## \*\*\*1AC

### Plan

#### 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.

### 1AC Allied Cooperation

#### Advantage 1 is Allied Cooperation –

#### Domestic and international criticism of the drone program is threatening its effectiveness. 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.

#### U.S. drone policy is more important than the spying and data scandal to European partners – it threatens the trans-atlantic relationship

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.

#### Accountability over standards of imminence are impossible from executive internal measures – no one trusts Obama on drones – only the plans court action solves

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.

#### Unrestrained drone policy results in collapse of NATO

Parker 9/17/12 (Tom, former policy director for Terrorism, Counterterrorism and Human Rights at Amnesty International USA. He is also a former officer in the British Security Service (MI5), “U.S. Tactics Threaten NATO” <http://nationalinterest.org/commentary/us-tactics-threaten-nato-7461?page=1>)

A growing chasm in operational practice is opening up between the United States and its allies in NATO. This rift is putting the Atlantic alliance at risk. Yet no one in Washington seems to be paying attention. The escalating use of unmanned aerial vehicles to strike terrorist suspects in an increasing number of operational environments from the Arabian Peninsula to Southeast Asia, coupled with the continued use of military commissions and indefinite detention, is driving a wedge between the United States and its allies. Attitudes across the Atlantic are hardening fast. This isn’t knee-jerk, man-on-the-street anti-Americanism. European governments that have tried to turn a blind eye to U.S. counterterrorism practices over the past decade are now forced to pay attention by their own courts, which will restrict cooperation in the future. As recently as last month, the German federal prosecutor’s office opened a probe into the October 2010 killing of a German national identified only as “Buenyamin E.” in a U.S. drone strike in Pakistan. There are at least four other similar cases involving German nationals and several reported strikes involving legal residents of the United Kingdom. In March, Polish prosecutors charged the former head of Polish intelligence, Zbigniew Siemiatkowski, with “unlawfully depriving prisoners of the their liberty” because of the alleged role he played in helping to establish a CIA secret prison in northeastern Poland in 2002–2003. Last December, British Special Forces ran afoul of the UK courts for informally transferring two Al Qaeda suspects detained in Iraq, Yunus Rahmatullah and Amanatullah Ali, to U.S. forces. The British government has been instructed to recover the men from U.S. custody or face legal sanctions that could result in two senior ministers being sent to prison. Perhaps the most dramatic example illustrating the gap that has opened up between the United States and its European allies concerns the 2009 in absentia conviction of twenty-three U.S. agents in an Italian court for the role they played in the extraordinary rendition of radical Imam Hassan Mustafa Osama Nasr from Milan to Cairo. Britain, Poland, Italy and Germany are among America’s closest military partners. Troops from all four countries are currently serving alongside U.S. forces in Afghanistan, but they are now operating within a very different set of constraints than their U.S. counterparts. The European Court of Human Rights established its jurisdiction over stabilization operations in Iraq, and by implication its writ extends to Afghanistan as well. The British government has lost a series of cases before the court relating to its operations in southern Iraq. This means that concepts such as the right to life, protection from arbitrary punishment, remedy and due process apply in areas under the effective control of European forces. Furthermore, the possibility that intelligence provided by any of America’s European allies could be used to target a terrorism suspect in Somalia or the Philippines for a lethal drone strike now raises serious criminal liability issues for the Europeans. The United States conducts such operations under the legal theory that it is in an international armed conflict with Al Qaeda and its affiliates that can be pursued anywhere on the globe where armed force may be required. But not one other member of NATO shares this legal analysis, which flies in the face of established international legal norms. The United States may have taken issue with the traditional idea that wars are fought between states and not between states and criminal gangs, but its allies have not. The heads of Britain’s foreign and domestic intelligence services have been surprisingly open about the “inhibitions” that this growing divergence has caused the transatlantic special relationship, telling Parliament that it has become an obstacle to intelligence sharing. European attitudes are not going to change—the European Court of Human Rights is now deeply embedded in European life, and individual European governments cannot escape its oversight no matter how well disposed they are to assist the United States. The United States has bet heavily on the efficacy of a new array of counterterrorism powers as the answer to Al Qaeda. In doing so it has evolved a concept of operations that has much more in common with the approach to terrorist threats taken by Israel and Russia than by its European partners. There has been little consideration of the wider strategic cost of these tactics, even as the Obama administration doubles down and extends their use. Meanwhile, some of America’s oldest and closest allies are beginning to place more and more constraints on working with U.S. forces. NATO cannot conduct military operations under two competing legal regimes for long. Something has to give—and it may just be the Atlantic alliance.

#### NATO prevents global nuclear war

Zbigniew Brzezinski 9, former U.S. National Security Adviser, Sept/Oct 2009, “An Agenda for NATO,” Foreign Affairs, 88.5, EBSCO

NATO's potential is not primarily military. Although NATO is a collective-security alliance, its actual military power comes predominantly from the United States, and that reality is not likely to change anytime soon. NATO's real power derives from the fact that it combines the United States' military capabilities and economic power with Europe's collective political and economic weight (and occasionally some limited European military forces). Together, that combination makes NATO globally significant. It must therefore remain sensitive to the importance of safeguarding the geopolitical bond between the United States and Europe as it addresses new tasks. The basic challenge that NATO now confronts is that there are historically unprecedented risks to global security. Today's world is threatened neither by the militant fanaticism of a territorially rapacious nationalist state nor by the coercive aspiration of a globally pretentious ideology embraced by an expansive imperial power. The paradox of our time is that the world, increasingly connected and economically interdependent for the first time in its entire history, is experiencing intensifying popular unrest made all the more menacing by the growing accessibility of weapons of mass destruction -- not just to states but also, potentially, to extremist religious and political movements. Yet there is no effective global security mechanism for coping with the growing threat of violent political chaos stemming from humanity's recent political awakening. The three great political contests of the twentieth century (the two world wars and the Cold War) accelerated the political awakening of mankind, which was initially unleashed in Europe by the French Revolution. Within a century of that revolution, spontaneous populist political activism had spread from Europe to East Asia. On their return home after World Wars I and II, the South Asians and the North Africans who had been conscripted by the British and French imperial armies propagated a new awareness of anticolonial nationalist and religious political identity among hitherto passive and pliant populations. The spread of literacy during the twentieth century and the wide-ranging impact of radio, television, and the Internet accelerated and intensified this mass global political awakening. In its early stages, such new political awareness tends to be expressed as a fanatical embrace of the most extreme ethnic or fundamentalist religious passions, with beliefs and resentments universalized in Manichaean categories. Unfortunately, in significant parts of the developing world, bitter memories of European colonialism and of more recent U.S. intrusion have given such newly aroused passions a distinctively anti-Western cast. Today, the most acute example of this phenomenon is found in an area that stretches from Egypt to India. This area, inhabited by more than 500 million politically and religiously aroused peoples, is where NATO is becoming more deeply embroiled. Additionally complicating is the fact that the dramatic rise of China and India and the quick recovery of Japan within the last 50 years have signaled that the global center of political and economic gravity is shifting away from the North Atlantic toward Asia and the Pacific. And of the currently leading global powers -- the United States, the EU, China, Japan, Russia, and India -- at least two, or perhaps even three, are revisionist in their orientation. Whether they are "rising peacefully" (a self-confident China), truculently (an imperially nostalgic Russia) or boastfully (an assertive India, despite its internal multiethnic and religious vulnerabilities), they all desire a change in the global pecking order. The future conduct of and relationship among these three still relatively cautious revisionist powers will further intensify the strategic uncertainty. Visible on the horizon but not as powerful are the emerging regional rebels, with some of them defiantly reaching for nuclear weapons. North Korea has openly flouted the international community by producing (apparently successfully) its own nuclear weapons -- and also by profiting from their dissemination. At some point, its unpredictability could precipitate the first use of nuclear weapons in anger since 1945. Iran, in contrast, has proclaimed that its nuclear program is entirely for peaceful purposes but so far has been unwilling to consider consensual arrangements with the international community that would provide credible assurances regarding these intentions. In nuclear-armed Pakistan, an extremist anti-Western religious movement is threatening the country's political stability. These changes together reflect the waning of the post-World War II global hierarchy and the simultaneous dispersal of global power. Unfortunately, U.S. leadership in recent years unintentionally, but most unwisely, contributed to the currently threatening state of affairs. The combination of Washington's arrogant unilateralism in Iraq and its demagogic Islamophobic sloganeering weakened the unity of NATO and focused aroused Muslim resentments on the United States and the West more generally.

#### Courts don’t leak intel methods or classified information—this fear has been repeatedly dispelled by hundreds of successfully tried terrorism cases

Jaffer-director ACLU’s National Security Project-12/9/08 <http://www.salon.com/2008/12/09/guantanamo_3/> Don’t replace the old Guantánamo with a new one

The contention that the federal courts are incapable of protecting classified information — “intelligence sources and methods,” in the jargon of national security experts — is another canard. When classified information is at issue in federal criminal prosecutions, a federal statute — the Classified Information Procedures Act (CIPA) — generally permits the government to substitute classified information at trial with an unclassified summary of that information. It is true that CIPA empowers the court to impose sanctions on the government if the substitution of the unclassified summary for the classified information is found to prejudice the defendant, and in theory such sanctions can include the dismissal of the indictment. In practice, however, sanctions are exceedingly rare, and of the hundreds of terrorism cases that have been prosecuted over the last decade, none has been dismissed for reasons relating to classified information. Proponents of new detention authority, including Waxman and Wittes, invoke the threat of exposing “intelligence sources and methods” as a danger inherent to terrorism prosecutions in U.S. courts, but the record of successful prosecutions provides the most effective rebuttal.

#### No over-deterrence of military operations- government liability is rooted in the FTCA and it avoids the chilling associated with individual liability.

Kent, Constitutional Law prof, 13 (Andrew, Faculty Advisor-Center on National Security at

Fordham Law School, prof @ Fordham University School of Law- constitutional law, foreign relations law, national security law, federal courts and procedure, “ARE DAMAGES DIFFERENT?: BIVENS AND NATIONAL SECURITY,” October 8, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2330476>) \*\* Evidence is gender paraphrased

Because of sovereign immunity, federal officials are sued under Bivens in their so-called personal rather than official capacities.43 In theory, persons injured by actions of a federal official could also seek compensation by suing the agent’s employer, the United States Government for damages, but the sovereign immunity of the federal government blocks this route.44 The Federal Tort Claims Act (FTCA), originally enacted in 1946 and frequently amended since,45 effects a partial waiver of sovereign immunity by allowing suits directly against the federal government instead of officers (who might be judgment proof) and making the United States liable for injuries caused by the negligent or wrongful act or omission of any federal employee acting within the scope of ~~his~~ employment, in accordance with the law of the state where the act or omission occurred.46 Under the Westfall Act of 1988, the FTCA is the exclusive remedy for torts committed by federal officials within the scope of their employment, except for suits brought for violations of the Constitution.47 In other words, state law tort claims against individual official defendants are now generally barred. The Supreme Court takes the prospect of individual liability in damages for officials very seriously and has crafted immunity doctrines to soften the blow. The Court’s rulings provide the President of the United States and certain classes of officials defined functionally—prosecutors doing prosecutorial work, legislators legislating, judges doing judicial work and certain persons performing “quasijudicial” functions—with absolute immunity from money damages suits, generally for the reason that such suits would be likely to be frequent, frequently meritless, and uniquely capable of disrupting job performance.48 All other government officials are entitled to only “qualified immunity” from money damages suits. Under the qualified immunity doctrine, officials are liable only when they violate “clearly established” federal rights, that is, when “[t]he contours of [a] right [are] sufficiently clear that every reasonable official would have understood that what ~~he is~~ [they are] doing violates that right.”49 Because qualified immunity is not just a defense to liability but also “a limited entitlement not to stand trial or face the other burdens of litigation,”50 the Court’s doctrine encourages speedy resolution of immunity questions by judges. The policy reasons for the Court’s active protection of federal officials through a robust immunity doctrine, including fear of dampening the zeal with which officials perform their jobs because of fear of personal liability, are discussed below in Section V.A.

