical moralizing demands the “ethics of responsibility to the terrorist other.” For Ken Booth it involves, it appears, empathizing “with the ethic of responsibility” faced by those who, “in extremis” “have some explosives” (p. 76). Anthony Burke contends that a critically self-conscious normativism requires the analyst, not only to “critique” the “strategic languages” of the West, but also to “take in” the “side of the Other” or more particularly “engage” “with the highly developed forms of thinking” that provides groups like Al Qaeda “with legitimizing foundations and a world view of some profundity” (p. 44). This additionally demands a capacity not only to empathize with the “other,” but also to recognize that both Osama bin Laden in his *Messages to the West* and Sayyid Qutb in his Muslim Brotherhood manifesto *Milestones* not only offer “well observed” criticisms of Western decadence, but also “converges with elements of critical theory” (p. 45). This is not surprising given that both Islamist and critical theorists share an analogous contempt for Western democracy, the market, and the international order these structures inhabit and have done much to shape.

Histrionically Speaking

Critical theory, then, embraces relativism not only toward language but also toward social action. Relativism and the bizarre ethicism it engenders in its attempt to empathize with the terrorist other are, moreover, histrionic. As Leo Strauss classically inquired of this relativist tendency in the social sciences, “is such an understanding dependent upon our own commitment or independent of it?” Strauss explains, if it is independent, I am committed as an actor and I am uncommitted in another compartment of myself in my capacity as a social scientist. “In that latter capacity I am completely empty and therefore completely open to the perception and appreciation of all commitments or value systems.” I go through the process of empathetic understanding in order to reach clarity about my commitment for only a part of me is engaged in my empathetic understanding. This means, however, that “such understanding is not serious or genuine but histrionic.”5 It is also profoundly dependent on Western liberalism. For it is only in an open society that questions the values it promotes that the issue of empathy with the non-Western other could arise. The critical theorist's explicit loathing of the openness that affords her histrionic posturing obscures this constituting fact.

On the basis of this histrionic empathy with the “other,” critical theory concludes that democratic states “do not always abjure acts of terror whether to advance their foreign policy objectives … or to buttress order at home” (p. 73). Consequently, Ken Booth asserts: “If terror can be part of the menu of choice for the relatively strong, it is hardly surprising it becomes a weapon of the relatively weak” (p. 73). Zulaika and Douglass similarly assert that terrorism is “always” a weapon of the weak (p. 33).

At the core of this critical, ethicist, relativism therefore lies a syllogism that holds all violence is terror: Western states use violence, therefore, Western states are terrorist. Further, the greater terrorist uses the greater violence: Western governments exercise the greater violence. Therefore, it is the liberal democracies rather than Al Qaeda that are the greater terrorists.

In its desire to empathize with the transformative ends, if not the means of terrorism generally and Islamist terror in particular, critical theory reveals itself as a form of Marxist unmasking. Thus, for Booth “*terror has multiple forms*” (original italics) and the real terror is economic, the product it would seem of “global capitalism” (p. 75). Only the *engagee* intellectual academic finding in deconstructive criticism the philosophical weapons that reveal the illiberal neo-conservative purpose informing the conventional study of terrorism and the democratic state's prosecution of counterterrorism can identify the real terror lurking behind the “manipulation of the politics of fear” (p. 75).

Moreover, the resolution of this condition of escalating violence requires not any strategic solution that creates security as the basis for development whether in London or Kabul. Instead, Booth, Burke, and the editors contend that the only solution to “the world-historical crisis that is facing human society globally” (p. 76) is universal human “emancipation.” This, according to Burke, is “the normative end” that critical theory pursues. Following Jurgen Habermas, the godfather of critical theory, terrorism is really a form of distorted communication. The solution to this problem of failed communication resides not only in the improvement of living conditions, and “the political taming of unbounded capitalism,” but also in “the telos of mutual understanding.” Only through this telos with its “strong normative bias towards non violence” (p. 43) can a universal condition of peace and justice transform the globe. In other words, the only ethical solution to terrorism is conversation: sitting around an un-coerced table presided over by Kofi Annan, along with Ken Booth, Osama bin Laden, President Obama, and some European Union pacifist sandalista, a transcendental communicative reason will emerge to promulgate norms of transformative justice. As Burke enunciates, the panacea of un-coerced communication would establish “a secularism that might create an enduring architecture of basic shared values” (p. 46).

In the end, un-coerced norm projection is not concerned with the world as it is, but how it ought to be. This not only compounds the logical errors that permeate critical theory, it advances an ultimately utopian agenda under the guise of *soi-disant* cosmopolitanism where one somewhat vaguely recognizes the “human interconnection and mutual vulnerability to nature, the cosmos and each other” (p. 47) and no doubt bursts into spontaneous chanting of Kumbaya.

In analogous visionary terms, Booth defines real security as emancipation in a way that denies any definitional rigor to either term. The struggle against terrorism is, then, a struggle for emancipation from the oppression of political violence everywhere. Consequently, in this Manichean struggle for global emancipation against the real terror of Western democracy, Booth further maintains that universities have a crucial role to play. This also is something of a concern for those who do not share the critical vision, as university international relations departments are not now, it would seem, in business to pursue dispassionate analysis but instead are to serve as cheerleaders for this critically inspired vision.

Overall, the journal's fallacious commitment to emancipation undermines any ostensible claim to pluralism and diversity. Over determined by this transformative approach to world politics, it necessarily denies the possibility of a realist or prudential appreciation of politics and the promotion not of universal solutions but pragmatic ones that accept the best that may be achieved in the circumstances. Ultimately, to present the world how it ought to be rather than as it is conceals a deep intolerance notable in the contempt with which many of the contributors to the journal appear to hold Western politicians and the Western media.6

It is the exploitation of this oughtistic style of thinking that leads the critic into a Humpty Dumpty world where words mean exactly what the critical theorist “chooses them to mean—neither more nor less.” However, in order to justify their disciplinary niche they have to insist on the failure of established modes of terrorism study. Having identified a source of government grants and academic perquisites, critical studies in fact does not deal with the notion of terrorism as such, but instead the manner in which the Western liberal democratic state has supposedly manipulated the use of violence by non-state actors in order to “other” minority communities and create a politics of fear.

Critical Studies and Strategic Theory—A Missed Opportunity

Of course, the doubtful contribution of critical theory by no means implies that all is well with what one might call conventional terrorism studies. The subject area has in the past produced superficial assessments that have done little to contribute to an informed understanding of conflict. This is a point readily conceded by John Horgan and Michael Boyle who put “A Case Against 'Critical Terrorism Studies'” (pp. 51-74). Although they do not seek to challenge the agenda, assumptions, and contradictions inherent in the critical approach, their contribution to the new journal distinguishes itself by actually having a well-organized and well-supported argument. The authors' willingness to acknowledge deficiencies in some terrorism research shows that critical self-reflection is already present in existing terrorism studies. It is ironic, in fact, that the most clearly reflective, original, and *critical* contribution in the first edition should come from established terrorism researchers who critique the critical position.

Interestingly, the specter haunting both conventional and critical terrorism studies is that both assume that terrorism is an existential phenomenon, and thus has causes and solutions. Burke makes this explicit: “The inauguration of this journal,” he declares, “indeed suggests broad agreement that there is a phenomenon called terrorism” (p. 39). Yet this is not the only way of looking at terrorism. For a strategic theorist the notion of terrorism does not exist as an independent phenomenon. It is an abstract noun. More precisely, it is merely a tactic—the creation of fear for political ends—that can be employed by any social actor, be it state or non-state, in any context, without any necessary moral value being involved.

Ironically, then, strategic theory offers a far more “critical perspective on terrorism” than do the perspectives advanced in this journal. Guelke, for example, propounds a curiously orthodox standpoint when he asserts: “to describe an act as one of terrorism, without the qualification of quotation marks to indicate the author's distance from such a judgement, is to condemn it as absolutely illegitimate” (p. 19). If you are a strategic theorist this is an invalid claim. Terrorism is simply a method to achieve an end. Any moral judgment on the act is entirely separate. To fuse the two is a category mistake. In strategic theory, which Guelke ignores, terrorism does not, ipso facto, denote “absolutely illegitimate violence.”

Intriguingly, Stohl, Booth, and Burke also imply that a strategic understanding forms part of their critical viewpoint. Booth, for instance, argues in one of his commandments that terrorism should be seen as a conscious human choice. Few strategic theorists would disagree. Similarly, Burke feels that there does “appear to be a consensus” that terrorism is a “form of instrumental political violence” (p. 38). The problem for the contributors to this volume is that they cannot emancipate themselves from the very orthodox assumption that the word terrorism is pejorative. That may be the popular understanding of the term, but inherently terrorism conveys no necessary connotation of moral condemnation. “Is terrorism a form of warfare, insurgency, struggle, resistance, coercion, atrocity, or great political crime,” Burke asks rhetorically. But once more he misses the point. All violence is instrumental. Grading it according to whether it is insurgency, resistance, or atrocity is irrelevant. Any strategic actor may practice forms of warfare. For this reason Burke's further claim that existing definitions of terrorism have “specifically excluded states as possible perpetrators and privilege them as targets,” is wholly inaccurate (p. 38). Strategic theory has never excluded state-directed terrorism as an object of study, and neither for that matter, as Horgan and Boyle point out, have more conventional studies of terrorism.