#### Commanders are adapting to litigation to maintain unit cohesion – they will instill the rule of law to lower level officers in order to build a stable chain of command

Dunlap 9 (Charles J., Major General, USAF, is Deputy Judge Advocate General, Headquarters U.S. Air Force, “Lawfare: A Decisive Element of 21st-Century Conflicts?” Joint Force Quarterly – issue 54, 3d

quarter 2009, www.dtic.mil/cgi-bin/GetTRDoc?AD=ADA515192‎)

Of course, the availability of expert legal advice is absolutely necessary in the age of lawfare. The military lawyers (judge advocates) responsible for providing advice for combat operations need schooling not only in the law, but also in the characteristics of the weapons to be used, as well as the strategies for their employment. Importantly, commanders must make it unequivocally clear to their forces that they intend to conduct operations in strict adherence to the law. Helping commanders do so is the job of the judge advocate. Assuring troops of the legal and moral validity of their actions adds to combat power. In discussing the role of judge advo- cates, Richard Schragger points out: Instead of seeing law as a barrier to the exercise of the clients power, [military lawyers] understand the law as a prerequisite to the meaning- ful exercise of power.... Law makes just wars possible by creating a well-defined legal space within which individual soldiers can act without resorting to their own personal moral codes}\* That said, commanders should aim not to have a judge advocate at the elbow of every rifleman, but rather to imbue troops with the right behaviors so they instinctively do the right thing on the battlefield. The most effective way is to carefully explain the enemy's lawfare strategies and highlight the pragmatic, real-world impact of Abu Ghraib-type incidents on the overall success of the mission. One of the most powerful motivators of troop conduct is the desire to enhance the security of fellow soldiers. Making the connection between adherence to law and troop safety is a critical leader- ship task. Integral to defensive lawfare operations is the education of the host nation population and, in effect, the enemy themselves. In many 21\*-century battlespaces, these audiences are not receptive to what may appear as law imposed by the West. In 1999, for example, a Chinese colonel famously argued that China was "a weak country, so do we need to fight according to your rules? No. War has rules. but those rules arc set by the West……[I]f you use those rules, then weak countries have no chance." To counter such beliefs, it is an essential lawfare technique to look for touchstones within the culture of the target audience. For example, in the early 1990s, the International Committee of the Red Cross produced an illustrated paperback that matched key provi- sions of the Geneva Convention "with bits of traditional Arab and Islamic wisdom!\*" Such innovations ought to be reexamined, along with creative ideas that would get the messages to the target audience. One way might be to provide audio cassettes in local languages that espouse what arc really Geneva Convention values in a context and manner that tit with community religious and cultural imperatives. The point is to delegitimize the enemy in the eyes of the host nation populace. This is most effectively accomplished when respected indigenous authorities lead the effort. Consider Thomas Friedman's favor- able assessment to the condemnation by Indian Muslim leaders to the November 2008 Mumbai attacks: The only effective way to stop (terrorism) is tor "the village"—the Muslim community itself— to say "no more" When a culture and a faith community delegitimize this kind of behavior, openly, loudly and consistently, it is more impor- tant than metal detectors or extra police.\* Moreover, it should not be forgotten that much of the success in suppressing violence in Iraq was achieved when Sunnis in Anbar Province and other areas realized that al Qaeda operatives were acting contrary to Iraqi, and indeed Islamic, sensibilities, values, and law. It also may be possible to use educa- tional techniques to change the attitudes of enemy lighters as well. Finally, some critics believe that "lawfare\* is a code to condemn anyone who attempts to use the courts to resolve national security issues. For example, lawyer-turned- journalist Scott Horton charged in the luly 2007 issue ot Harper's Magazine that "lawfare theorists\* reason that lawyers who present war-related claims in court "might as well be terrorists themselves."™ Though there are those who object to the way the courts have been used by some litigants.\*0 it is legally and morally wrong to paint anyone legitimately using legal processes as the "enemy." Indeed, the courageous use of the courts on behalf of unpopular clients, along with the insistence that even our vilest enemies must be afforded due process of law. is a deeply embedded American value, and the kind of principle the Armed Forces exist to preserve. To be clear, recourse to the courts and other legal processes is to be encouraged: if there are abuses, the courts are well equipped to deal with them. It is always better to wage legal battles, however vicious, than it is to fight battles with the lives of young Americans. Lawfare has become such an indel- ible feature of 21st-century conflicts that commanders dismiss it at their peril. Key leaders recognize this evolution. General James Jones. USMC (Ret.), the Nation's new National Security Advisor, observed several years ago that the nature of war has changed. "It's become very legalistic and very complex." he said, adding that now "you have to have a lawyer or a dozen."\*' Lawfare. of course, is about more than lawyers, it is about the rule of law and its relation to war. While it is true, as Professor Eckhardt maintains, that adherence to the rule of law is a "center of gravity" for democratic societ- ies such as ours—and certainly there arc those who will try to turn that virtue into a vulnerability—we still can never forget that it is also a vital source of our great strength as a nation." We can—and must—meet the chal- lenge of lawfare as effectively and aggressively as we have met every other issue critical to our national security.

### 1AC Blowback

#### Advantage 2 is Blowback –

#### Overuse of drones causes massive blowback in Pakistan-this is the consensus of research and assumes unique Pakistani cultural traits

**Dengler, US Secret service Assistant to the Special Agent in Charge, 2013**

(Judson, “An examination of the collateral psychological and political damage of drone warfare in the FATA region of Pakistan”, September, <http://calhoun.nps.edu/public/bitstream/handle/10945/37611/13Sep_Dengler_Judson.pdf?sequence=1>, ldg)

University of Arizona researchers Hudson, Owens, and Flannes state there are five distinct, yet overlapping, forms of blowback from the use of drones in counter-terror operations: the purposeful retaliation against the United States, the creation of new insurgents, complications in the Afghan-Pakistan theatre, further destabilization of Pakistan and the deterioration of U.S. and Pakistani relations.45 The authors, who are members of the Southwest Initiative for the Study of Middle East Conflicts (SISMEC), capture the main arguments against drone warfare. Most of the literature I reviewed seems to fall into one of the five categories listed above. There is an abundance of scholarly sources which support the findings of these researchers. Definitive statistical support of the negative aspects of drone warfare is difficult to assess due to intervening factors in this volatile region. Many factors can influence the criteria established by Hudson, Owens, and Flannes. In his discussion about the history of the CIA’s covert drone warfare program, University of Massachusetts—Dartmouth history faculty member Brian Glyn Williams adds to the case against drone warfare. He finds the collateral damage of drone strikes gives the media and religious leaders an opportunity to rally anti-American sentiment in Pakistan and the Islamic world in general.46 This article highlights the ability of radicals to easily use drone strikes, regardless if successful or not, to their advantage to manipulate the views of the local population. This view was supported by multiple other materials I reviewed. Writing for the German based Institute for the Study of Labor (IZA), Jaeger and Siddique discuss an example of retaliation by the Taliban which is attributed to drone strikes.47 This is typical of many examples of the Taliban or al-Qaeda directly stating their attack against the local government or U.S. was in response to drone policy in the region. In his Georgetown University Master’s thesis, Luke Olney evaluates the long term effectiveness of drone warfare. He supports the previously mentioned findings with particular emphasis on drones inspiring further radicalization, increased recruitment opportunities and further destabilization of local governments. However, he does note that drones may have some short-term success in disrupting militant groups.48 This seems to be a reoccurring theme in much of the readings I have conducted. Most researchers support the short-term advantage of drone strikes because they eliminate the target but drones have only been used extensively over the last ten years and questions exist about their effectiveness over time. The elimination of the militant is positive. But at what point does this victory become outweighed by the long-term effects of the killing? Support of the argument that drones have a negative political and diplomatic impact is made by Anne L. Oblinger in her 2011 Georgetown University thesis depicting the moral, legal, and diplomatic implications of drone warfare. Her thesis discusses the cultural and religious motivations behind terrorist activities which will be useful in a socio-cultural examination of this topic. She notes that despite their precision, drones still create many diplomatic hurdles for the U.S.49 This is another example of research which states that despite their tactical success, negative consequences still exist when leveraging drones. The majority of the literature indicates that there is a strong possibility of drone strikes having a negative overall influence in the FATA. Researchers from the University of Massachusetts, Dartmouth, Plaw, Fricker, and Williams, find that civilian casualties, real or perceived, will be the primary instigator. No matter how precise drone strikes are executed or how much technology improves, Pakistani press and society will be prone to believe that high percentages of civilians are being targeted. While the U.S. keeps details of the program somewhat secure, this practice allows the targeted groups to report the details of drone strikes to their advantage.50 There are numerous examples available of the collateral damage and devastation that drones inflict on the local community. Even if the strike successfully hits the intended target, statistics can be manipulated by the Taliban or Pakistani government. Investigative journalist Porter Gareth criticizes drone strikes because they are based on “scant evidence” in his article for The Washington Report for Middle East Affairs. He finds that the U.S. is targeting militant groups rather than al-Qaeda planning global terrorism.51 This was one of the few pieces of information which discussed who was being targeted by drone strikes and I found it particularly valuable. There should be more such information available, or forthcoming, because who is being targeted is critical to evaluating drone warfare. Ken Dilanian, of the Los Angeles Times, finds that the U.S. drone program has killed dozens of al-Qaeda operatives and hundreds of low-level militants but is has also infuriated many Pakistanis. Some officials in the State Department and National Security Council say these strikes are counterproductive because they only kill easily replaceable militants and the civilian casualties, which the U.S. disputes, destabilize the government of President Asif Ali Zardari of Pakistan. The number of drone strikes has grown since 2008 and now includes targeting of individuals based on a “pattern of life” that suggests involvement with insurgents. A former senior U.S. intelligence official stated that the CIA maintains a list of the top 20 targets and has at times had difficulty finding high value militants to add to the list. Are lower-level militants being targeted just to fill the list? This official is among those urging the CIA to reconsider its approach because the agency cannot kill all Islamic militants and drones alone will not solve challenge presented in the region. One former senior State Department official stated that drone strikes probably give motivation to those that fight us. Dilanian offers that it is impossible to independently assess the accuracy or effectiveness of the strikes because the program is classified, the Obama administration refuses to release information about the program and Pakistan has barred access to FATA from Western journalists or humanitarian agencies.52 This is one of Dilanian’s many pieces documenting drone warfare in Pakistan. Considering the sources of information he uses for this article, it appears that many in the military and intelligence community are beginning to realize the potential negative aspects of this tactic. He also identifies why it is so difficult to accurately and independently report on the impact of drone strikes and how data can be easily manipulated by the U.S., Pakistan, and militants. The New America Foundation database reflects the aggregation of credible news reports about U.S. drone strikes in Pakistan. The media outlets that New America relies upon are the three major international wire services (Associated Press, Reuters, Agence France Presse), the leading Pakistani newspapers (Dawn, Express Times, The News, The Daily Times), leading South Asian and Middle Eastern TV networks (Geo TV and Al Jazeera), and Western media outlets with extensive reporting capabilities in Pakistan (CNN, New York Times, Washington Post, LA Times, BBC, The Guardian, Telegraph). The New America Foundation makes no independent claims about the veracity of casualty reports provided by these organizations. The purpose of this database is to provide as much information as possible about the covert U.S. drone program in Pakistan. The Obama administration dramatically increased the frequency of the drone strikes, in comparison to the Bush Administration, with the peak number of drone attacks occurring in 2010, but the ratio of civilians killed in drone strikes fell to just over two percent. Despite the record 122 strikes in 2010, an average of 0.3 civilians were killed per strike, the lowest civilian death rate per strike until 2012, which saw only 0.1 civilians killed per attack in the first eight months of the year. According to data collected as of the summer of 2011, only one out of every seven drone strikes killed a militant leader. Under President Bush, about one-third of the militants killed were identified as leaders, but under President Obama, just 13 percent have been militant leaders. Drone strikes dropped sharply in 2011, as the relationship between the United States and Pakistan deteriorated. During the first half of 2012, the rate of strikes continued to fall and the civilian death ratio was close to zero. Since the U.S. drone campaign in Pakistan began in 2004, 84 to 85 percent of those killed were reported to be militants; six to eight percent were reported to be civilians and seven to nine percent remain “unknown.”53 The New America Foundation and Terror Free Tomorrow conducted the first comprehensive public opinion survey covering sensitive political issues in FATA. This survey was conducted from June 30 to July 20, 2010, and consisted of face-to-face interviews of 1,000 FATA residents age 18 or older across 120 villages or sampling points in all seven tribal Agencies of FATA. The respondents were 99 percent Pashtun, and 87 percent Sunni. Among their findings were that nearly nine out of ten opposed the U.S. following al-Qaeda and the Taliban into FATA and most would prefer that the Pakistani military fight these forces in FATA. Seventy-six percent are opposed to U.S. drone strikes, 16 percent believe they accurately target militants and just under half believed that drones predominantly kill civilians. The majority of FATA residents reject the presence of the Taliban or al-Qaeda in their region. Their top priorities included lack of jobs which was closely followed by lack of schools, good roads and security, poor health care and corruption of local official officials.54 Avner uses psychoanalysis, psychology, psychiatry, sociology, anthropology, and Islamic studies to understand Islamic terror. His research discusses the religion and culture of Islam, the psychology of Islam, the Muslim family and Muslim society from which many terrorists originate. Avner finds that terror can originate with emotions such as rage, hatred, fear and surprisingly, love and longing.56 Shame is an excessively painful feeling and is prevalent in Muslim culture. Shame, loss of honor, loss of face, and humiliation are unbearable feelings. Hamady found that shame was the worst and most painful feeling for an Arab. Preserving one’s honor and the honor of their tribe or clan is crucial. Any injury, real or imagined, causes unbearable shame that must be repaired through acts of revenge against those that damaged your honor.57 The importance of pride, honor and dignity is critical in Muslim culture. “Everything must be done to erase one’s humiliations and to regain one’s honor.”58 For Muslims who feel they have been shamed or humiliated, the only way to repair these feelings is by humiliating those that inflicted shame and humiliation on them.59 Avner’s research identifies multiple psychological factors which may explain the existing anger within segments of the Muslim community. Honor and shame is a tremendous motivator in Islam and may provide a solid predisposition for action against the offending party to regain one’s honor. Maintaining your honor or the honor of your tribe is of high importance to the Pashtun tribesmen of FATA. Once this has been violated, retaliation is obligated against those that have humiliated you. Stern reveals that the real or perceived national humiliation of the Palestinian people by Israeli policies gives rise to desperation and uncontrollable rage. Citing Mark Jurgensmeyer, Stern notes that suicide bombers are attempting to “dehumiliate” the deeply humiliated and traumatized. Through their actions, suicide bombers belittle their enemies and provide themselves with a sense of power. Repeated, small humiliations add up to a feeling of nearly unbearable despair and frustration, which can result in atrocities being committed in the belief that attacking the oppressor restores dignity.60 A skilled terrorist leader can strengthen and utilize feelings of betrayal and the desire for revenge.61 Stern shows the extent to which a Muslim will go to in order to restore their honor after being humiliated. The uncontrollable rage may not be proportionate when measured by Western standards. Even small humiliations will build to the point of suicide attacks to repair the loss of dignity. The hopelessness and aggravation many may feel in FATA should not be overlooked or diminished. Charismatic militant leaders can manipulate shame to motivate groups to action against whom they perceive has wronged their group. The most important psychoanalytic idea for understanding terrorism, according to Avner, is Heinz Kohut’s notion of narcissistic rage, “The need for revenge, for righting a wrong, for undoing a hurt by whatever means, and a deeply anchored, unrelenting compulsion in the pursuit of all these aims, which gives no rest to those that have suffered a narcissistic injury. These are the characteristic features of narcissistic rage in all its forms and which set it apart from other kinds of aggression.” This boundless rage, together with unconscious factors and the traditional Muslim family dynamic may explain Islamic terrorism, including suicidal versions.62 Kohut’s finding that narcissistic rage is the most important psychoanalytic factor for understanding is significant. The narcissistic aspect depicts how personal the hostility is and rage shows the intensity of the emotion which drives terrorists. Narcissistic rage allows the militant to pursue those that they perceive have wronged them by using extreme measures to regain their honor.