Yet, Burke offers—as a critical revelation—that “the strategic intent behind the US bombing of North Vietnam and Cambodia, Israel's bombing of Lebanon, or the sanctions against Iraq is also terrorist.” He continues: “My point is not to remind us that states practise terror, but to show how mainstream *strategic doctrines* are terrorist in these terms and undermine any prospect of achieving the normative consensus if such terrorism is to be reduced and eventually eliminated” (original italics) (p. 41). This is not merely confused, it displays remarkable nescience on the part of one engaged in teaching the next generation of graduates from the Australian Defence Force Academy. Strategic theory conventionally recognizes that actions on the part of state or non-state actors that aim to create fear (such as the allied aerial bombing of Germany in World War II or the nuclear deterrent posture of Mutually Assured Destruction) can be terroristic in nature.7 The problem for critical analysts like Burke is that they impute their own moral valuations to the term terror. Strategic theorists do not. Moreover, the statement that this undermines any prospect that terrorism can be eliminated is illogical: you can never eliminate an abstract noun.

Consequently, those interested in a truly “critical” approach to the subject should perhaps turn to strategic theory for some relief from the strictures that have traditionally governed the study of terrorism, not to self-proclaimed critical theorists who only replicate the flawed understandings of those whom they criticize. Horgan and Boyle conclude their thoughtful article by claiming that critical terrorism studies has more in common with traditional terrorism research than critical theorists would possibly like to admit. These reviewers agree: they are two sides of the same coin.

Conclusion

In the looking glass world of critical terror studies the conventional analysis of terrorism is ontologically challenged, lacks self-reflexivity, and is policy oriented. By contrast, critical theory's ethicist, yet relativist, and deconstructive gaze reveals that we are all terrorists now and must empathize with those sub-state actors who have recourse to violence for whatever motive. Despite their intolerable othering by media and governments, terrorists are really no different from us. In fact, there is terror as the weapon of the weak and the far worse economic and coercive terror of the liberal state. Terrorists therefore deserve empathy and they must be discursively engaged.

At the core of this understanding sits a radical pacifism and an idealism that requires not the status quo but communication and “human emancipation.” Until this radical post-national utopia arrives both force and the discourse of evil must be abandoned and instead therapy and un-coerced conversation must be practiced. In the popular ABC drama *Boston Legal* Judge Brown perennially referred to the vague, irrelevant, jargon-ridden statements of lawyers as “jibber jabber.” The Aberystwyth-based school of critical internationalist utopianism that increasingly dominates the study of international relations in Britain and Australia has refined a higher order incoherence that may be termed Aber jabber. The pages of the journal of *Critical Studies on Terrorism* are its natural home.

#### Terrorism studies are epistemologically and methodologically valid---our authors are self-reflexive

Michael J. Boyle '8, School of International Relations, University of St. Andrews, and John Horgan, International Center for the Study of Terrorism, Department of Psychology, Pennsylvania State University, April 2008, “A Case Against Critical Terrorism Studies,” Critical Studies On Terrorism, Vol. 1, No. 1, p. 51-64

Jackson (2007c) calls for the development of an explicitly CTS on the basis of what he argues preceded it, dubbed ‘Orthodox Terrorism Studies’. The latter, he suggests, is characterized by: (1) its poor methods and theories, (2) its state centricity, (3) its problemsolving orientation, and (4) its institutional and intellectual links to state security projects. Jackson argues that the major defining characteristic of CTS, on the other hand, should be ‘a skeptical attitude towards accepted terrorism “knowledge”’. **An implicit presumption from this is that terrorism scholars have laboured for all of these years without being aware that their area of study has an implicit bias, as well as definitional and methodological** **problems**. In fact**, terrorism scholars are not only well aware of these problems, but also have provided their own** searching **critiques** of the field at various points during the last few decades (e.g. Silke 1996, Crenshaw 1998, Gordon 1999, Horgan 2005, esp. ch. 2, ‘Understanding Terrorism’). **Some of those scholars most associated with the critique of empiricism** implied in ‘Orthodox Terrorism Studies’ **have also engaged in deeply critical examinations of the nature of sources, methods, and data in the study of terrorism**. For example, Jackson (2007a) regularly cites the handbook produced by **Schmid and Jongman** (1988) to support his claims that theoretical progress has been limited. But this fact was well recognized by the authors; indeed, in the introduction of the second edition they **point out** that they have not revised their chapter on theories of terrorism from the first edition, because the **failure to address** persistent conceptual and **data problems** has undermined progress in the field. The point of their handbook was to sharpen and make more comprehensive the result of research on terrorism, not to glide over its methodological and definitional failings (Schmid and Jongman 1988, p. xiv). Similarly, **Silke’s** (2004) **volume on the state of the field of terrorism research performed a similar function**, highlighting the shortcomings of the field, in particular the lack of rigorous primary data collection. **A non-reflective community of scholars does not produce such scathing indictments of its own work.**

#### Terrorism may have lots of steps—but our authors consider all of them and conclude the risk is real

Peter **Beinart 8**, associate professor of journalism and political science at CUNY, The Good Fight; Why Liberals – and only Liberals – Can Win the War on Terror and Make America Great Again, 106-7

For all these reasons, jihadists seem less intent on acquiring a finished nuclear weapon than on acquiring weapons- grade uranium and building the bomb themselves. In the early 1990s, Al Qaeda bought a 3- foot- long cylinder from a Sudanese military officer who said it contained South African highly enriched uranium. It turned out to be a hoax. Jihadists have reportedly made other failed attempts as well. Eventually, however, they could succeed. Moscow may adequately protect its nuclear weapons, but the National Academy of Sciences has warned that “large inventories of SNM [fissile material] are stored at many sites that apparently lack inventory controls.” And the Russians reportedly experience one or two attempted thefts of that material a year—that they know of. ¶ If Al Qaeda obtained 50 kilograms of weapons-g rade uranium, the hardest part would be over. The simplest nuke to build is the kind the United States dropped on Hiroshima, a “gun- type,” in which a mass of highly enriched uranium is fired down a large gun barrel into a second uranium mass. Instructions for how to make one are widely available. Just how widely available became clear to an elderly nuclear physicist named Theodore Taylor in 2002, when he looked up “atomic bomb” in the World Book Encyclopedia in his upstate New York nursing home, and found much of the information you’d need. ¶ Even with directions, building a nuclear bomb would still be a monumental task. According to a New York Times Magazine article by Bill Keller, in 1986 five Los Alamos nuke builders wrote a paper called “Can Terrorists Build Nuclear Weapons?” They concluded that it would require people who understood “the physical, chemical and metallurgical proper-¶ 107¶ ties of the various materials to be used, as well as characteristics affecting their fabrication; neutronic properties; radiation effects, both nuclear and biological; technology concerning high explosives and/or chemical pro- pellants; some hydrodynamics; electrical circuitry.” That sounds daunting. **Yet, at the end of the paper, the scientists answered their question: “Yes, they can.”** ¶Finally, once terrorists built a nuclear weapon, they’d still have to smuggle it into the United States. The best way might be to put it in a shipping container, on one of the many supertankers that bring oil into American ports every day. The containers are huge, more than big enough to fit a gun-t ype nuke, which could be as small as 6 feet in length and 6 inches in diameter. Highly enriched uranium emits much less radiation than plutonium, and inside a supertanker’s thick double-steel hull it would be hard for sensors to detect. What’s more, a single ship can carry several thousand containers, most of which are never searched. On September 11, 2002, ABC News smuggled a 15- pound cylinder of depleted uranium in a cargo container past U.S. customs. On September 11, 2003, they performed the same exercise—and got the uranium past customs again.

#### Focusing on the root cause of terrorism does nothing to prevent it

**Elshtain, 3**

Jean Bethke Elshtain, Professor of Social and Politics Ethics @ U of Chicago-Divinity School, 2003 (Just War Against Terror: The Burden of American Power in a Violent World) p. 3

Certain critical events in the past remind us of this mordant fact. Looking back on twentieth-century fascism, we do not wring our hands and blame everyone but the Nazis for their murderous policies. Of course, it is important for historians and political analysts to take account of the political, social, and economic milieu out of which National Socialism emerged. But the difficulty and desperation of post-World War I conditions-runaway inflation, a war-torn econ­omy, and war reparations, all of which Germany faced-do not add up to the inevitability of the evil that was Nazism. To claim such is to set in motion an exculpatory strategy that, whether intentionally or inadvertently, rationalizes political pathology. The overriding truth and most salient fact of National Socialism is simply stated: A group of people took over state power, aimed to expand an Aryan Empire through ruthless force, and, as dictated by their ideology of biologi­cal racism, murdered whole categories of people not because of any­thing they had done but because of who they were. Why, then, in the context of America's war against terrorism, do so many tick off a list of American "failures" or even insist that America brought the horrors of September 11, 2001, on herself? Let me be clear that I exempt from this mode of argument the ludicrous claims that have arisen since that day, such as the slander that Israel carried out the attacks after having first warned Jews who worked in New York's World Trade Center towers to stay home that day, or the preposterous charge that American officials, up to and including the president of the United States, engineered the attacks to bolster their popularity. This sort of in­flammatory madness exists outside the boundary of political debate and festers instead in the fever swamps of conspiracy theory. Conducted within the boundary of reasonable political debate, how­ever, are those arguments that an international "war on poverty and de­spair," or a change in the direction of U.S. Middle Eastern policy, or a different U.S. policy toward Iraq will stay the hands of murderous terror­ists in the future. Certainly these arguments deserve a hearing. Pushing more programs that deal with poverty and despair or rethinking Ameri­can foreign policy, including our approach to Iraq, may have desirable outcomes. But no such change, either singly or together, will deter Osama bin Laden and those like him. To believe such is to plunge head­first into the strategy of denial characteristic of the citizens of Oran in Camus's novel. We could do everything demanded of us by those who are critical of America, both inside and outside our boundaries, but Islamist fundamentalism and the threat it poses would not be deterred.