#### 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.

#### Current drone policy will collapse Yemen and lead to civil war

**Cox, Vice, 2013**

(Joseph, “ARE AMERICAN DRONES AL QAEDA'S STRONGEST WEAPON IN YEMEN?”, 8-19, <http://www.vice.com/read/are-us-drones-al-qaedas-strongest-weapon>, ldg)

Things are getting really messy in Yemen at the moment. With soldiers being murdered in their sleep and embassies closing en masse in fear of an imminent wave of attacks and multiple drone strikes, the country seems to be the latest sandbox full of blood in our war on terror. Not that this warz one is all that new. Al Qaeda in the Arabian Peninsula (AQAP) have had a presence in the area for years, their membership rose from around 300 in 2009 up to an estimated 1,000 today. In an attempt to combat this rise in manpower, the US has escalated its infamous drone program, allegedly targeting high-ranking AQAP members. Although, according to reports, they've yet to actually kill any of them. Is this hit-and-hope policy really the best way to fight al Qaeda in Yemen? Or are these drone strikes, which have a habit of killing civilians, exactly the PR ammo al Qaeda need to lure new recruits in a country that is already as politically stable as a gang of jihadists on a bouncy castle? “Drones will always be an easy way for [organizations like al Qaeda] to gain anti-American support,” Alexander Meleagrou-Hitchens, from the International Center for the Study of Radicalization, told me. “When something like a drone strike comes crashing down in people's front bedrooms or front rooms, that's going to help you recruit and radicalize, absolutely.” This is already the case in other places with a heavy US drone presence, such as Pakistan. According to research, the drone policy has caused the majority of the population to see the US as an enemy, with strikes killing civilians, breeding resentment towards the US and undermining Pakistan’s sovereignty. Indeed, the foiled Times Square bomber declared that his attack was intended as payback for the US’ worldwide use of drones, a point that is seldom admitted by advocates of "targeted killings." Depressingly, commentators believe that the use of drone strikes in Yemen could be even more damaging than they have been in Pakistan. Michael Boyle, an expert on terrorism and political violence, and author of The Costs and Consequences of Drone Warfare, told me about some vital differences between the two when it comes to patterns of al-Qaeda affiliation. “The membership of al Qaeda in a place like Pakistan comprises people who come from many areas, such as Russia, the Middle East, Africa, and Asia," he explained. "They come to Pakistan to fight. In Yemen, however, al Qaeda membership is dominated by people who were born and raised in the country, with deep connections to the local tribal structures.” This means that when a drone strike kills an unintended target, it is likely to be someone's brother, father, uncle, or son; sister, mother, aunt, or daughter. This situation is probably going to breed more desire for retribution than the death of a fellow soldier, no matter how strong the thirst for vengeful jihad. There is also the threat of killing someone with strong connections to a clan or tribe and generating a level of public outrage that could destabilize the Yemeni government. It is these close-knit ties of people who may not have any kind of connection to al Qaeda that make Yemen a completely different battlefield to Afghanistan or Pakistan. According to Ibrahim Mothana, a Yemeni youth activist, “Drone strikes are causing more and more Yemenis to hate America and join radical militants. They are not driven by ideology but rather by a sense of revenge and despair.” During the latest escalation of violence, Yemeni bloggers have claimed “there is more hostility now in Yemen against the US because of these attacks.” Even Robert Grenier, a former CIA station head, has said that the US policy in Yemen runs the risk of turning the country into a "safe haven" for al Qaeda. Even as academics, experts and Yemenis themselves are saying that drones may be contributing to a rise in al Qaeda's local fanbase, the US government are seeking to place the blame elsewhere. In the recent sentencing of Bradley Manning, prosecutors claimed that his leak of over 700,000 files to WikiLeaks had aided al Qaeda’s recruitment efforts. However, visit any local Yemeni news website and you’ll be greeted with images of the latest bloodied drone strike victims. As a Yemeni, what's more likely to make you resent the US: Whatever you happen to see of Manning's leaks, or the very real threat of a missile killing your family at any moment? Admittedly, it's difficult to know exactly how many Yemenis have been "radicalized" because of the drones' presence, and how many of these people actually end up joining their local al Qaeda division. It's not something that's particularly easy to research with any kind of authority—there's no bubbly al Qaeda PR girl sat in an office in Sana'a somewhere who will gladly pull the latest membership stats for you. Of course, it's also possible that the tribes will come to blame al Qaeda for attracting drone strikes. “Al Qaeda have a global plan, but they've had to relegate those global concerns in favor of local ones to make these tribal alliances," Meleagrou-Hitchens explained. "But in the end, they will continue to pursue this global strategy and at some point that is going to dawn on their allies [the tribes]: that these guys are going to bring a lot more trouble than they're worth.” If al Qaeda, or the myriad other extremist Islamist groups, can only survive by keeping alliances with the tribes, then it follows that the US might ultimately need the tribes' support to lessen radical Islam's grip on the area. Meleagrou-Hitchens has some ideas about how Obama's administration might go about courting that support: “I think the US would have to encourage the Yemeni government to start helping people outside of the main cities. When al Qaeda come along and say to the tribes that they can help with their running water, their crops, etc., then they'll ally with them. So you have to be able to offer them what al Qaeda is offering—or at least make sure the Yemeni government does.” But by alienating these same tribes through murder of their friends and relatives, the US seems to be making the whole situation worse. "At the moment, the US is the worst and most feared enemy,” a Yemeni-born blogger known as Noon told me over email. “The US drones have claimed the lives of many more people than al Qaeda. While al Qaeda targets military personnel in Yemen, the US drones kill arbitrarily without differentiating between civilians and so called ‘militants.’” One of the main attractions drones hold for the US is that they allow them to wage war remotely, thus avoiding the loss of life to military personnel and the domestic ill-feeling back home that comes with it. However, ultimately the resentment that drone strikes cause has to be focused somewhere and at this stage it looks most likely to turn various factions within the country against each other. With clashes erupting between Yemeni forces and local tribespeople and al Qaeda looking to break their members out of local prisons, the situation in Yemen seems primed for civil war and insurgency.

#### That risks 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

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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 solves---creates less strikes with more accuracy

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)

Whether judicial review should be limited for epistemic reasons has been particularly salient in recent years, as courts have been repeatedly called to determine the meaning of statutes and constitutional provisions on executive officials' powers to prevent terrorist attacks. Some scholars argue that terrorism prevention, just like other national security matters, is an area of questionable judicial competence where executive officials should be afforded considerable discretion to devise counterterrorism policies not only because the pres- ident is elected, but also because the president's agents have superior information about how best to address the terrorist threat (Sunstein 2005; Tushnet 2005; Posner 2006). Similar arguments for limiting judicial review because of asymmetric institutional competence are often voiced in the scholarship on administrative rulemaking (Sunstein 2006). Judicial in-tervention in rulemaking can he at odds, so the argument goes, with the very rationale of creating administrative agencies: to have an institutional repository of expertise in realms in which elected officials lack the necessary information required by complexity of the modern- day governance (Landis 1938). Such arguments approach the question of whether judicial review is desirable or not as a balancing exercise between the rule-of-law ideal of checking the legality of policies and the separat ion-of-powers principle of dispensing policy-making authority to those institutions with superior expertise. As such, the expertise rationale for limiting the scope of judicial review seems simple and intuitive: When questions of law are intertwined with matters of fact and policy choice and when the courts are unsure what consequences will follow from a particular decision, judicial second-guessing can throw governmental policies off course. And if the harm to public policy caused by potentially erroneous judicial decisions outweighs the rule-of-law benefits of assessing the legality of policies, it is allegedly desirable to limit judicial review on grounds of institutional competence, especially in technical and complex policy areas such as national security and administrative action. Notwithstanding the foregoing, restraining the exercise of judicial review for epistemic reasons, some argue, is bound to create a zone of legal unaccountability where governmental power can be deployed in an arbitrary and illegal manner, with potentially deleterious effects for the effectiveness of public law. Because even the most expert body can act unlawfully, foreclosing legal review in certain policy areas amounts to an abdication of the judicial duty to enforce relevant legal limits (Allan 2011). The pressing question then is this: Can we reconcile the review of expert policy decisions by non-expert courts in a manner that is consistent with both the rule-of-law ideal of checking the legality of policies and the separation-of-powers concern for policy expertise? To this end, we develop a game-theoretic analysis to illustrate how the exercise of judicial review can have a beneficial effect on expertise, even if the courts are relatively ill-equipped to evaluate the likely effects of various policies. That is, our analysis proposes a novel ratio-nale for the institution of judicial review. The conventional argument for such institutional arrangement is that it ensures consistency between the actions of governmental officials and preexisting legal provisions. Without disputing the importance of judicial review as a mech-anism of legal accountability, the analysis here underscores another, perhaps less intuitive virtue: judicial review by non-expert courts can foster policy expertise. Our analysis takes as its point of departure the fact that policymakers, those with for-mal power to make decisions, have to rely on expert agents for information regarding the likely consequences of various courses of action. Nothing about this argument is profound: that policymakers depend on experts for policy advice is an institutional fact of modern government. For example, the president relies on the White House staff, bureaucrats and non-governmental experts for policy advice; the House and the Senate depend on staff mem- bers, congressional committees, bureaucrats and lobbyists for valuable information when drafting legislation; the heads of administrative agencies depend on lower-level bureaucrats and the regulated industry, among others, for information regarding the consequences of various regulations; and so on. At the same time, this separation between policy-making and policy expertise implies that the amount of information available for decision-making is endogenous to the institutional structure under which policy-making takes place, observation which leads to, as we shall show, a novel assessment of judicial review expertise perspective. To illustrate the conditions under which judicial review fosters policy expertise, we com-pare a baseline model of an interaction between a policymaker and an expert in the absence of judicial review with an institutional setting in which a court can assess the legality of policies. This analysis shows that the judiciary can be better off without its review power if judicial checks dilute the amount of information available for policy-making, which implies that there are endogenous judicial incentives to limit the detrimental effect of judicial review on expertise. More importantly, the institutional analysis underscores that judicial review can enhance the amount of information available for policy-making, while, under those con- ditions, the judiciary prefers to exercise legal review, even though it lacks the knowledge to precisely assess the likely effects of various policies. In other words, not only that it can be desirable solely on expertise grounds to subject governmental policy to the muster of judi-cial review, but non-expert courts have endogenous incentives to employ judicial review in a manner consistent with both the principle of checking the legality of policies and institutional concern for policy expertise. These results have policy implications for public and scholarly debates regarding how to design the structure of liberal governments to fight terrorism (Cole 2003; Posner 2006). Whether counterterrorism policy should be subjected to the muster of judicial review has been a contentious matter, especially in the aftermath of 9/11 as various liberal democracies made terrorism prevention a pressing objective. The contending views on the appropriate- ness of judicial review of counterterrorism policy are sharply articulated in the recent debate on drone strikes. Some say that judicial review of targeted killings is necessary to put the policy on a better legal foundation, while others argue that it is inappropriate because judges lack the required expertise to review expert executive decisions.1 Our results suggest that non-expert judicial review has the potential to induce more informed policies, an observation that is missing from current discussions on judicial review of drone strikes and other coun- terterrorism policies. In section 7, we discuss in more detail the application of our theory and its policy implications, in the context of counterterrorism policy.

### 1AC CMR

#### Executive overreliance on the military is counterproductive and sparks military backlash

Brooks 11/1/13 (Rosa Brooks, a law professor at Georgetown University, served as an Obama appointee at the Defense Department from 2009 to 2011, “Obama vs. the Generals,” http://www.politico.com/magazine/story/2013/11/obama-vs-the-generals-99379\_Page3.html

The military and the White House are not supposed to be on different “sides,” but there’s a long history of mutual recriminations; it’s practically an American tradition. Recall President Harry Truman’s theatrical firing of Gen. Douglas MacArthur amid the dispute over whether to escalate the Korean War; Dwight Eisenhower’s condemnation of the “military-industrial complex,” John F. Kennedy’s struggles with military leaders during the Cuban Missile Crisis; and Bill Clinton’s failed effort to end the ban on gay people serving openly in the military. And that’s just in the post-World War II era. Dubik argues that critics of Obama’s relationship with the military have short memories. “This administration seems more inclusive and willing to listen than the last few,” he says dryly. And, he adds, if anyone imagines that military leaders are more comfortable with Republican administrations, “that’s baloney.” Charles J. Dunlap, an Air Force major general who retired in 2010, agrees: “The longer you’re in the military, the more you realize that there’s not all that much difference between administrations.” Disputes between military leaders and the White House can be healthy for a democratic society. After all, senior commanders have a legal and ethical obligation to provide the president and Congress with honest military advice, and although Dempsey’s openly expressed concerns about Syria may not have sat well with White House officials, says retired Lt. Gen. David Barno, “the chairman does have to say, ‘Here are the risks in that course of action.’” In any case, warns another retired general, the only thing worse than an overtly dissenting military is a covertly dissenting military. “Beware the silence of the generals,” he quips. “Public silence doesn’t mean private inaction.” It is far better, he argues, to have top brass be “out in the open and accountable for what they’re thinking” than for them to be “speaking through proxies and doing back-channel manipulations.” Meanwhile, the president is “right to ask his generals tough questions,” says Dunlap. Every administration prefers to present a united front with the military, but, as another retired senior military leader told me, the president needs to be comfortable if that proves impossible: “There’s nothing wrong with the president saying, ‘The military wanted something, but as president, I decided different, and here’s why.’ The president shouldn’t be afraid of that.” That’s easier said than done. For this White House, the military is the proverbial 800-pound gorilla—more so than ever. After the Sept. 11, attacks, resources and authorities flowed lavishly to the Pentagon, which saw its budget almost double in the following decade. President George W. Bush’s administration “always wanted military guys between themselves and whatever the problem was,” recalls a retired general who served in senior positions during that period. And Bush was more than willing to spend the money needed to make that happen. Meanwhile, budgets for civilian agencies and programs remained largely stagnant. “Ten to 15 years ago, the military was much smaller and less holistic,” notes another retired officer. Today’s military is doing more with more: It sponsors radio and television shows in Afghanistan, operates health clinics in Africa, provides technical assistance to courts and parliaments, engages in cyberdefense, carries out drone strikes in far-flung places, and collects data from our telephone calls and emails. “It’s just the easiest way out of any problem,” says Eaton. “Give money to the military and let them deal with it.” The relentlessly expanding U.S. military, Barno says, is becoming “like a super-Walmart with everything under one roof.” Like Walmart, the military can marshal vast resources and exploit economies of scale in ways impossible for mom-and-pop operations. And like Walmart, the tempting one-stop-shopping convenience the military offers has a devastating effect on smaller, more traditional enterprises—in this case, the outnumbered diplomats of Foggy Bottom. Or the boutique national security shop at the White House, where power lives but resources don’t. And yet no one—least of all Obama—seems to know how to cope with the military’s relentless Walmartization. However committed the president is, in theory, to rebalancing civilian and military roles, Obama has found himself repeatedly turning to the Pentagon in times of crisis, whether in Libya, Syria or Yemen. That, in the end, may be the real story of Obama and his uneasy relationship with a military he came to office determined to rein in. “When the shit hits the fan,” says a former White House official, he’s “racing for that super-Walmart every single bloody time.”

Deference collapses CMR; the court is an essential piece to the triangle, solves a culture of isolation

Gilbert, Lieutenant Colonel, 98 (Michael, Lieutenant Colonel Michael H. Gilbert, B.S., USAF Academy; MSBA, Boston University; J.D., McGeorge School of Law; LL.M., Harvard Law School. He is a member of the State Bars of Nebraska and California. “ARTICLE: The Military and the Federal Judiciary: an Unexplored Part of the Civil-Military Relations Triangle,” 8 USAFA J. Leg. Stud. 197, lexis)

The legislative, executive, and judicial branches of the federal government comprise and form a triangle surrounding the military, each branch occupying one side of the civil-military triangle. Commentators have written countless pages discussing, analyzing, and describing the civil-military relationship that the Congress and the President have with the armed forces they respectively regulate and command. Most commentators, however, have neglected to consider the crucial position and role of the federal judiciary. This article examines the relationship between the judiciary and the military in the interest of identifying the role that the judiciary, specifically the United States Supreme Court, plays in civil-military relations. Without an actual, meaningful presence of the judiciary as a leg of the civil-military triangle, the triangle is incomplete and collapses. In its current structure, the judiciary has adopted a non-role by deferring its responsibility to oversee the lawfulness of the other two branches to those branches themselves. This dereliction, which arguably is created by the malfeasance of the United States Supreme Court, has resulted in inherent inequities to the nation, in general, and to service members, in particular, as the federal courts are reluctant to protect even basic civil rights of military members. Judicial oversight is one form of civilian control over the military; abrogating this responsibility is to return power to the military hierarchy that is not meant to be theirs. [\*198] Under the United States Constitution, Congress has plenary authority over the maintenance and regulation of the armed forces, and the President is expressly made the Commander-in-Chief of the armed forces. The unwillingness of the Court to provide a check and balance on these two equal branches of the federal government creates an area virtually unchallengeable by the public. As a result, a large group of people, members of the military services, lack recourse to address wrongs perpetrated against them by their military and civilian superiors. Ironically, the very men and women dedicating their lives to protect the U.S. Constitution lack many of the basic protections the Constitution affords everyone else in this nation. The weakness in the present system is that the Supreme Court has taken a detour from the Constitution with regard to reviewing military issues under the normally recognized requirements of the Constitution. The federal judiciary, following the lead of the Supreme Court, has created de facto immunity from judicial interference by those who seek to challenge policy or procedure established by the other two branches and the military itself. When the "Thou Shalt Nots" of the Amendments to the Constitution compete with the necessities of the military, the conflict is resolved in favor of the military because it is seen as a separate society based upon the constitutionally granted authority of Congress to maintain and regulate the armed forces. 1 Essentially, the Court permits a separate world to be created for the military because of this regulation, distinguishing and separating the military from society. 2 The Court needs to reexamine their almost complete deference on military matters, which is tantamount to an exception to the Bill of Rights for matters concerning members of the military. Unless the Court begins to provide the oversight that is normally dedicated to many other areas of law fraught with complexity and national importance, judicial review of the military will continue to be relegated to a footnote in the annals of law. Combined with the downsizing and further consequent decline of interaction between the military and general society, 3 this exile from the protection of the Constitution could breed great injustices within the military. Perhaps even more importantly, the military might actually begin to believe that they are indeed second-class citizens, separate from the general [\*199] population, which could create dire problems with civil-military relations that are already the subject of concern by many observers. 4

CMR erosion collapses hegemony

Barnes, Retired Colonel, 11 (Rudy Barnes, Jr., BA in PoliSci from the Citadel, Military Awards: Legion of Merit, Meritorious Service Medal, Army Commendation Medal, Army Achievement Medal with Oak Leaf Cluster, Army Reserve Component Achievement Medal, National Defense Service Medal, “An Isolated Military as a Threat to Military Legitimacy,” http://militarylegitimacyreview.com/?page\_id=159)