## \*\*\*2AC

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#### We meet-Due process rights are judicial restrictions on executive authority

Al-Aulaqi Motion to Dismiss Memo 2013 (PLAINTIFFS’ OPPOSITION TO DEFENDANTS’ MOTION TO DISMISS, files February 5, 2013)

Despite Defendants’ attempt to distinguish the habeas cases, Defs. Br. 12, claims alleging

unlawful deprivation of life under the Fifth Amendment’s Due Process Clause are as textually

committed to the courts as claims brought under the Suspension Clause. Both are fundamental

judicial checks on executive authority. Cf. Boumediene v. Bush, 476 F.3d 981, 993 (D.C. Cir.

1997) (rejecting distinction between the Suspension Clause and Bill of Rights amendments

because both are “restrictions on governmental power”), rev’d on other grounds by Boumediene,

553 U.S. 723.

#### Their ex-post evidence concludes aff – we’re a restriction and ex-ante is not

Vladeck 13 (Steve, Professor of Law and the Associate Dean for Scholarship – American University Washington College of Law, JD – Yale Law School, Senior Editor – Journal of National Security Law & Policy, “Why a “Drone Court” Won’t Work–But (Nominal) Damages Might…,” Lawfare Blog, 2-10, http://www.lawfareblog.com/2013/02/why-a-drone-court-wont-work/)

That’s why, even though [I disagree](http://www.lawfareblog.com/2013/02/whats-really-wrong-with-the-targeted-killing-white-paper/) with the [DOJ white paper](http://msnbcmedia.msn.com/i/msnbc/sections/news/020413_DOJ_White_Paper.pdf) that ex ante review would present a nonjusticiable political question, I actually agree that courts are ill-suited to hear such cases–not because, as the white paper suggests, they lack the power to do so, but because, in most such cases, they would lack the competence to do so. **III. Drone Courts and the Legitimacy Problem** That brings me to perhaps the biggest problem we should all have with a “drone court”–the extent to which, even if one could design a legally and practically workable regime in which such a tribunals could operate, its existence would put irresistible pressure on federal judges to sign off even on those cases in which they have doubts. As a purely practical matter, it would be next to impossible meaningfully to assess imminence, the existence of less lethal alternatives, or the true nature of a threat that an individual suspect poses ex ante. Indeed, it would be akin to asking law enforcement officers to obtain judicial review before they use lethal force in defense of themselves or third persons–when the entire legal question turns on what was actually true in the moment, as opposed to what might have been predicted to be true in advance. At its core, that’s why the analogy to search warrants utterly breaks down–and why it would hardly be surprising if judges in those circumstances approved a far greater percentage of applications than they might have on a complete after-the-fact record. Judges, after all, are humans. In the process, the result would be that such ex ante review would do little other than to add legitimacy to operations the legality of which might have otherwise been questioned ex post. Put another way, ex ante revew in this context would most likely lead to a more expansive legal framework within which the targeted killing program could operate, one sanctioned by judges asked to decide these cases behind closed doors; without the benefit of adversary parties, briefing, or presentation of the facts; and with the very real possibility that the wrong decision could directly lead to the deaths of countless Americans. Thus, even if it were legally and practically possible, a drone court would be a very dangerous idea. **IV. Why Damages Actions Don’t Raise the Same Legal Concerns** At first blush, it may seem like many of these issues would be equally salient in the context of after-the-fact damages suits. But as long as such a regime was designed carefully and conscientiously, I actually think virtually all of these concerns could be mitigated. For starters, retrospective review doesn’t raise anywhere near the same concerns with regard to adversity or judicial competence. Re: adversity, presumably those who are targeted in an individual strike could be represented as plaintiffs in a post-hoc proceeding, whether through their next friend or their heirs. And as long as they could state a viable claim for relief (more on that below), it’s hard to see any pure Article III problem with such a suit for retrospective relief. As for competence, judges routinely review whether government officers acted in lawful self-defense under exigent circumstances (this is exactly what [Tennessee v. Garner](http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=471&invol=1) contemplates, after all). And if the Guantánamo litigation of the past five years has shown nothing else, [it demonstrates that](http://www.brookings.edu/research/reports/2011/05/guantanamo-wittes) judges are also more than competent to resolve not just whether individual terrorism suspects are who the government says they are (and thus members of al Qaeda or one of its affiliates), but to do so using highly classified information in a manner that balances–albeit not always ideally–the government’s interest in secrecy with the detainee’s ability to contest the evidence against him. Just as Guantánamo detainees are represented in their habeas proceedings by security-cleared counsel who must comply with court-imposed protective orders and security procedures, so too, the subjects of targeted killing operations could have their estates represented by security-cleared counsel, who would be in a far better position to challenge the government’s evidence and to offer potentially exculpatory evidence / arguments of their own. More to the point, it should also follow that courts would be far more able to review the questions that will necessary be at the core of these cases after the fact. Although the pure membership question can probably be decided in the abstract, it should stand to reason that the imminence and infeasibility-of-capture issues will be much easier to assess in hindsight–removed from the pressures of the moment and with the benefit of the dispassionate distance on which judicial review must rely. To similar effect, whether the government used excessive force in relation to the object of the attack is also something that can only reasonably be assessed post hoc. And in addition to the substantive questions, it will also be much easier for courts to review the government’s own procedures after they are employed, especially if the government itself is already conducting after-action reviews that could be made part of the (classified) record in such cases. Indeed, the government’s own analysis could, in many cases, go along way toward proving the lawfulness vel non of an individual strike… To be sure, there are a host of legal doctrines that would get in the way of such suits–foremost among them, [the present judicial hostility](http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=471&invol=1) to causes of action under [*Bivens*](http://supreme.justia.com/cases/federal/us/403/388/case.html); the state secrets privilege; and official immunity doctrine. But I am a firm believer that, except where the President himself is concerned (where there’s a stronger argument that [immunity is constitutionally grounded](http://www.law.cornell.edu/supct/html/historics/USSC_CR_0457_0731_ZS.html)), each of these concerns can be overcome by statute–so long as Congress creates an express cause of action for nominal damages, and so long as the statute both (1) expressly overrides state secrets and official immunity doctrine; and (2) replaces them with carefully considered procedures for balancing the secrecy concerns that would arise in many–if not most–of these cases, these legal issues would be overcome. **V. Why Damages Actions Aren’t Perfect–But Might Be the Least-Worst Alternative** Perhaps counterintuitively, I also believe that after-the-fact judicial review wouldn’t raise anywhere near the same prudential concerns as those noted above. Leaving aside how much less pressure judges would be under in such cases, it’s also generally true that damages regimes don’t have nearly the same validating effect on government action that ex ante approval does. Otherwise, one would expect to have seen a dramatic upsurge in lethal actions by law enforcement officers after each judicial decision refusing to impose individual liability arising out of a prior use of deadly force. So far as I know, no such evidence exists. Of course, damages actions aren’t a perfect solution here. It’s obvious, but should be said anyway, that in a case in which the government does act unlawfully, no amount of damages will make the victim (or his heirs) whole. It’s also inevitable that, like much of the Guantánamo litigation, most of these suits would be resolved under extraordinary secrecy, and so there would be far less public accountability for targeted killings than, ideally, we might want. That said, there are two enormous upsides to damages actions that, in my mind, make them worth it–even if they are deeply, fundamentally flawed: First, if nothing else, the specter of damages, even nominal damages, should have a deterrent effect on future government officers, such that, if a targeted killing operation ever was carried out in a way that violated the relevant legal rules, there would be liability–and, as importantly, precedent–such that the next government official in a similar context might think twice, and might make sure that he’s that much more convinced that the individual in question is who the government claims, and that there’s no alternative to the use of lethal force. Second, at least where the targets of such force are U.S. citizens, I believe that there is a non-frivolous argument that the Constitution requires at least some form of judicial process–and, compared to the alternatives, nominal damages actions litigated under carefully circumscribed rules of secrecy may be the only way to get all of the relevant constituencies to the table. That’s a very long way of reiterating what I wrote in [my initial response](http://www.lawfareblog.com/2013/02/whats-really-wrong-with-the-targeted-killing-white-paper/) to the DOJ white paper, but I end up in the same place: If folks really want to provide a judicial process to serve as a check on the U.S. government’s conduct of targeted killing operations, this kind of regime, and not an ex ante “drone court,” is where such endeavors should focus.

#### C/I – Authority is what the president may do not what the president can do

Ellen Taylor 96, 21 Del. J. Corp. L. 870 (1996), Hein Online

The term authority is commonly thought of in the context of the law of agency, and the Restatement (Second) of Agency defines both power and authority.'89 Power refers to an agent's ability or capacity to produce a change in a legal relation (whether or not the principal approves of the change), and authority refers to the power given (permission granted) to the agent by the principal to affect the legal relations of the principal; the distinction is between what the agent can do and what the agent may do.

#### C/I --- Restriction is limitation, NOT prohibition

CAC 12,COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT, COUNTY OF LOS ANGELES, Plaintiff and Respondent, v. ALTERNATIVE MEDICINAL CANNABIS COLLECTIVE et al., Defendants and Appellants, DIVISION ONE, 207 Cal. App. 4th 601; 143 Cal. Rptr. 3d 716; 2012 Cal. App. LEXIS 772

We disagree with County that in using the phrases “further restrict the location or establishment” and “regulate the location or establishment” in [\*615] section 11362.768, subdivisions (f) and (g), the Legislature intended to authorize local governments to ban all medical marijuana dispensaries that are otherwise “authorized by law to possess, cultivate, or distribute medical marijuana” (§ 11362.768, subd. (e) [stating scope of section's application]); the Legislature did not use the words “ban” or “prohibit.” Yet County cites dictionary definitions of “regulate” (to govern or direct according to rule or law); “regulation” (controlling by rule or restriction; a rule or order that has legal force); “restriction” (a limitation or qualification, including on the use of property); “establishment” (the act of establishing or state or condition of being established); “ban” (to prohibit); and “prohibit” (to forbid by law; to prevent or hinder) to attempt to support its interpretation. County then concludes that “the ordinary meaning [\*\*\*23] of the terms, ‘restriction,’ ‘regulate,’ and ‘regulation’ are consistent with a ban or prohibition against the opening or starting up or continued operation of [a medical marijuana dispensary] storefront business.” We disagree.¶CA(9)(9) The ordinary meanings of “restrict” and “regulate” suggest a degree of control or restriction falling short of “banning,” “prohibiting,” “forbidding,” or “preventing.” Had the Legislature intended to include an outright ban or prohibition among the local regulatory powers authorized in section 11362.768, subdivisions (f) and (g), it would have said so. Attributing the usual and ordinary meanings to the words used in section 11362.768, subdivisions (f) and (g), construing the words in context, attempting to harmonize subdivisions (f) and (g) with section 11362.775 and with the purpose of California's medical marijuana [\*\*727] statutory program, and bearing in mind the intent of the electorate and the Legislature in enacting the CUA and the MMP, we conclude that HN21Go to this Headnote in the case.the phrases “further restrict the location or establishment” and “regulate the location or establishment” in section 11362.768, subdivisions (f) and (g) do not authorize a per se ban at the local level. The Legislature [\*\*\*24] decided in section 11362.775 to insulate medical marijuana collectives and cooperatives from nuisance prosecution “solely on the basis” that they engage in a dispensary function. To interpret the phrases “further restrict the location or establishment” and “regulate the location or establishment” to mean that local governments may impose a blanket nuisance prohibition against dispensaries would frustrate both the Legislature's intent to “[e]nhance the access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects” and “[p]romote uniform and consistent application of the [CUA] among the counties within the state” and the electorate's intent to “ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes” and “encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana.”

### 2AC Congress

#### --Permute- do both- shields the link

Sheldon, Prof-Political Science, 98 (Charles Sheldon, Department of Political Science, Washington State University, “THE CHOICES JUSTICES MAKE,” http://www.bsos.umd.edu/gvpt/lpbr/subpages/reviews/epstknig.htm)

To confirm strategic behavior the authors look for "distinct" and "discrete" evidence that justices are engaged in political choices. The justices' papers are screened for signs of bargaining, thinking ahead, "manipulating the agenda, and engaging in sophisticated opinion writing." Bargaining is common throughout the process. The ultimate weapon in granting concessions on whether to hear a case is a dissenting opinion. According to Justice Stevens: "Occasionally a written statement of reasons for granting certiorari is more persuasive than the Justice's oral contribution to the Conference." Bargaining over the merits of a case is readily evident. An example among many: Powell sent O'Connor this memo along with his opinion draft. "Here is the first draft . . . .As I need you for a Court, and also because of your experience and special interest, I send the draft to you before circulating it. I had in mind, of course, the two concerns that you have expressed to me."¶ A tabulation of substantive bargaining memoranda shows an average of nearly nine memos in each of the 125 landmark cases decided in the 1983 term and an average of nearly four in each of the total of 157 decisions for the term. Because of his role as Chief Justice and because of his policy preferences, Burger provides amble evidence of attempts to manipulate the agenda of the Court. As you might imagine, Douglas calls him to task for his sometimes blatant manipulations. The authors document the numerous changes in draft opinions to support their contention that the politics of opinion writing is a common form of strategic behavior¶ Institutions (internal norms, rules and procedures and external considerations) also structure the strategic behavior of the justices. The "rule of four" and opinion writing assignments constitute the internal structures within which the justices act and relations with Congress (separation of powers) and the public (legitimacy) are the external institutions that guide the justices' strategic thinking.¶ The choices involved in ROE v. WADE (1973) provide the authors with a case study of manipulating opinion assignments for strategic reasons. However, ROE was not an exception. The justices care about who assigns and to whom an opinion is assigned for it provides them with opportunities for strategic behavior.¶ Not only are the justices constrained by the internal norms and rules but are expected to pay heed to Congress and to the American public. The authors begin their analysis with a review of the politics surrounding MARBURY and MCCARDLE to show the Court being checked by the president or Congress. The authors add further evidence of the importance of separation of powers from a number of other studies. Stare decisis proves to be a strong norm for maintaining public legitimacy. The point of the authors again is that both internal and external structures supply some predictability to the justice's behavior, prompting strategic choices.¶ We are not told how new justices become socialized into strategic behavior, whether the Court bureaucracy plays a restraining role, whether lower courts help set the agenda, what strategies may be used during oral arguments in open court, and what part the law clerks play in the process. Nonetheless there is more than enough material to challenge our thinking on Court politics.¶ Epstein and Knight have provided us with an intriguing framework for analyzing Supreme Court's role in policy making. However, they admit that what remains is the goal "to understand how [strategic] choices come together to explain the substantive content of law.¶ The authors provide the means to check their data, through their internet website. They also build nicely on existing scholarship on the Supreme Court. Nearly every page has a footnote, expanding further on their assertions and answering questions that arise. Also the endnotes provide a valuable bibliography for further study.

#### No solvency –

#### --The Executive would effectively challenge the counterplan in Court

McKelvey-JD Candidate Vandy-11 44 Vand. J. Transnat'l L. 1353

NOTE: Due Process Rights and the Targeted Killing of Suspected Terrorists: The Unconstitutional Scope of Executive Killing Power

Alternatively, Congress could pass legislation that explicitly prohibits the targeted killing of Americans unless the circumstances present a concrete threat of imminent danger.236 As the analysis in Part II.A indicates, targeted killing is a premeditated offensive military strategy, not a defensive practice.237 Congress could exercise its own constitutional powers as the war-making body of government to ensure that no American may be targeted for extrajudicial lethal force by the Executive Branch.238 Similarly, Congress could amend the AUMF to include a prohibition of the targeted killing of Americans.239 Although this has the potential to limit the military in counterterrorism measures in circumstances such as the Aulaqi case, it would emphasize congressional commitment to fundamental constitutional rights even in the face of terrorist threats.240 The irony of the Aulaqi case is that based on the publicly available evidence, there is good reason to believe the DOJ’s assertion that Anwar al-Aulaqi presented significant danger to the country.241 But allowing the president to target Aulaqi for extrajudicial killing presents its own danger, as it establishes a broad and unreviewable killing power with potential for error and abuse.242 Americans must have more reassurance that the powers of the Executive Branch are limited and reasonable. Although a legislative solution is appealing given the success of the analogous FISA court, a statutory ban on the targeted killings of Americans is certainly the preferable option. When a government unilaterally assassinates one of its own citizens in circumvention of civil liberties, this raises profound questions about the legitimacy of that government, especially in a representative democracy. It also stands in contradiction to the American constitutional legacy, in which separate but coequal branches of government were created primarily to limit the possibility of tyranny and other government abuses of power. A congressional ban on the targeted killing of Americans would represent a legislative rebuke of executive excesses in protection of fundamental civil liberties. Congressional action of any kind, however, faces a very serious hurdle: as the DOJ made clear in the Aulaqi case, the executive branch position is that any infringement on the President's targeted killing authority is simply unconstitutional. Yet if congress were to prohibit targeted killing and a court found that such a law is an unconstitutional infringement on executive authority, there is still another and perhaps final option. In the event that a federal court interprets the constitution to actually permit the targeted killing of Americans by the Executive Branch, then it would be necessary to fix this constitutional flaw. A constitutional amendment prohibiting the practice of targeted killing would thus permanently extinguish the concerns over targeted killing. 243

#### --Can’t solve –

#### A. Court will ignore Congress

Devins, Law Prof- William&Mary, 12 (Neal, Professor of Law and Professor of Government, William & Mary Law School, PARTY POLARIZATION AND JUDICIAL REVIEW: LESSONS FROM THE AFFORDABLE CARE ACT†, http://www.law.northwestern.edu/lawreview/v106/n4/1821/LR106n4Devins.pdf)

Lawmakers have little incentive to independently interpret the Constitution. In particular, while all members of Congress have a stake in preserving Congress’s institutional authority to independently interpret the Constitution, lawmaker desires to seek reelection, gain status within their party, and serve interest group constituents overwhelm this “collective good.”65 In particular, a lawmaker who invests in constitutional interpretation “loses time for fundraising, casework, media appearances, and obtaining particularized spending projects in her district; she will thus be at a disadvantage [when seeking reelection].”66 In explaining why “Congress is designed to pass over constitutional questions,” former Congressman and D.C. Circuit Judge Abner Mikva remarked that “the constitutional principles involved in a bill, unlike its merits, are generally abstract, unpopular, and fail to capture the imagination of either the media or the public. The Constitution is often portrayed as an obstacle to a better society by Congressmen forced to confront its limitations.”67 Academic studies of lawmaker interest in constitutional interpretation bear this out. Consider, for example, the complementary work of Mitch Pickerell, Keith Whittington, and Bruce Peabody. Pickerell’s study of constitutional deliberation in Congress demonstrates that lawmakers typically advance a positive legislative agenda and, consequently, rarely have reason to discuss potential constitutional limitations; instead, lawmakers “first take their position on legislation based on their policy preferences, and then use all arguments possible to support that position.”68 Whittington likewise calls attention to how it is that lawmakers benefit by making judgmental statements pleasing to voters and other constituents.69 In particular, lawmakers “can always take credit for voting the right way on the issue” and, as such, are unlikely to raise constitutional or other objections that cut against such “position-taking” behavior.70 Peabody’s study (surveying lawmakers’ attitudes towards Court–Congress relations) highlights two related phenomena, namely, (1) the legal issues that matter to lawmakers concern “local and electorally salient matters” and (2) more than 70% of lawmaker respondents said the courts should give little or no weight to congressional judgments about the constitutionality of legislation.71 In other words, lawmakers care about reelection; they do not defend their institutional prerogatives to interpret the Constitution but, instead, defer to the courts.72