The legitimacy of the US military depends upon civil-military relations. In Iraq and Afghanistan conflicting religions and cultures have presented daunting challenges for the US military since mission success in counterinsurgency (COIN) operations depends upon public support in those hostile cultural environments; and even in the US, civil-military relations are fragile since the military is an authoritarian regime within a democratic society. This cultural dichotomy within our society creates the continuing potential for conflict between authoritarian military values and more libertarian civilian values that can undermine military legitimacy, especially when there are fewer bridges between the military and the civilian population it serves. The US military is a shield that protects our national security, but it can also be a sword that threatens our national security. After all, the US military controls the world’s most destructive weaponry. Our Founding Fathers understood this danger and provided for a separation of powers to prevent a concentration of power in the military. Still, if the US military were ever to become isolated from the civilian population it serves, then civil-military relations would deteriorate and US security would be at risk. Richard Cohen has opined that we are slowly but inexorably moving toward an isolated military: The military of today is removed from society in general. It is a majority white and, according to a Heritage Foundation study, disproportionately Southern. New England is underrepresented, and so are big cities, but the poor are no longer cannon fodder – if they ever were – and neither are blacks. We all fight and die just about in proportion to our numbers in the population. The all-volunteer military has enabled America to fight two wars while many of its citizens do not know of a single fatality or even of anyone who has fought overseas. This is a military conscripted by culture and class – induced, not coerced, indoctrinated in all the proper cliches about serving one’s country, honored and romanticized by those of us who would not, for a moment, think of doing the same. You get the picture. Talking about the picture, what exactly is wrong with it? A couple of things. First, this distant Army enables us to fight wars about which the general public is largely indifferent. Had there been a draft, the war in Iraq might never have been fought – or would have produced the civil protests of the Vietnam War era. The Iraq debacle was made possible by a professional military and by going into debt. George W. Bush didn’t need your body or, in the short run, your money. Southerners would fight, and foreigners would buy the bonds. For understandable reasons, no great songs have come out of the war in Iraq. The other problem is that the military has become something of a priesthood. It is virtually worshipped for its admirable qualities while its less admirable ones are hardly mentioned or known. It has such standing that it is awfully hard for mere civilians – including the commander in chief – to question it. Dwight Eisenhower could because he had stars on his shoulders, and when he warned of the military-industrial complex, people paid some attention. Harry Truman had fought in one World War and John Kennedy and Gerald Ford in another, but now the political cupboard of combat vets is bare and there are few civilian leaders who have the experience, the standing, to question the military. This is yet another reason to mourn the death of Richard Holbrooke. He learned in Vietnam that stars don’t make for infallibility, sometimes just for arrogance. (Cohen, How Little the US Knows of War, Washington Post, January 4, 2011) The 2010 elections generated the usual volume of political debate, but conspicuously absent were the two wars in which US military forces have been engaged for ten years. It seems that dissatisfaction with the wars in Iraq and Afghanistan has caused the American public to forget them and those military forces left to fight them. A forgotten military can become an isolated military with the expected erosion of civil-military relations. But the forgotten US military has not gone unnoticed: Tom Brokaw noted that there have been almost 5,000 Americans killed and 30,000 wounded, with over $1 trillion spent on the wars in Afghanistan and Iraq, with no end in sight. Yet most Americans have little connection with the all-volunteer military that is fighting these wars. It represents only one percent of Americans and is drawn mostly from the working class and middle class. The result is that military families are often isolated “…in their own war zone.” (See Brokaw, The Wars that America Forgot About, New York Times, October 17, 2010) Bob Herbert echoed Brokaw’s sentiments and advocated reinstating the draft to end the cultural isolation of the military. (Herbert, The Way We Treat Our Troops, New York Times, October 22, 2010) In another commentary on the forgotten military, Michael Gerson cited Secretary of Defense Robert Gates who warned of a widening cultural gap between military and civilian cultures: “There is a risk over time of developing a cadre of military leaders that politically, culturally and geographically have less and less in common with the people they have sworn to defend.” Secretary Gates promoted ROTC programs as a hedge against such a cultural divide. Gerson concluded that the military was a professional class by virtue of its unique skills and experience: “They are not like the rest of America—thank God. They bear a disproportionate burden, and they seem proud to do so. And they don’t need the rest of society to join them, just to support them.” (Gerson, The Wars We Left Behind, Washington Post, October 28, 2010) The Chairman of the Joint Chiefs of Staff, Admiral Mike Mullen, has seconded the observations of Secretary Gates and warned of an increasingly isolated military and “…a potentially dangerous gulf between the civilian world and men and women in uniform.” Mullen explained, “To the degree that we are out of touch I believe is a very dangerous force.” And he went on to observe that “Our audience, our underpinnings, our authority, everything we are, everything we do, comes from the American people…and we cannot afford to be out of touch with them.” (Charley Keyes, Joint Chiefs Chair Warns of Disconnect Between Military and Civilians, CNN.com, January 10, 2011) Gerson’s observation that the military are not like the rest of Americans goes to the heart of the matter. An isolated military that exacerbates conflicting military and civilian values could undermine civil-military relations and threaten military legitimacy. The potential for conflicting values is evident in the article by Kevin Govern on Higher Standards of Honorable Conduct Reinforced: Lessons (Re) Learned from the Captain Honors Incident (see article posted under this section) which highlights the “exemplary conduct” standard for military personnel and the need to enforce the unique standards of exemplary conduct to maintain good order and discipline in the military. The communal and authoritarian military values inherent in the standards of exemplary conduct often clash with more libertarian civilian values; but in the past that clash has been moderated by bridges between the military and civilian cultures, most notably provided by the draft, the National Guard and reserve components. The draft is gone and the National Guard and reserve components are losing ground in an all-volunteer military that is withdrawing from Iraq and Afghanistan. The Reserve Officer Training Program (ROTC) has provided most civilian-soldier leaders for the US military in the past, but it is doubtful that will continue in the future. If Coleman McCarthy speaks for our best colleges and universities, then ROTC is in trouble and so are civil-military relations: These days, the academic senates of the Ivies and other schools are no doubt pondering the return of military recruiters to their campuses. Meanwhile, the Pentagon, which oversees ROTC programs on more than 300 campuses, has to be asking if it wants to expand to the elite campuses, where old antipathies are remembered on both sides. It should not be forgotten that schools have legitimate and moral reasons for keeping the military at bay, regardless of the repeal of “don’t ask, don’t tell.” They can stand with those who for reasons of conscience reject military solutions to conflicts. ROTC and its warrior ethic taint the intellectual purity of a school, if by purity we mean trying to rise above the foul idea that nations can kill and destroy their way to peace. If a school such as Harvard does sell out to the military, let it at least be honest and add a sign at its Cambridge front portal: Harvard, a Pentagon Annex. (Coleman McCarthy, Don’t ask, don’t tell has been repealed. ROTC still shouldn’t be on campus, Washington Post, December 30, 2010) McCarthy’s attitude toward ROTC reflects a dangerous intellectual elitism that threatens civil-military relations and military legitimacy. But there are also conservative voices that recognize the limitations of ROTC and offer alternatives. John Lehman, a former Secretary of the Navy, and Richard Kohn, a professor of military history at the University of North Carolina at Chapel Hill, don’t take issue with McCarthy. They suggest that ROTC be abandoned in favor of a combination of military scholarships and officer training during summers and after graduation: Rather than expanding ROTC into elite institutions, it would be better to replace ROTC over time with a more efficient, more effective and less costly program to attract the best of America’s youth to the services and perhaps to military careers. Except from an economic perspective, ROTC isn’t efficient for students. They take courses from faculty almost invariably less prepared and experienced to teach college courses, many of which do not count for credit and cover material more akin to military training than undergraduate education. Weekly drills and other activities dilute the focus on academic education. ROTC was begun before World War I to create an officer corps for a large force of reservists to be mobilized in a national emergency. It has outgrown this purpose and evolved into just another source of officers for a military establishment that has integrated regulars and reservists into a “total force” in which the difference is between part-time and full-time soldiering. The armed services should consider a program modeled in part on the Marine Platoon Leaders Corps to attract the nation’s most promising young people. In a national competition similar to ROTC scholarships, students should be recruited for four years of active duty and four years of reserve service by means of all-expenses-paid scholarships to the college or university of their choice. Many would no doubt take these lucrative grants to the nation’s most distinguished schools, where they would get top-flight educations and could devote full attention on campus to their studies. Youths would gain their military training and education by serving in the reserve or National Guard during college (thus fulfilling their reserve obligation). Being enlisted would teach them basic military skills and give them experience in being led before becoming leaders themselves. As reservists during college, they would be obligated to deploy only once, which would not unduly delay their education or commissioned service. They could receive their officer education at Officer Candidate School summer camps or after graduation from college. This program could also be available to those who do not win scholarships but are qualified and wish to serve. Such a system would cost less while attracting more, and more outstanding, youth to military service, spare uniformed officers for a maxed-out military establishment, and reconnect the nation’s leadership to military service – a concern since the beginning of the all-volunteer armed force. (Lehman and Kohn, Don’t expand ROTC. Replace it. Washington Post, January 28, 2011) The system proposed by Lehman and Kohn would preserve good civil-military relations only if it could attract as many reserve component (civilian-soldier) military officers as has ROTC over the years. Otherwise the demise of ROTC will only hasten the isolation of the US military. As noted by Richard Cohen, Tom Brokaw, Bob Herbert, Michael Gerson, Secretary of Defense Bill Gates and Chairman of the Joint Chiefs Admiral Mike Mullen, the increasing isolation of the US military is a real danger to civil-military relations and military legitimacy. The trends are ominous: US military forces are drawing down as they withdraw from Iraq and Afghanistan and budget cuts are certain to reduce both active and reserve components, with fewer bridges to link a shrinking and forgotten all-volunteer military to the civilian society it serves. The US has been blessed with good civil-military relations over the years, primarily due to the many civilian-soldiers who have served in the military. But with fewer civilian-soldiers to moderate cultural differences between an authoritarian military and a democratic society, the isolation of the US military becomes more likely. Secretary Gates and Admiral Mullen were right to emphasize the danger of an isolated military, but that has not always been the prevailing view. In his classic 1957 work on civil-military relations, The Soldier and the State, Samuel Huntington advocated the isolation of the professional military to prevent its corruption by civilian politics. It is ironic that in his later years Huntington saw the geopolitical threat environment as a clash of civilizations which required military leaders to work closely with civilians to achieve strategic political objectives in hostile cultural environments such as Iraq and Afghanistan. (see discussion in Barnes, Military Legitimacy: Might and Right in the New Millennium, Frank Cass, 1996, at pp 111-115) Today, the specter of an isolated military haunts the future of civil-military relations and military legitimacy. With fewer civilian-soldiers from the National Guard and Reserve components to bridge the gap between our military and civilian cultures, an all-volunteer professional military could revive Huntington’s model of an isolated military to preserve its integrity from what it perceives to be a morally corrupt civilian society. It is an idea that has been argued before. (see Robert L. Maginnis, A Chasm of Values, Military Review (February 1993), cited in Barnes, Military Legitimacy: Might and Right in the New Millennium, Frank Cass, 1996, at p 55, n 6, and p 113, n 20) The military is a small part of our population—only 1 percent—but the Department of Defense is our largest bureaucracy and notorious for its resistance to change. Thomas Jefferson once observed the need for such institutions to change with the times: “Laws and institutions must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths disclosed, and manners and opinions change with the change of circumstance, institutions must advance also, and keep pace with the times.” Michael Gerson noted that the military remains a unique culture of warriors within a civilian culture, and that “it is not like the rest of America.” For that reason a forgotten and isolated military with values that do not keep pace with changing times and circumstances and conflict with civilian values would not only be a threat to military legitimacy but also be a threat to our individual freedom and democracy. In summary, the US military is in danger of becoming isolated from the civilian society it must serve. Military legitimacy and good civil-military relations depend upon the military maintaining close bonds with civilian society. In contemporary military operations military leaders must be both diplomats as well as warriors. They must be effective working with civilians in domestic and foreign emergencies and in civil-military operations such as counterinsurgency and stability operations, and they must be combat leaders who can destroy enemy forces with overwhelming force. Diplomat-warriors can perform these diverse leadership roles and maintain the close bonds needed between the military and civilian society. Such military leaders can help avoid an isolated military and insure healthy civil-military relations.

Loss of mission effectiveness risks multiple nuclear wars

Kagan and O’Hanlon 7 Frederick, resident scholar at AEI and Michael, senior fellow in foreign policy at Brookings, “The Case for Larger Ground Forces”, April 2007, http://www.aei.org/files/2007/04/24/20070424\_Kagan20070424.pdf

We live at a time when wars not only rage in nearly every region but threaten to erupt in many places where the current relative calm is tenuous. To view this as a strategic military challenge for the United States is not to espouse a specific theory of America’s role in the world or a certain political philosophy. Such an assessment flows directly from the basic bipartisan view of American foreign policy makers since World War II that overseas threats must be countered before they can directly threaten this country’s shores, that the basic stability of the international system is essential to American peace and prosperity, and that no country besides the United States is in a position to lead the way in countering major challenges to the global order. Let us highlight the threats and their consequences with a few concrete examples, emphasizing those that involve key strategic regions of the world such as the Persian Gulf and East Asia, or key potential threats to American security, such as the spread of nuclear weapons and the strengthening of the global Al Qaeda/jihadist movement. The Iranian government has rejected a series of international demands to halt its efforts at enriching uranium and submit to international inspections. What will happen if the US—or Israeli—government becomes convinced that Tehran is on the verge of fielding a nuclear weapon? North Korea, of course, has already done so, and the ripple effects are beginning to spread. Japan’s recent election to supreme power of a leader who has promised to rewrite that country’s constitution to support increased armed forces—and, possibly, even nuclear weapons— may well alter the delicate balance of fear in Northeast Asia fundamentally and rapidly. Also, in the background, at least for now, Sino Taiwanese tensions continue to flare, as do tensions between India and Pakistan, Pakistan and Afghanistan, Venezuela and the United States, and so on. Meanwhile, the world’s nonintervention in Darfur troubles consciences from Europe to America’s Bible Belt to its bastions of liberalism, yet with no serious international forces on offer, the bloodletting will probably, tragically, continue unabated. And as bad as things are in Iraq today, they could get worse. What would happen if the key Shiite figure, Ali al Sistani, were to die? If another major attack on the scale of the Golden Mosque bombing hit either side (or, perhaps, both sides at the same time)? Such deterioration might convince many Americans that the war there truly was lost—but the costs of reaching such a conclusion would be enormous. Afghanistan is somewhat more stable for the moment, although a major Taliban offensive appears to be in the offing. Sound US grand strategy must proceed from the recognition that, over the next few years and decades, the world is going to be a very unsettled and quite dangerous place, with Al Qaeda and its associated groups as a subset of a much larger set of worries. The only serious response to this international environment is to develop armed forces capable of protecting America’s vital interests throughout this dangerous time. Doing so requires a military capable of a wide range of missions—including not only deterrence of great power conflict in dealing with potential hotspots in Korea, the Taiwan Strait, and the Persian Gulf but also associated with a variety of Special Forces activities and stabilization operations. For today’s US military, which already excels at high technology and is increasingly focused on re-learning the lost art of counterinsurgency, this is first and foremost a question of finding the resources to field a large-enough standing Army and Marine Corps to handle personnel intensive missions such as the ones now under way in Iraq and Afghanistan. Let us hope there will be no such large-scale missions for a while. But preparing for the possibility, while doing whatever we can at this late hour to relieve the pressure on our soldiers and Marines in ongoing operations, is prudent. At worst, the only potential downside to a major program to strengthen the military is the possibility of spending a bit too much money. Recent history shows no link between having a larger military and its overuse; indeed, Ronald Reagan’s time in office was characterized by higher defense budgets and yet much less use of the military, an outcome for which we can hope in the coming years, but hardly guarantee. While the authors disagree between ourselves about proper increases in the size and cost of the military (with O’Hanlon preferring to hold defense to roughly 4 percent of GDP and seeing ground forces increase by a total of perhaps 100,000, and Kagan willing to devote at least 5 percent of GDP to defense as in the Reagan years and increase the Army by at least 250,000), we agree on the need to start expanding ground force capabilities by at least 25,000 a year immediately. Such a measure is not only prudent, it is also badly overdue.

#### Balanced CMR is essential to democratic modeling

Barnes, Retired Colonel, 11 (Rudy Barnes, Jr., BA in PoliSci from the Citadel, Military Awards: Legion of Merit, Meritorious Service Medal, Army Commendation Medal, Army Achievement Medal with Oak Leaf Cluster, Army Reserve Component Achievement Medal, National Defense Service Medal, “Military Legitimacy: Might and Right in the New Millennium”, originally published in 1996, revised Feb 8, 2011, document accessed from: http://militarylegitimacyreview.com/?page\_id=206)

Continuing nation assistance operations have confirmed the importance of human rights and civil-military relations to military legitimacy. Military forces in undemocratic regimes have historically been associated with human rights violations and political oppression. The U.S. has provided security and humanitarian assistance to encourage democratization in many such regimes: first to Latin America in the 1970s and 1980s, and more recently to Eastern Europe and Russia. In most developing countries the military is not separated from domestic politics as in the U.S., and is expected to provide internal as well as external security to the civilian population. This makes it especially important that the requirements of internal security be balanced with the restraint needed to protect human rights. In Latin America the exercise of political power by military forces has had a corrosive influence on military professionalism and civil-military relations. The use of the military to protect or install corrupt regimes has eroded their legitimacy. To build the public support required for military legitimacy, Latin American militaries must limit their political role, constrain the use of force, and focus on improving civil-military relations.21 A joint project between US Army military lawyers and their Peruvian counterparts to promote human rights is discussed in chapter 7. It illustrates how institutionalizing respect for human rights in the military can improve civil-military relations and legitimacy. According to the 1993 UN Truth Commission Report on the civil war in El Salvador the Salvadoran military has a long way to go to achieve legitimacy. The Report indicates gross human rights violations were committed by death squads associated with U.S.-trained military forces. The conviction of two officers for the murder of six Jesuit priests in 1989 was a positive step, but the failure to purge those officers identified with human rights violations indicates military legitimacy remains an elusive goal. In Eastern Europe there have been similar problems with military legitimacy. Promoting the values of democracy, human rights, and the rule of law in former communist countries can contribute to peace, security and military legitimacy in two ways: first, democratic regimes are less likely to misuse their military power than authoritarian regimes; and second, the democratic values of individual liberty and civilian control contribute to better civil-military relations and military professionalism, and professionalism (internal control) is the best defense against the misuse of military power.22 The failure of civil-military relations and military professionalism in the "masterless" armies of the former Yugoslavia has contributed to the unspeakable atrocities in the Bosnian civil war. Better civil-military relations and military professionalism could help protect human rights and prevent the spread of similar violence throughout the region. "Civil-military relations take on a deeper significance and must be viewed as a critical element in the struggle to maintain legitimacy of existing democratic governments as they attempt to deal with the internal and external manifestations of this crisis."23 The future of democracy, human rights, and the rule of law in emerging democracies depends upon better civil-military relations, which will require effective separation of military and political power (ideally civilian control of the military), but this should not preclude domestic military missions with political implications. For U.S. military advisors to help their indigenous counterparts improve civil-military relations, they must understand the requirements and principles of military legitimacy, especially the role of human rights and the rule of law. Civil-military relations in the U.S. There have been important lessons learned in civil-military relations in the U.S. as well as overseas. While they have not involved serious violations of human rights (with the exception of the Indian wars and the Kent State incident) they do provide important lessons in military legitimacy and useful precedents for the future.

#### Democratic backsliding causes great power war

Azar Gat 11, the Ezer Weizman Professor of National Security at Tel Aviv University, 2011, “The Changing Character of War,” in The Changing Character of War, ed. Hew Strachan and Sibylle Scheipers, p. 30-32

Since 1945, the decline of major great power war has deepened further. Nuclear weapons have concentrated the minds of all concerned wonderfully, but no less important have been the institutionalization of free trade and the closely related process of rapid and sustained economic growth throughout the capitalist world. The communist bloc did not participate in the system of free trade, but at least initially it too experienced substantial growth, and, unlike Germany and Japan, it was always sufﬁciently large and rich in natural resources to maintain an autarky of sorts. With the Soviet collapse and with the integration of the former communist powers into the global capitalist economy, the prospect of a major war within the developed world seems to have become very remote indeed. This is one of the main sources for the feeling that war has been transformed: its geopolitical centre of gravity has shifted radically. The modernized, economically developed parts of the world constitute a ‘zone of peace’. War now seems to be conﬁned to the less-developed parts of the globe, the world’s ‘zone of war’, where countries that have so far failed to embrace modernization and its pacifying spin-off effects continue to be engaged in wars among themselves, as well as with developed countries.¶ While the trend is very real, one wonders if the near disappearance of armed conﬂict within the developed world is likely to remain as stark as it has been since the collapse of communism. The post-Cold War moment may turn out to be a ﬂeeting one. The probability of major wars within the developed world remains low—because of the factors already mentioned: increasing wealth, economic openness and interdependence, and nuclear deterrence. But the deep sense of change prevailing since 1989 has been based on the far more radical notion that the triumph of capitalism also spelled the irresistible ultimate victory of democracy; and that in an afﬂuent and democratic world, major conﬂict no longer needs to be feared or seriously prepared for. This notion, however, is fast eroding with the return of capitalist non-democratic great powers that have been absent from the international system since 1945. Above all, there is the formerly communist and fast industrializing authoritarian-capitalist China, whose massive growth represents the greatest change in the global balance of power. Russia, too, is retreating from its postcommunist liberalism and assuming an increasingly authoritarian character.¶ Authoritarian capitalism may be more viable than people tend to assume. 8 The communist great powers failed even though they were potentially larger than the democracies, because their economic systems failed them. By contrast, the capitalist authoritarian/totalitarian powers during the ﬁrst half of the twentieth century, Germany and Japan, particularly the former, were as efﬁcient economically as, and if anything more successful militarily than, their democratic counterparts. They were defeated in war mainly because they were too small and ultimately succumbed to the exceptional continental size of the United States (in alliance with the communist Soviet Union during the Second World War). However, the new non-democratic powers are both large and capitalist. China in particular is the largest player in the international system in terms of population and is showing spectacular economic growth that within a generation or two is likely to make it a true non-democratic superpower.¶ Although the return of capitalist non-democratic great powers does not necessarily imply open conﬂict or war, it might indicate that the democratic hegemony since the Soviet Union’s collapse could be short-lived and that a universal ‘democratic peace’ may still be far off. The new capitalist authoritarian powers are deeply integrated into the world economy. They partake of the development-open-trade-capitalist cause of peace, but not of the liberal democratic cause. Thus, it is crucially important that any protectionist turn in the system is avoided so as to prevent a grab for markets and raw materials such as that which followed the disastrous slide into imperial protectionism and conﬂict during the ﬁrst part of the twentieth century. Of course, the openness of the world economy does not depend exclusively on the democracies. In time, China itself might become more protectionist, as it grows wealthier, its labour costs rise, and its current competitive edge diminishes.¶ With the possible exception of the sore Taiwan problem, China is likely to be less restless and revisionist than the territorially conﬁned Germany and Japan were. Russia, which is still reeling from having lost an empire, may be more problematic. However, as China grows in power, it is likely to become more assertive, ﬂex its muscles, and behave like a superpower, even if it does not become particularly aggressive. The democratic and non-democratic powers may coexist more or less peacefully, albeit warily, side by side, armed because of mutual fear and suspicion, as a result of the so-called ‘security dilemma’, and against worst-case scenarios. But there is also the prospect of more antagonistic relations, accentuated ideological rivalry, potential and actual conﬂict, intensiﬁed arms races, and even new cold wars, with spheres of inﬂuence and opposing coalitions. Although great power relations will probably vary from those that prevailed during any of the great twentieth-century conﬂicts, as conditions are never quite the same, they may vary less than seemed likely only a short while ago.