#### --Congress cant effectively direct judicial review-APA proves

Grinsinger-Prof History NU-12

The Unwieldy American State: Administrative Politics Since the New Deal p.81

Congress was at least discontented with certain judicial practices. As the Senate Judiciary Committee suggested, the problem was not with the "substantial evidence" test itself, but with "the practice of agencies to rely upon (and of courts to tacitly approve) something less - to rely upon suspicion, surmise, implications, or plainly incredible evidence."'0' As a result, Congress directed courts to determine "in the exercise of their independent judgment, whether on the whole record the evidence in a given instance is sufficiently substantial to support a finding, conclusion, or other agency action as a matter of Iaw."'0i As one scholar suggested, "the difference in emphasis is not so much over what the Act requires, as over what the Courts have been really doing."10"' It was not at all clear that this problem extended beyond a few prominent cases, but the bill's drafters were able to use this opportunity to provide a new and clearly stated standard of review that asked all courts to reexamine how they reviewed agency decision making. However, by implicitly endorsing what most courts were already doing. Congress blunted the revolutionary impact of the new standard. One contemporary observer predicted that the APA "will not upset the rubric of judicial review which the federal judiciary has fashioned piecemeal, and from which it has no intention of deviating, even though its home- made precepts also now have been expressed, however opaquely, in statutory flapdoodle."104

#### --No net benefit – congressional checks will be abandoned in times of crisis – means the counterplan necessitates future court action

Katyal 13 (Neal Kumar, Georgetown University Law Center, review of Jack Goldsmith’s Power and Constraint: The Accountable Presidency After 9/11, “Book Review: Stochastic Constraint”, 126 Harv. L. Rev. 990-1010 (2013))

He identifies several mechanisms Congress has established and the Executive has self-imposed to check military wartime activities. Covert actions must be approved via formal findings, congressional intelligence committees must be informed of all intelligence activities, detention now involves extensive paperwork and legalistic standards, and inspectors general conduct reviews of CIA activities (pp. 87–88, 99, 155). Goldsmith describes the exponential increase in the number of lawyers employed by the executive and military departments as a significant check on executive discretion (pp. 125–35). These mechanisms not only lead to increased reporting but also provide a deterrent effect — the presidential synopticon described by Goldsmith and mentioned earlier in this Review — inducing executive branch officials to second guess themselves before undertaking decisions that they will soon have to explain to Congress and other bodies. These existing mechanisms work well now, in a time of relative calm. But if another grave threat to national security emerges, as it undoubtedly will, there is no guarantee that these accountability programs will be left in place and will work. Indeed, Goldsmith himself suggests that they will not.48 The suspension of these checks and the resulting increase in executive power would mean the cycle will repeat itself, for to reinstate those same checks we would have to relitigate, repass, or rescind legislation, and rely once again on the press and courts to uncover abuse of this broad power. Given Goldsmith’s prognosis, it is worth thinking now about ways to try to lace an understanding of Goldsmith’s cycle into legislative and judicial decisionmaking in times of crisis, in order to catalyze the start of stage three and allow a quick exit from stage two’s unilateral regime.

### 2AC Politics

#### Obama’s approval ratings at all-time low and he won’t bounce back – kills his political capital

AFP 11/15/13 (“Are Obama’s approval ratings sinking past the point of no return?” <http://www.rawstory.com/rs/2013/11/15/are-obamas-approval-ratings-sinking-past-the-point-of-no-return/>)

Barack Obama’s second term fumbles have pitched him to record low poll ratings and splintered his credibility with the American people. But has his presidency reached the point of no return? History and opinion poll data suggest that when reelected presidents slump in the ratings, it is tough, if not impossible to bounce back. Obama, stung by the amateurish debut of his health care plan, which has sent fellow Democrats into revolt, is beginning to sense the depth of his woes. “I do make apologies for not having executed better over the last several months,” he said at a Thursday press conference, punctuated by uncharacteristic mea culpas. “Am I going to have to do some work to rebuild confidence around some of our initiatives? Yes.” He had better act fast. An NBC/Wall Street Journal survey two weeks ago had the president’s approval rating down to 42 percent. A week later, Pew Research put Obama at 41 percent. By Wednesday, Quinnipiac University had him at 39 percent, a new low. The data suggest Obama can no longer count on the solid floor of support that has sustained his crisis-strewn presidency. “For the first time it appears that 40 percent floor is cracking,” said Tim Malloy, assistant director of the Quinnipiac University Polling Institute. But do polls matter for a man who will never again be on the ballot? Second term presidents enjoy some freedom from the tyranny of their job ratings — and become more obsessed with staving off dreaded lame duck status. But Obama’s deteriorating image threatens to shred his remaining authority on Capitol Hill — where key priorities, including immigration reform are on life support. He is also pleading with sanctions-wielding senators for more time to do a nuclear deal with Iran. And Obama’s unpopularity is spooking Democrats with tough races in next year’s mid-term elections, which may doom his long-shot hopes of seeing his party recapture the House of Representatives. Already, Obama is getting the cold shoulder from vulnerable Democrats, including Louisiana Senator Mary Landrieu who is brandishing her own bill to clean up the Obamacare mess. Charlie Cook, a renowned political analyst, suggests Obama’s presidency is suffering a “classic case of second term fatigue.” Bill Clinton saw his second term consumed by a sex scandal, George W. Bush was brought low by Iraq and Ronald Reagan struggled through the Iran-Contra scandal. Obama’s self-inflicted wound is the jammed Affordable Care Act website and his discredited promise that if Americans liked the health insurance they already had, they could keep it. The damage is obvious: Quinnipiac found that by 52-44 percent, people thought their president was not honest. “Any elected official with an eight point deficit is in serious trouble,” Malloy said. Obama’s spokesman Jay Carney offered the timeworn politician’s trope that his boss did not “spend a lot of time, worrying about ups and downs in polls.” But no president in the last 60 years who has got into deep polling trouble in their second term has been able to bounce back Only Dwight Eisenhower and Clinton bettered their approval ratings after one year of their second term before leaving town — and they were popular to start with. Worryingly for Obama, the president whose polling track he most resembles at this point is George W. Bush, who slunk out of Washington with a pitiful 34 percent approval.

NU-NSA fights

LA Times 11/11/13

<http://www.latimes.com/nation/la-na-johnson-homeland-20131113,0,5943074.story#axzz2kYnO1DEx>

TOP STORY: SENATE CONFIRMATION OF NSA BOSS WEIGHED — Tony has the story on the front page of today’s POLITICO: “Frustration with the NSA’s spying and the impending departure of its longtime director have fueled a congressional push to put its future leaders through the potentially grueling process of Senate confirmation — a scenario the White House has warned in the past could harm intelligence efforts. Some believe Senate confirmation for the NSA director could bring sweeping change and more accountability to the ultra-secretive NSA. But it also threatens to subject the agency to public, political showdowns and delays — something the Obama administration has said it wants to avoid.” “The confirmation concept is one of several NSA reforms under serious consideration on Capitol Hill. Administration officials also have weighed whether to split leadership of the NSA away from U.S. Cyber Command — both currently led by Gen. Keith Alexander, who’s slated to depart in 2014. Such a change could forge the way for a civilian to head the NSA for the first time.” http://politi.co/19d0wf7 — PLUS: MCCAIN SAYS ALEXANDER SHOULD GO: The NSA leader should either resign or be fired, Sen, John McCain told Germany’s Der Spiegel in an interview published over the weekend: “Now we have a contractor employee, not a government employee, who has access to information which is, when revealed, most damaging to the standing prestige of the United States and our relations with some of our best friends,” the Arizona Republican said. “Why did Edward Snowden have that information? And what are we doing as far as screening people who have access to this information? It's outrageous, and someone ought to be held accountable.”

#### Court links aren’t unique: Obama is fighting NSA case and proves lower courts don’t link

Politico 10/16/13

http://www.politico.com/blogs/under-the-radar/2013/10/obama-fights-quick-supreme-court-review-of-nsa-program-175217.html

Obama Administration fights quick Supreme Court review of NSA program

The Obama Administration is fighting an effort to have the Supreme Court immediately review the legality of the National Security Agency’s call-tracking program. In a brief filed with the high court, the Justice Department argues that the Electronic Privacy Information Center’s petition asking the justices to weigh in on the issue is premature and that the issue should be allowed to percolate in the lower courts. After former NSA contractor Edward Snowden’s leaks about the telephone metadata program became public in June, EPIC went to the Supreme Court in July, asking for a rare “mandamus” review of one of the Foreign Intelligence Surveillance Court orders authorizing the program. “The petition… does not meet the stringent requirements for mandamus relief, and this Court lacks jurisdiction to issue a writ of certiorari to the FISC in these circumstances. Accordingly, the petition should be denied,” Solicitor General Donald Verrilli Jr. wrote in the brief filed Friday, made public by EPIC this week, and posted here. “The mandamus petition does not establish that it is more than speculative that the NSA has reviewed, or might in the future review, records pertaining to petitioner’s members, particularly given the stringent, FISC-imposed restrictions that limit access to the database to counterterrorism purposes,” Verrilli added. The brief points to three lawsuits pending in district courts over the NSA program: one filed by the American Civil Liberties Union in June in Manhattan, another filed by the Electronic Frontier Foundation in July in San Francisco, and a third filed by conservative legal activist Larry Klayman in Washington in June. “Mandamus relief is unwarranted unless ‘the party seeking issuance of the writ’ has ‘no other adequate means to attain the relief he desires,’” Verrilli wrote. While the Justice Department filing essentially urges EPIC to seek similar review in a district court, government lawyers do not concede that the group would be able to get a ruling in that forum on the legal merits of the program.