#### Balanced CMR is key to democratic consolidation-the relationship is statistically significant

**Tusalem, Arkansas State political science professor, 2013**

(Rollin, “Bringing the military back in: The politicisation of the military and its effect on democratic consolidation”, International Political Science Review, August, SAGE, ldg)

Panel regression results presented in Table 2 confirm the hypothesis that a politicised military infrastructure affects democratic politics. For instance, the military index of politicisation (provided by PRS) is negatively correlated with democratic accountability at (p < .05). Thus, states that have politically active military institutions are more likely to face lower levels of political accountability. We can also infer from Table 2 that the Siaroff index of military activism is positively correlated with higher levels of democratic accountability (p < .01), suggesting that states that have restrictions on “reserved domains” are more likely to be responsive to political rights and civil liberties, and have checks and balances in their political system. The role of institutionalised military intervention, reflected by the occurrence of coup events in the historical past (prior to transition), also has a negative effect on democratic accountability (achieving statistical significance at p < .10), largely confirming how the historical legacy of institutional structures may affect the nature of transitional politics (Pop-Eleches, 2007). Interestingly, none of the military-related variables concerning the size of the national army and spending on the military as an institution are correlated with democratic accountability. We now move to examine the effect of a politicised military on a more substantive and maximalist measure of democracy, the EIU measure. Table 3 conveys how all the relevant measures—the PRS measure (significant at p < .05), the Siaroff index (significant at p < .05), and the coup index prior to transition (significant at p < .01)—have coefficient signs in the expected direction and are statistically significant across the board. Out of all the three variables capturing the politicisation of the military, the variable that has the most salient effect on promoting the politics of inclusion, equality, pluralism, and fairness in governance is the dummy variable of whether or not a state had a coup in its pre-transition history. Hence, states whose militaries were engaged in coups prior to transition are less likely to strengthen the nature of democratic politics, an indication that activist militaries in the pre-transition period are more likely to remain restive and destabilising in the post-transition period, largely affecting and eroding democratic gains. Hence, this comports with Stepan’s (1988) argument that historical legacies of military adventurism matter in shaping how far states move forward in their transitional trajectory toward consolidation. Finally, what effect does an activist military have on the prospects for democratic consolidation? The results presented in Table 4 show that the PRS measure is negatively correlated with democratic consolidation (significant at p < .01) and, based on the predicted estimates shown in Figure 1, we see that the BTI measure of consolidation is at its highest when the PRS measure is 1 (states with apolitical military institutions), while the BTI score is at its lowest when the PRS measure is 6 (states with politicised military institutions), even when holding all control variables constant at their means and modes. These results are mimicked when we look at the effect of the Siaroff index of military activism on democratic consolidation. Table 4 shows a positive relationship between the Siaroff index and democratic consolidation (significant at p < .01), and the predicted estimates illustrated in Figure 2 show that as the restrictions on reserved domains increase, so do the prospects for democratic consolidation. To substantiate further, the BTI transformation index reaches its maximum value when the Siaroff index is 10 (connoting lower levels of reserved domains), while the BTI transformation index reaches its minimum level when the Siaroff index is 2 (connoting higher levels of reserved domains). This shows that states which have militaries that control security, defence, and social policies, particularly those whose post-transitional constitutions gave the military responsibilities and positions in government, are less likely to consolidate or strengthen their democratic institutions. What about the effect of the military’s historical prerogative in ending civilian rule in the past? Does this activism persist even in the post-transition period, producing problems as it relates to democratic consolidation? The results in Table 4 confirm the deleterious effect of prior coup events on the prospects of democratic consolidation, although this time the prior coup variable attains only marginal significance (at p < .10), results which attained a higher level of statistical significance when the EIU measure of democracy was used. It should also be noted here that the reduced models that drop the number of countries from 44 to 39 states also yield results that corroborate the main models in all the regression analyses. Thus, even if we restrict the sampling to states that strictly transitioned to democracy, the pernicious effect of a politicised military on democratic accountability and democratic consolidation remains statistically significant. The empirical findings of this study convey that transitional states where reserved domains granted to the military are high, specifically states where the military apparatus has a large role in shaping national policies, are more likely to have lower levels of democratic accountability and are more likely to reverse democratic gains. Furthermore, politicised military institutions and the institutional legacy of overthrowing civilian regimes in the pre-transitional past have an enduring effect in eroding prospects for democratic consolidation. Scholars provide the normative prescription that reserved domains given to the military should not be provided by the state. In fact, such domains must be immediately dismissed at the onset of roundtable negotiations during “pacted” transitional processes (Diamond, 1999). Civilian governments should not grant the military a “golden parachute” to escape prosecution for human rights violations committed in the authoritarian past. For instance, there is consensus that one reason behind the relative success of Chilean, Brazilian, and Argentinean democratisation is attributed to amendments in their constitution that openly targeted the reserved domains granted to the military. These actions drastically lessened the military’s activism post-transition (Hagopian, 2005). The high-publicity trials of military generals involved in a coup or past human rights violations should be encouraged, to deter the military from pursuing a political role in the affairs of the state. Immunity deals granted to military generals who have denigrated the rule of law should be avoided so as to have a deterrent effect on the military’s potential activism (Siaroff, 2009). In light of democracy-building initiatives of international organisations, Fitch (1998) recommends that new democracies should discourage military generals from participating in constituent assemblies/constitutional conventions. It is also recommended that generals or retired generals not be invited to take positions in the civil service or bureaucracy. Many also recommend that a civil–military equilibrium must be reached in which civilian governments retain control of the economy, especially in determining budgets that affect the military, their pay scales, and issues concerning the promotion and demotion of highly ranked officers. Lastly, the military’s role in influencing public policy and the consultative role it grants to the executive should be restrained or severed altogether as these reserved domains may threaten democratic values and institutions (Alagappa, 2001; Kohn, 1997; Trinkunas, 2001). The results of this study also find that other military-related variables, like the size of the army and the percentage of GDP spent on the military, have no effect on democratic quality and consolidation. This corroborates the empirical findings of McKinlay and Cohan (1975) and Zuk and Thompson (1982), which allude to how the corporate model of greed and grievance coming from the military is not a salient factor in shaping its political agenda and motivations. Thus, the effect of the military on democratic outcomes is largely not a structural issue per se; rather, it is more a function of how the military’s activism in the pre-transitional process leads them to demand reserved domains at the cusp of constructing post-authoritarian constitutions. As these domains accrue over time, it provides the impetus for the military to further erode democratic gains, thus paving the way for the return of creeping authoritarianism.

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### 2AC Heroism K

#### Judicial review doesn’t allow for unheoric ontology

Guiora, University of Utah Law professor & Jurist contributing editor, 13

[Amos, 3-4-13, “Drone Policy: A Proposal Moving Forward”, accessed 10-26-13, AFB]

Targeted killing sits at the intersection of law, morality, strategy and policy. I am a proponent of targeted killing because it enables the state to protect its innocent civilian population. However, my support for targeted killing is conditioned on the process being subject to rigorous standards, criteria and guidelines. My advocacy of both targeted killing and criteria-based decision-making rests largely on 20 years of experience with a "seat at the table" of operational counterterrorism. The dangers inherent in the use of state power are enormous. On the opposite side of the equation, however, is the terrible cost of terrorism; after all, terrorists deliberately target innocent civilians. However, broad definitions of imminence combined with new technological capabilities drastically affect the implementation of targeted killing predicated on legal and moral principles. The recently released US Department of Justice (DOJ) "white paper" regarding the Obama administration's drone policy defines "imminence" so expansively there need not be clear evidence of a specific attack to justify the killing of an individual, including US citizens. This extraordinary broadness creates a targeted killing paradigm akin to interrogation excesses under the Bush administration that followed in the wake of the Bybee Memo. The solution to this search for an actionable guideline is adoption of a strict scrutiny standard which would enable operational engagement of a non-state actor predicated on intelligence information subject to admissibility standards akin to a court of law. Such intelligence would have to be reliable, material and probative. To re-phrase, this strict scrutiny test seeks to strike a balance by enabling the state to act sooner but subjecting that action to significant restrictions. This paradigm would be predicated on narrow definitions of imminence and legitimate targets. Rather than enabling the consequences of the DOJ memo, the strict scrutiny test would ensure implementation of person-specific operational counterterrorism. That is the essence of targeted killing conducted in accordance with the rule of law and morality in armed conflict. This proposal is predicated on the understanding that, while nation states need to engage in operational counterterrorism, mistakes regarding the correct interpretation and analysis of intelligence information can lead to tragic mistakes. Adopting admissibility standards akin to criminal law minimizes operational error. Rather than relying on the executive branch to make decisions in a "closed world" devoid of oversight and review, the intelligence information justifying the proposed action must be submitted to a court that would ascertain the information's admissibility. The discussion before the court would necessarily be conducted ex parte; however, the process of preparing and submitting available intelligence information to a court would significantly contribute to minimizing operational error that otherwise would occur. The logistics of this proposal are far less daunting than might seem — the court before which the executive would submit the evidence is the US Foreign Intelligence Surveillance Court (FISA Court), established by the Foreign Intelligence Surveillance Act. Presently, FISA Court judges weigh the reliability of intelligence information in determining whether to grant government ex parte requests for wire-tapping warrants. Under this proposal, judicial approval is necessary prior to undertaking a counterterrorism operation predicated solely on intelligence information. The standard the court would adopt in determining the information's reliability is the same applied in the traditional criminal law paradigm. The court would cross-examine the representative of the executive branch and subsequently rule as to the information's admissibility. While some may suggest that the FISA Court is largely an exercise in "rubber-stamping," the importance of this proposal is in requiring the government to present the available information to an independent judiciary as a precursor to engaging in operational counterterrorism. While this proposal explicitly calls for changing the nature of the relationship between the executive and the judicial branches of the government, it would serve to minimize collateral damage in drone attacks predicated on narrow definitions of legitimate target. This proposal does not limit the state's fundamental right to self-defense. Rather, it creates a process seeking to objectify counterterrorism by seeking to establish standards for determining the reliability of intelligence information that is the backbone of targeted killing decision-making. The practical impact? A drone policy predicated on the rule of law and morality rather than the deeply troubling paradigm established by the Obama administration in the DOJ white paper.

#### The alternative fails – their promotion of egoism and defending the executive encourages whisteblowers, the media, and other countries to backlash – causes worse restrictions against egoism that only judicial review can solve through the plan

Marguilies ‘10 Peter, Professor of Law, Roger Williams University, “Judging Myopia in Hindsight: Bivens Actions, National Security Decisions, and the Rule of Law” IOWA LAW REVIEW Vol. 96:195

The categorical-deference approach also fails to acknowledge that those stymied by the lack of formal redress can substitute for litigation other paths that pose greater danger. For example, consider the perspective of the official who leaks a document, not to advance a personal agenda, but to focus public attention on government policy.170 Whistleblowers of this kind, like Daniel Ellsberg, who leaked the Pentagon Papers to the New York Times, 171 are advancing a constitutional vision of their own in which senior officials have strayed from the limits of the original understanding.172 If the courts and Congress do not work to restore the balance, the whistleblower engages in self-help. Because leakers are risk-seekers who believe the status quo is unacceptable, they lack courts’ interest in safeguarding sensitive information. Policy shaped by blowback from leaks is far more volatile than policy reacting to judicial precedent.173 Similarly, the media has a constitutional role to play that includes investigative reporting. The media will step up its efforts if other institutions like courts take a more deferential stance.174 When government hides information, the media’s sense of its own role leads to greater distrust of government and a willingness to both uncover and publish more information. On some occasions, the First Amendment will oblige us to tolerate journalists’ disclosure of operational details of covert programs.175 Journalists will understandably view government’s claims that information is sensitive with greater skepticism when government has methodically locked down information in other settings. Similarly, shutting off damage suits regarding terrorism issues leaves other kinds of litigation, including litigation the government has initiated. Journalists and activists will seek to scrutinize and mobilize around these cases, even if the avenue of civil suits is closed. Indeed, activism may be distorted in these other venues when they are the only game in town. For example, journalists may be more inclined to credit even outlandish claims made by some lawyers on behalf of detainees when the government has a track record of concealing information.176 While some might argue that courts should not speculate about future conduct of third parties, a court that makes empirical predictions about the effect of liability should not selectively ignore major unintended consequences of its holding. There are parallel developments in international law. Some countries have prosecuted criminal cases against American agents who allegedly were complicit in extraordinary renditions. In Italy, a number of American government employees and personnel were convicted in absentia because of legal action generated by popular pressure.177 U.S. public-interest organizations, like the Center for Constitutional Rights, have encouraged these assertions of universal jurisdiction. These prosecutions occurred because of officials’ sense that they were above the law. Judicial remedies available in the United States can check these officials, thereby reducing the incidence and impact of universal-jurisdiction proceedings in the future.