#### No link – court action shields Obama from controversy

Pacelle, Prof-Political Science-Georgia Southern, 2002 (Richard L., Prof of Poli Sci @ Georgia Southern University, The Role of the Supreme Court in American Politics: The Least Dangerous Branch? 2002 p 175-6)

The limitations on the Court are not as significant as they once seemed. They constrain the Court, but the boundaries of those constraints are very broad. Justiciability is self-imposed and seems to be a function of the composition of the Court, rather than a philosophical position. Checks and balances are seldom successfully invoked against the judiciary, in part because the Court has positive institutional resources to justify its decisions. The Supreme Court has a relatively high level of diffuse support that comes, in part, from a general lack of knowledge by the public and that contributes to its legitimacy.[6] The cloak of the Constitution and the symbolism attendant to the marble palace and the law contribute as well. As a result, presidents and Congress should pause before striking at the Court or refusing to follow its directives. Indeed, presidents and members of Congress can often use unpopular Court decisions as political cover. They cite the need to enforce or support such decisions even though they disagree with them. In the end, the institutional limitations do not mandate judicial restraint, but turn the focus to judicial capacity, the subject of the next chapter.

#### Supreme Court Links don’t apply – the plan is the D.C. district court

Jaffer, Director-ACLU Center for Democracy, 13 (Jameel Jaffer, Director of the ACLU's Center for Democracy, “Judicial Review of Targeted Killings,” 126 Harv. L. Rev. F. 185 (2013), http://www.harvardlawreview.org/issues/126/april13/forum\_1002.php)

This is why the establishment of a specialized court would more likely institutionalize the existing program, with its elision of the imminence requirement, than narrow it. Second, judicial engagement with the targeted killing program does not actually require the establishment of a new court. In a case pending before Judge Rosemary Collyer of the District Court for the District of Columbia, the ACLU and the Center for Constitutional Rights represent the estates of the three U.S. citizens whom the CIA and JSOC killed in Yemen in 2011. The complaint, brought under Bivens v. Six Unknown Named Agents, seeks to hold senior executive officials liable for conduct that allegedly violated the Fourth and Fifth Amendments. It asks the court to articulate the limits of the government’s legal authority and to assess whether those limits were honored. In other words, the complaint asks the court to conduct the kind of review that many now seem to agree that courts should conduct. This kind of review—ex post review in the context of a Bivens action—could clarify the relevant legal framework in the same way that review by a specialized court could. But it also has many advantages over the kind of review that would likely take place in a specialized court. In a Bivens action, the proceedings are adversarial rather than ex parte, increasing their procedural legitimacy and improving their substantive accuracy. Hearings are open to the public, at least presumptively. The court can focus on events that have already transpired rather than events that might or might not transpire in the future. And a Bivens action can also provide a kind of accountability that could not be supplied by a specialized court reviewing contemplated strikes ex ante: redress for family members of people killed unlawfully, and civil liability for officials whose conduct in approving or carrying out the strike violated the Constitution. (Of course, in one profound sense a Bivens action will always come too late, because the strike alleged to be unlawful will already have been carried out. Again, though, if “imminence” is a requirement, ex ante judicial review is infeasible by definition.) Another advantage of the Bivens model is that the courts are already familiar with it. The courts quite commonly adjudicate wrongful death claims and “survival” claims brought by family members of individuals killed by law enforcement agents. In the national security context, federal courts are now accustomed to considering habeas petitions filed by individuals detained at Guantánamo. They opine on the scope of the government’s legal authority and they assess the sufficiency of the government’s evidence — the same tasks they would perform in the context of suits challenging the lawfulness of targeted killings. While Congress could of course affirm or strengthen the courts’ authority to review the lawfulness of targeted killings if it chose to do so, or legislatively narrow some of the judicially created doctrines that have precluded courts from reaching the merits in some Bivens suits, more than 40 years of Supreme Court precedent since Bivens makes clear that federal courts have not only the authority to hear after-the-fact claims brought by individuals whose constitutional rights have been infringed but also the obligation to do so.

### 2AC PQD

#### The PQD is already dead in the realm for foreign policy

Skinner 8/23, Professor of Law at Willamette

(13, Gwynne, Misunderstood, Misconstrued, and Now Clearly Dead: The 'Political Question Doctrine' in Cases Arising in the Context of Foreign Affairs, papers.ssrn.com/sol3/papers.cfm?abstract\_id=2315237)

Lower federal courts often erroneously cite the “political question doctrine” to dismiss as nonjusticiable individual rights claims arising in foreign or military affairs contexts, a trend that has increased since the 1962 case of Baker v. Carr. Similarly, lower courts have begun citing “special factors counselling hesitation” when dismissing constitutional claims (“Bivens claims”) in similar contexts, inappropriately treating “special factors” as a nonjusticiability doctrine. Lower federal courts should not cite either doctrine as a reason to avoid adjudicating individual rights claims arising in the context of foreign or military affairs. Rather, lower federal courts should adjudicate these claims on their merits by deciding whether the political branch at issue had the power under the Constitution to act as it did. Doing so is consistent with the manner in which the Supreme Court has approached these types of cases for over 200 years. The Court affirmed this approach in the 2012 case of Zivotofsky v. Clinton, a case in which the Court once and for all rung the death knell for the application of the “political question doctrine” as a nonjusticiability doctrine in cases involving individual rights – even those arising in a foreign policy context. In fact, a historical review of Supreme Court cases demonstrates that the Supreme Court has never applied the so-called “political question doctrine” as a true nonjusticiable doctrine to dismiss individual rights claims (and arguably, not to any claims at all), even those arising in the context of foreign or military affairs. This includes the seminal “political question” case of Marbury v. Madison. Rather, the Supreme Court has almost always rejected the “political question doctrine” as a basis to preclude adjudication of individual rights claims, even in the context of foreign or military affairs. Moreover, the Supreme Court has consistently admonished lower courts regarding the importance of the judiciary branch’s adjudication of individual rights claims, even in such contexts.13 That is not to say that from time to time the Court has not cited a “political question doctrine” in certain of its cases. However, a close review of those cases demonstrates that rather than dismissing such claims in those cases as “nonjusticiable,” the Court in fact adjudicated the claims by finding that either the executive or Congress acted constitutionally within their power or discretion. Moreover, the post-9/11 Supreme Court cases of Hamdi v. Rumsfeld, Rasul v. Bush, and Bush v. Boumediene, in which the Supreme Court consistently found that the political branches overstepped their constitutional authority, clarified that the doctrine should not be used to dismiss individual rights claims as nonjusticiable, even those arising in a foreign or military affairs context. In case there remained any doubt, the Supreme Court in Zivotofsky rejected the “political question doctrine” as a nonjusticiability doctrine, at least in the area individual rights, if not altogether. The Court found the case, involving whether the parents of a boy born in Jerusalem had the right to list Israel as his place of birth pursuant to a Congressional statute, was justiciable.17 The Court addressed the real issue, which was whether Congress had the authority to trump the President over whether Israel could be listed as the country of birth on passports where a person was born in Jerusalem, notwithstanding the President’s sole authority to recognize other governments. 18 In ruling as it did, the Court stayed true to many of its earlier cases involving “political questions” by adjudicating the claim through deciding whether one of the political branches took action that was within its constitutional authority. In the case, the Court showed its willingness to limit the power of the President in the area of foreign affairs rather than finding the claim nonjusticiable.

#### **Ex post review wouldn’t violate the political question doctrine or cause other branches to go to the court to settle disputes**

Taylor 13 (Paul, is a Senior Fellow, Center for Policy & Research. Focus on national security policy, international relations, targeted killings, and drone operations. “Former DOD Lawyer Frowns on Drone Court,” http://centerforpolicyandresearch.com/2013/03/23/former-dod-lawyer-frowns-on-drone-court/)

First, Johnson notes, as others have, that judges would be loath to issue the equivalent of death warrants, first of all on purely moral grounds, but also on more political grounds. Courts enjoy the highest approval ratings of the three branches of government, yet accepting the responsibility to determine which individuals may live or die, without that individual having an opportunity to appear before the court would simply shift some of the public opprobrium from the Executive to the Judiciary. However, if the court exercised ex post review, it instead would be in its ordinary position of approving or disapproving the Executive’s decisions, not making its decisions for it. Another concern raised by Johnson is that the judges would be highly uncomfortable making such decisions because they would be necessarily involve a secret, purely ex parte process. While courts do this on a daily basis, as when they issue search or arrest warrants, the targeted killing context stands apart in that the judge’s decision would be effectively irreversible. Here again, the use of ex post process would free the courts from this problem, and place it in the executive (which includes the military, incidentally, an organization which deals with this issue as a matter of course).

#### No extinction-empirically denied

**Carter et al., James Cook University adjunct research fellow, 2011**

(Robert, “Surviving the Unpreceented Climate Change of the IPCC”, 3-8, <http://www.nipccreport.org/articles/2011/mar/8mar2011a5.html>, ldg)

On the other hand, they indicate that some biologists and climatologists have pointed out that "many of the predicted increases in climate have happened before, in terms of both magnitude and rate of change (e.g. Royer, 2008; Zachos *et al*., 2008), and yet biotic communities have remained remarkably resilient (Mayle and Power, 2008) and in some cases thrived (Svenning and Condit, 2008)." But they report that those who mention these things are often "placed in the 'climate-change denier' category," although the purpose for pointing out these facts is simply to present "a sound scientific basis for understanding biotic responses to the magnitudes and rates of climate change predicted for the future through using the vast data resource that we can exploit in fossil records." Going on to do just that, Willis et al. focus on "intervals in time in the fossil record when atmospheric CO2 concentrations increased up to 1200 ppm, temperatures in mid- to high-latitudes increased by greater than 4°C within 60 years, and sea levels rose by up to 3 m higher than present," describing studies of past biotic responses that indicate "the scale and impact of the magnitude and rate of such climate changes on biodiversity." And what emerges from those studies, as they describe it, "is evidence for rapid community turnover, migrations, development of novel ecosystems and thresholds from one stable ecosystem state to another." And, most importantly in this regard, they report "there is very little evidence for broad-scale extinctions due to a warming world." In concluding, the Norwegian, Swedish and UK researchers say that "based on such evidence we urge some caution in assuming broad-scale extinctions of species will occur due solely to climate changes of the magnitude and rate predicted for the next century," reiterating that "the fossil record indicates remarkable biotic resilience to wide amplitude fluctuations in climate.

### 2AC Chernus K

#### 2. Consequentialism first; their ethics claims are shirk responsibility allowing infinite violence

Williams 2000 (Michael, Professor of International Politics at the University of Wales—Aberystwyth,

The Realist Tradition and the Limits of International Relations, p. 174-176)

A commitment to an ethic of consequences reflects a deeper ethic of criticism, of ‘self-clarification’, and thus of reflection upon the values adopted by an individual or a collectivity. It is part of an attempt to make critical evaluation an intrinsic element of responsibility. Responsibility to this more fundamental ethic gives the ethic of consequences meaning. Consequentialism and responsibility are here drawn into what Schluchter, in terms that will be familiar to anyone conversant with constructivism in International Relations, has called a ‘reflexive principle’. In the wilful Realist vision, scepticism and consequentialism are linked in an attempt to construct not just a more substantial vision of political responsibility, but also the kinds of actors who might adopt it, and the kinds of social structures that might support it. A consequentialist ethic is not simply a choice adopted by actors: it is a means of trying to foster particular kinds of self-critical individuals and societies, and in so doing to encourage a means by which one can justify and foster a politics of responsibility. The ethic of responsibility in wilful Realism thus involves a commitment to both autonomy and limitation, to freedom and restraint, to an acceptance of limits and the criticism of limits. Responsibility clearly involves prudence and an accounting for current structures and their historical evolution; but it is not limited to this, for it seeks ultimately the creation of responsible subjects within a philosophy of limits. Seen in this light, the Realist commitment to objectivity appears quite differently. Objectivity in terms of consequentialist analysis does not simply take the actor or action as given, it is a political practice — an attempt to foster a responsible self, undertaken by an analyst with a commitment to objectivity which is itself based in a desire to foster a politics of responsibility. Objectivity in the sense of coming to terms with the ‘reality’ of contextual conditions and likely outcomes of action is not only necessary for success, it is **vital for self-reflection**, for sustained engagement with the practical and ethical adequacy of one’s views. The blithe, self-serving, and uncritical stances of abstract moralism or rationalist objectivism avoid self-criticism by refusing to engage with the intractability of the world ‘as it is’. **Reducing the world** to an expression of their theoretical models, political platforms, or ideological programmes, they fail to engage with this reality, and thus avoid the process of self-reflection at the heart of responsibility. By contrast, Realist objectivity takes an engagement with this intractable ‘object’ that is not reducible to one’s wishes or will as a necessary condition of ethical engagement, self-reflection, and self-creation.7 Objectivity is not a naïve naturalism in the sense of scientific laws or rationalist calculation; it is a necessary engagement with a world that eludes one’s will. A recognition of the limits imposed by ‘reality’ is a condition for a recognition of one’s own limits — that **the world is not simply an extension of one’s own will.** But it is also a challenge to use that intractability as a source of possibility, as providing a set of openings within which a suitably chastened and yet paradoxically energised will to action can responsibly be pursued. In the wilful Realist tradition, the essential opacity of both the self and the world are taken as limiting principles. Limits upon understanding provide chastening parameters for claims about the world and actions within it. But they also provide challenging and creative openings within which diverse forms of life can be developed: the limited unity of the self and the political order is the **precondition for freedom**. The ultimate opacity of the world is not to be despaired of: it is a condition of possibility for the wilful, creative construction of selves and social orders which embrace the diverse human potentialities which this lack of essential or intrinsic order makes possible.8 But it is also to be aware of the less salutary possibilities this involves. Indeterminacy is not synonymous with absolute freedom — it is both a condition of, and imperative toward, responsibility.

#### Simulation is effective in developing knowledge and decision making-no other technique creates the exploration of possible alternative futures

**Eijkman, New South Wales visiting fellow, 2012**

(Henk, “The role of simulations in the authentic learning for national security policy development Implications for practice”, May, <http://nsc.anu.edu.au/documents/occasional-4-eijkman.pdf>)

However, whether as an approach to learning, innovation, persuasion or culture shift, policy simulations derive their power from two central features: their combination of simulation and gaming (Geurts et al. 2007). 1. The simulation element: the unique combination of simulation with role-playing.The unique simulation/role-play mix enables participants to create possible futures relevant to the topic being studied. This is diametrically opposed to the more traditional, teacher-centric approaches in which a future is produced for them. In policy simulations, possible futures are much more than an object of tabletop discussion and verbal speculation. ‘No other technique allows a group of participants to engage in collective action in a safe environment to create and analyse the futures they want to explore’ (Geurts et al. 2007: 536). 2. The game element: the interactive and tailor-made modelling and design of the policy game. The actual run of the policy simulation is only one step, though a most important and visible one, in a collective process of investigation, communication, and evaluation of performance. In the context of a post-graduate course in public policy development, for example, a policy simulation is a dedicated game constructed in collaboration with practitioners to achieve a high level of proficiency in relevant aspects of the policy development process. To drill down to a level of finer detail, policy development simulations—as forms of interactive or participatory modelling— are particularly effective in developing participant knowledge and skills in the five key areas of the policy development process (and success criteria), namely: Complexity, Communication, Creativity, Consensus, and Commitment to action (‘the five Cs’). The capacity to provide effective learning support in these five categories has proved to be particularly helpful in strategic decision-making (Geurts et al. 2007). Annexure 2.5 contains a detailed description, in table format, of the synopsis below.

#### C. Singular focus on representational practices don’t alter policy – structures and politics are more vital

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

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

#### D.. Reality shapes discourse --- Materiality is a prerequisite to discursive construction.

Roskoski & Peabody 1991

Matthew, Joe, “A Linguistic and Philosophical Critique of Language ‘Arguments,’” http://debate.uvm.edu/Library/ DebateTheoryLibrary/Roskoski&Peabody-LangCritiques

The first is that the hypothesis is phrased as a philosophical first principle and hence would not have an objective referent. The second is there would be intrinsic problems in any such test. The independent variable would be the language used by the subject. The dependent variable would be the subject's subjective reality. The problem is that the dependent variable can only be measured through self- reporting, which - naturally - entails the use of language. Hence, it is impossible to separate the dependent and independent variables. In other words, we have no way of knowing if the effects on "reality" are actual or merely artifacts of the language being used as a measuring tool. The second reason that the hypothesis is flawed is that there are problems with the causal relationship it describes. Simply put, it is just as plausible (in fact infinitely more so) that reality shapes language. Again we echo the words of Dr. Rosch, who says: {C}ovariation does not determine the direction of causality. On the simplest level, cultures are very likely to have names for physical objects which exist in their culture and not to have names for objects outside of their experience. Where television sets exists, there are words to refer to them. However, it would be difficult to argue that the objects are caused by the words. The same reasoning probably holds in the case of institutions and other, more abstract, entities and their names. (Rosch 264

#### 4. Scenario-building overcomes threat construction

Liotta 03, Jerome E. Levy Chair of Economic Geography and National Security at the Naval War College, and Somes, founding chairman of the Naval War College's Department of Joint Military Operations and Professor Emeritus at the Navy War College, ’3 (P.H. and Timothy, Autumn, “The Art of Reperceiving: Scenarios and the Future” Navy War College Review, Vol 56 No 4,  [http://findarticles.com/p/articles/mi\_m0JIW/is\_4\_56/ai\_110458728/pg\_3](http://www.nwc.navy.mil/press/Review/2003/Autumn/cy1-a03.htm) )

Finally, the scenarios we are talking about are not the limited threat-based planning scenarios common in defense planning. Threat-based scenarios, generally based on assessments of current or postulated threats or enemy capabilities, determine only the amount and types of force needed to defeat an adversary. (Similarly, capabilities-based planning seeks to avoid the perceived limits of threat-derived scenarios.)6 In contrast, the scenarios we want to consider should look well beyond current evaluations of threats. If future military force capabilities are derived from the kind of scenarios we are discussing, they must encompass the full range of possibilities, with a commensurate weighing of benefits, costs, and risks. Accomplishing this is a difficult but essential challenge, if decision makers are to come to any informed, perceptive conclusions for the future. In Wack’s words, “Scenarios serve two purposes. The first is protective—anticipating and understanding risk. The second is entrepreneurial—discovering strategic options of which one was previously unaware.”7 Often, and probably naturally, decision makers prefer the illusion of certainty to understanding risk and realities. But the scenario “builder” and analyst should strive to shatter the decision maker’s confidence in his or her ability to look ahead with certainty at the future. Scenarios should allow a decision maker to say, “I am prepared for whatever happens,” because we have thought through complex choices with a knowledgeable sense of risk and reward.8

#### ---Imagining nuclear death prevents numbing, repression and paralysis.

Lenz 1990

Millicent, Assis. Prof Science and Policy @ SUNY, Nuclear Age Literature for Youth, p. 9-10

A summary of Frank’s thought in “Psychological Determinants of the Nuclear Arms Race” notes how all people have difficulty grasping the magnitude and immediacy of the threat of nuclear arms and this psychological unreality is a basic obstacle to eliminating that threat. Only events that people have actually experienced can have true emotional impact. Since Americans have escaped the devastation of nuclear weapons on their own soil and “nuclear weapons poised for annihilation in distant countries cannot be seen, heard, smelled, tasted, or touched,” we find it easy to imagine ourselves immune to the threat. Albert Camus had the same phenomenon in mind when he wrote in his essay *Neither Victims nor Executioners* of the inability of most people really to *imagine* other people’s death (he might have added “or their own”). Commenting on Camus, David P. Barash and Judith Eve Lipton observed that this distancing from death’s reality is yet another aspect of our insulation from life’s most basic realities. “We make love by telephone, we work not on matter but on machines, and we kill and are killed by proxy. We gain in cleanliness, but lose in understanding.” If we are to heed Camus’s call to refuse to be either the victims of violence like the Jews of the Holocaust, or the perpetrators of it like the Nazi executioners of the death camps, we must revivify the imagination of what violence really entails. It is here, of course, that the literature of nuclear holocaust can play a significant role. Without either firsthand experience or vivid imagining, it is natural, as Frank points out, to deny the existence of death machines and their consequences. In psychiatric usage denial means to exclude from awareness, because “letting [the instruments of destruction] enter consciousness would create too strong a level of anxiety or other painful emotions.” In most life-threatening situations, an organism’s adaptation increases chances of survival, but ironically, adapting ourselves to nuclear fear is counterproductive. We only seal our doom more certainly. The repressed fear, moreover, takes a psychic toll.

#### ---Fearing the bomb is life affirming.

Fox 1985

Michael Allen, Assoc. Prof Phil. @ Queens, “Nuclear War: Philosophical Perspectives,” ed. Fox and Groarke, p. 127

There remains but one choice: we must seek a reduction of world tensions, mutual trust, disarmament, and peace.35 Security is not the absence of fear and anxiety, but a degree of stress and uncertainty with which we can cope and remain mentally healthy. For security, understood in this way, to become a feature of our lives, we must admit our nuclear fear and anxiety and identify the mechanisms that dull or mask our emotional and other responses. It is necessary to realist that we cannot entrust security to ourselves, but, strange as it seems and however difficult to accept, must entrust it to our adversary Just as the safety and security of each of us, as individuals, depends upon the good will of every other, any one of whom could harm us at any moment, so the security of nations finally depends upon the good will of other nations, whether or not we willingly accept this fact. The disease for which we must find the cure also requires that we continually come face to face with the unthinkable in image and thought and recoil from it. 36 In this manner we can break its hold over us and free ourselves to begin new initiatives. As Robert J. Lifton points out, “confronting massive death helps us bring ourselves more in touch with what we care most about in life. We [will then] find ourselves in no way on a death trip, but rather responding to a call for personal and professional actions and commitments on behalf of that wondrous and fragile entity we know as human life.

#### ---Fear of nuclear annihilation makes nuclear war impossible.

Futterman 1994

J.A.H., Former US nuclear weapons scientist, “Obscenity and Peace: Meditation on the Bomb,” Virtual Church of the Blind Chihuahua, www.dogchurch.org/books/nuke.html

But the inhibitory effect of reliable nuclear weapons goes deeper than Shirer's deterrence of adventurer-conquerors. It changes the way we think individually and culturally, preparing us for a future we cannot now imagine. Jungian psychiatrist Anthony J. Stevens states, [15] "History would indicate that people cannot rise above their narrow sectarian concerns without some overwhelming paroxysm. It took the War of Independence and the Civil War to forge the United States, World War I to create the League of Nations, World War II to create the United Nations Organization and the European Economic Community. Only catastrophe, it seems, forces people to take the wider view. Or what about fear? Can the horror which we all experience when we contemplate the possibility of nuclear extinction mobilize in us sufficient libidinal energy to resist the archetypes of war? Certainly, the moment we become blasé about the possibility of holocaust we are lost. As long as horror of nuclear exchange remains uppermost we can recognize that nothing is worth it. War becomes the impossible option. Perhaps horror, the experience of horror, the consciousness of horror, is our only hope. Perhaps horror alone will enable us to overcome the otherwise invincible attraction of war." Thus I also continue engaging in nuclear weapons work to help fire that world-historical warning shot I mentioned above, namely, that as our beneficial technologies become more powerful, so will our weapons technologies, unless genuine peace precludes it. We must build a future more peaceful than our past, if we are to have a future at all, with or without nuclear weapons — a fact we had better learn before worse things than nuclear weapons are invented. If you're a philosopher, this means that I regard the nature of humankind as mutable rather than fixed, but that I think most people welcome change in their personalities and cultures with all the enthusiasm that they welcome death — thus, the fear of nuclear annihilation of ourselves and all our values may be what we require in order to become peaceful enough to survive our future technological breakthroughs.[16]

#### ---Nuclear deterrence promotes collective survival --- Unites the world under a universal fate to confront.

Lifton 1985

Robert Jay, Toward a Nuclear-age Ethos, Bulletin of Atomic Scientists, August

We either survive or die as a species. **Nuclear weapons create a universally shared fate – a technologically imposed unity of all humankind**. The message of this shared fate, from any American to a Soviet counterpart, is simple and primal: If I die, you die; if you survive, I survive. The **principle of shared fate applies to nations no less than to individuals**. The United States and the Soviet Union are simultaneously terrorists and hostages. As in the case of a airplane hijacked in flight, the terrorist’s use of his own weaponry will kill him as certainly as it will his hostages. **This shared fate highlights as nothing else does the pragmatic dimension of nuclear-weapons issues and** of **survival** itself. At the same time it can throw us back on not just individual but collective humanity, on an evolving ethic of mutual responsibility, again as both individuals and nations, for shared life. **As pragmatism and moral imagination combine, the United States and the Soviet Union may be able to think less in terms of “the enemy”—the real enemy to both is nuclear extinction – and more in terms of committed partnership in survival**. **Collective human power can bring about change, awareness, and ultimately human survival**.

#### ---Deterrence is inevitable --- Refusing to engage in nuclear brinkmanship is politically untenable and results in the rollback of the alternative.

Kayka 1987

Gregory S., Prof – UC Irvine, Moral Paradoxes of Nuclear Deterrence, p. 86-87

The lesson of the kidney case seems to be that one can, at most, actively impose substantially lesser risks or harms on other innocent people to protect oneself. Can this lesson be applied to national as well as individual self-defense? One might contend that it cannot be, appealing for support to the hallowed ought-implies-can principle. According to that principle agents, including nations, can only be obligated to act in ways they are capable of acting. But, it may be suggested, **nations are literally incapable of refraining from taking steps believed to be necessary for national defense, even if these impose horrible risks or harms on outside innocents. For any government that failed to undertake the requisite defensive actions** (e.g., **any government that abandoned nuclear deterrence) would be quickly ousted and replaced by a government willing to under take them**.

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### 1AR W/M

#### Restrictions can happen after the fact

ECHR 91, European Court of Human Rights, Decision in Ezelin v. France, 26 April 1991, http://www.bailii.org/eu/cases/ECHR/1991/29.html

The main question in issue concerns Article 11 (art. 11), which provides:¶ "1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.¶ 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. ..."¶ Notwithstanding its autonomous role and particular sphere of application, Article 11 (art. 11) must, in the present case, also be considered in the light of Article 10 (art. 10) (see the Young, James and Webster judgment of 13 August 1981, Series A no. 44, p. 23, § 57). The protection of personal opinions, secured by Article 10 (art. 10), is one of the objectives of freedom of peaceful assembly as enshrined in Article 11 (art. 11).¶ A. Whether there was an interference with the exercise of the freedom of peaceful assembly¶ In the Government’s submission, Mr Ezelin had not suffered any interference with the exercise of his freedom of peaceful assembly and freedom of expression: he had been able to take part in the procession of 12 February 1983 unhindered and to express his convictions publicly, in his professional capacity and as he wished; he was reprimanded only after the event and on account of personal conduct deemed to be inconsistent with the obligations of his profession.¶ The Court does not accept this submission. The term "restrictions" in paragraph 2 of Article 11 (art. 11-2) - and of Article 10 (art. 10-2) - cannot be interpreted as not including measures - such as punitive measures - taken not before or during but after a meeting (cf. in particular, as regards Article 10 (art. 10), the Handyside judgment of 7 December 1976, Series A no. 24, p. 21, § 43, and the Müller and Others judgment of 24 May 1988, Series A no. 133, p. 19, § 28).