#### Government liability solves speed and flexibility and the ego which prevents overcorrecting appeasement

Sisk 06 (Gregory, holds the Laghi Distinguished Chair in Law at the University of St. Thomas School of Law, with Michael F. Noone, Litigation with the Federal Government, google books, p 395-6)

A number of commentators have argued that there would be substan-tial advantages in shifting liability for both ordinary and constitutional torts from public employees to the government itself. Professor Peter H. Schuck lists a variety of defects that he sees as flowing from imposition of liability directly upon officials rather than upon the government: "its propensity to chill vigorous decisionmaking; to leave deserving victims uncompensated and losses concentrated; to weaken deterrence; to obscure the morality of the law; and to generate high system costs."189 Professor Richard J. Pierce, Jr. contends that "[e]xposing individual government employees to potential tort liability is particularly likely to produce socially undesirable decision- making incentives."190 Because individuals are most likely to fear substantial personal liability, holding government employees liable for ordinary or con- stitutional torts may discourage them from undertaking new initiatives or reforms. Pierce notes that "many public officials routinely act in areas in which the legal constraints on their actions are both dynamic and murky." Even when the conduct is plainly wrongful, Schuck argues that "the costs of wrongdoing [should be] imposed upon the entity responsible for recruiting, training, guiding, constraining, managing, and disciplining" government em- ployees, rather than visiting liability upon individual officials who may be merely "instrument[s] of impersonal bureaucratic, political, and social pro- cesses over which they have little or no effective control." In addition to the effect on government interests and the injustice to public officials, these commentators argue that focusing liability upon gov- ernment officials, rather than the government, weakens the claims of those who have been wronged by government agents. Pierce states the argument this way: Allowing tort actions against government employees, rather than government, has three other adverse effects. First, sympathy for the plight of the public employee defendant often induces courts to adopt unduly narrow interpretations of constitutional and statutory rights... .Second, sympathy for the plight of the pub- lic servant defendant often induces juries to resolve close factual disputes in favor of the defendant and to award lower damages than would otherwise be warranted. Third, plaintiffs who are seri- ously injured by unlawful government conduct rarely can recover their full damages from a government employee defendant because government employees rarely have unencumbered assets sufficient to satisfy a large judgment.'" Indeed, Professor Cornelia T.L. Pillard argues that the "low rate of success- ful claims indicates that, notwithstanding Bivens, federal constitutional vio- lations are almost never remedied by damages."192 Pierce concludes that "[t]ort law would provide a more appropriate constraint on government ac- tion and a more secure source of compensation for victims of torts commit- ted by government if all potential exposure to tort liability were transferred from public employees to government."

### 2AC Queer K

#### Focus of the debate should be on the material implications of the plan---ontological focus steamrolls politics and undermines aff ground

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(Patrick Thadeus, The Conduct of Inquiry in International Relations, p. 57-59)

Perhaps the greatest irony of this instrumental, decontextualized importation of “falsification” and its critics into IR is the way that an entire line of thought that privileged disconfirmation and refutation—no matter how complicated that disconfirmation and refutation was in practice—has been transformed into a license to **worry endlessly about foundational assumptions.** At the very beginning of the effort to bring terms such as “paradigm” to bear on the study of politics, Albert O. **Hirschman** (1970b, 338) **noted this very danger**, suggesting that without “a little more ‘reverence for life’ and a little less straightjacketing of the future,” the **focus on** producing internally **consistent** packages of **assumptions instead of** actually examining **complex empirical situations would result in scholarly paralysis.** Here as elsewhere, Hirschman appears to have been quite prescient, inasmuch as the major effect of paradigm and research programme language in IR seems to have been a series of debates and discussions about whether the fundamentals of a given school of thought were sufficiently “scientific” in their construction. Thus **we have debates about how to evaluate scientific progress**, and attempts to propose one or another set of research design principles **as uniquely scientific**, and inventive, “reconstructions” of IR schools, such as Patrick James’ “elaborated structural realism,” supposedly for the purpose of placing them on a **firmer scientific footing** by making sure that they have all of the required elements of a basically Lakatosian19 model of science (James 2002, 67, 98–103). The bet with all of this scholarly activity seems to be that if we can just get the fundamentals right, then scientific progress will inevitably ensue . . . even though this is the precise opposite of what Popper and Kuhn and Lakatos argued! In fact, all of this obsessive interest in foundations and starting-points is, in form if not in content, a lot closer to logical positivism than it is to the concerns of the falsificationist philosophers, despite the prominence of language about “hypothesis testing” and the concern to formulate testable hypotheses among IR scholars engaged in these endeavors. That, above all, is why I have labeled this methodology of scholarship neopositivist. While it takes much of its self justification as a science from criticisms of logical positivism, in overall sensibility it still operates in a visibly positivist way, attempting to construct knowledge from the ground up by getting its foundations in logical order before concentrating on how claims encounter the world in terms of their theoretical implications. This is by no means to say that neopositivism is not interested in hypothesis testing; on the contrary, neopositivists are extremely concerned with testing hypotheses, but **only after the fundamentals have been** soundly **established.** Certainty, not conjectural provisionality, seems to be the goal—a goal that, ironically, Popper and Kuhn and Lakatos would all reject.

#### ---The ballot must center on political engagement with the state --- That’s the only way to challenge heteronormativity.

Duggan 1994

Lisa, Queering the State, Social Text, No. 39 (Summer, 1994), pp. 1-14

The problem for those of us engaged in queer scholarship and teaching, who have a stake in queer politics, is how to respond to these attacks at a moment when we have unprecedented opportunities (we are present in university curriculums and national politics as never before), yet confront perilous and paralyzing assaults. It is imperative that we respond to these attacks in the public arena from which they are launched. We cannot defend our teaching and scholarship without engaging in public debate and addressing the nature and operations of the state upon which our jobs and futures depend. In other words, the need to turn our attention to state politics is not only theoretical (though it is also that). It is time for queer intellectuals to concentrate on the creative production of strategies at the boundary of queer and nation-strategies specifically for queering the state.5

#### The perm creates self-reflexivity which solves the link and their impacts and avoids conservative cooption of the law of armed conflict

Margulies and Metcalf 11 (Joseph Margulies is a Clinical Professor, Northwestern University School of Law Hope Metcalf is a Lecturer, Yale Law School. Metcalf is co-counsel for the plaintiffs/petitioners in Padilla v. Rumsfeld, Padilla v. Yoo, Jeppesen v. Mohammed, and Maqaleh v. Obama, “Terrorizing Academia,” http://www.swlaw.edu/pdfs/jle/jle603jmarguilies.pdf)

The foregoing is simply one attempt at a scholarship that goes beyond the “myth of rights” and takes account of the broader historical, social and political context for U.S. reactions to terrorism. But we note that other disciplines are ahead of the legal academy in this regard. Many scholars— notably in socio-legal studies, history and political science—have probed the causes and consequences of U.S. counterterrorism policies.138 Sociologists have explored various explanations for post-9/11 policies, from consumerism139 to media portrayals of crime140 to the politics of fear generally.141 As Jonathan Simon observed, from a socio-legal perspective, post-9/11 policies were not the exception but “only the latest effort to redefine the scope of the U.S. federal government’s power (and especially the executive branch) by invoking the metaphor of war.”142 Legal historians also noted continuities, especially with respect to the historic U.S. antipathy to prisoners’ dignity and humanity143 as well as the long-standing presence of terrorism on U.S. soil.144 Mary Dudziak has probed the foundations of the dominant emergency framing, arguing that “[i]deas about the temporality of war are embedded in American legal thought [which are] in tension with the experience of war in the twentieth century. The problem of time, in essence, clouds an understanding of the problem of war."1 And cultural critics have provided much needed context for U.S. torture policies'16 and reactions to "Islamic extremism.'11"

An emerging group of legal scholars—whom we might term "integrationists"— have examined the continuities between post-9/11 policies and American practices and attitudes toward crime, risk, security, and socially constructed "others."118 As argued by John Parry,'1\* Judith Rcsnik,'\*° and James Foreman,1\*' post-9/11 policies arc neither sui generis nor likely to disappear at the end of this "war," whenever that might be. The struggle against abusive treatment and confinement of terrorism suspects will undoubtedly persist over the long- term, and we arc best served by broadening our lens to consider how post-9/11 policies repeat, reflect, and inform broader U.S. policies towards marginalized people such as prisoners and non-citizens. Munccr Ahmad has begun the difficult task of questioning whether a rights-based strategy can possibly be effective in the political context of Guantanamo,\*1 and most fundamentally, we must heed the admonition of Richard Fallon, who recently and quite properly observed that "the Constitution is 'politically constructed\* by the tolerances of Congress and the president, as supported by public opinion.""'

From the vantage of 2010, it appears the interventionist position—our position—has failed. As we see it, it failed because it was premised upon a legalistic view of rights that simply cannot be squared with the reality of the American political experience. Yet the interventionist stance holds an undeniable attraction. Of all the positions advanced since 9/11, it holds out the best promise of preserving the pluralist ideals of a liberal democracy. The challenge going forward, therefore, is to re-imagine the interventionist intellectual endeavor. To retain relevance, we must translate the lessons of the social sciences into the language of the law, which likely requires that we knock law from its lofty perch. As a beginning, scholarship should be more attuned to the limitations of the judiciary, and mindful of the complicated tendency of narratives to generate backlash and counter-narratives.

But there is another tendency we must resist, and that is the impulse to nihilism—to throw up our hands in despair, with the lament that nothing works and repression is inevitable. Just how to integrate the political and the ideal is, of course, a problem that is at least as old as legal realism itself and one we do not purport to solve in this essay.'\*\* Still, we are heartened by the creative work undertaken in other arenas, ranging from poverty law to gay rights, that explores how, done properly, lawyering (and even litigation) can make real differences in the lives of marginalized people.'" We hope that the next decade of reflections on the policies undertaken in the name of national security will follow their lead in probing not just what the law should be, but how it functions and whom it serves.

#### ---The alt fails --- If the social order inherently expels queerness, then directly assuming the negativity which queers are stigmatized by does nothing to confront that violence.

Bateman 2006

R Benjamin, doctoral candidate in English at the University of Virginia, Spring, The Minnesota Review, http://www.theminnesotareview.org/journal/ns6566/bateman\_r\_benjamin\_ns6566\_stf1.shtml

Reading No Future, one is reminded of Michael Warner's polemic, The Trouble with Normal, which argued that queers should contest all sexual norms and defend everything heterosexuals find detestable in queer culture—promiscuous sex, bathhouses, pornography, drugs, and so on. But where that book occupied queer culture as a site from which to imagine a more ethical future, Edelman's project, due to its anti-futurism, imagines very little. Edelman is at his best and most hilarious when exposing the hypocrisy, false piety and pseudo-morality of religious conservatives and of "reformed" homosexuals like Larry Kramer. He is also at his best when demonstrating how, in an impressive range of literary classics, movies, and contemporary political examples, heterosexual culture deploys the child, disingenuously, as a weapon against queer sexuality. But his book falters as it comes increasingly to rely upon arcane appeals to Lacanian psychoanalysis (conspicuously absent from this book is a single reference to Foucault). Edelman's argument runs something like this: a stubborn kernel of non-meaning resides at the core of language, forcing each signifier to find its meaning in the next ad infinitum, thus preventing signification from ever completing itself or establishing meaning once and for all. This internal limit subtends and makes possible all meaning-making while simultaneously disrupting it. An unbridgeable gap, it marks the place of a recalcitrant, functionless, and socially corrosive jouissance—an excessive enjoyment over which language, society, and the future stumble. Heterosexual culture, anxious to name and contain this minatory abyss, casts homosexuals as it and into it. They are "…the violent undoing of meaning, the loss of identity and coherence, the unnatural access to jouissance…"(132). One might fault Edelman, as John Brenkman has, for transposing a rule of language onto the order of being. But even if one takes his equation seriously, one must ask what is gained by actively occupying a structurally necessary role. In other words, if the Real must exist for the Symbolic to function, then the abyss will remain whether homosexuals agree to inhabit it or not. Edelman acknowledges this reality but argues that if homosexuals exit the abyss a new subaltern will be compelled to enter it. Better, then, to remain inside and mirror back to heterosexuality what troubles it most—meaninglessness, death and antisocial desire. Unfortunately, Edelman provides few details as to how we might accomplish this task, and his insistence elsewhere that the powers-that-be will clamp down with unmitigated force to repress and disavow the encroaching Real renders such a strategy less than appealing. At one point he encourages queers to pursue a more traditional politics alongside his radical recommendation (29), but he fails to acknowledge that if the former succeeds—and the dominant culture brings queers and/or their practices into its fold—then the latter's intended audience will no longer be listening.

#### They’re not denying the truth claims of the 1AC – they only say we should embrace extinction – that’s bad –

#### A. Futurity is life affirming Projecting desire into the future propels activity in the present

Rosi Braidotti 6, contemporary philosopher and feminist theoretician, Transpositions: On Nomadic Ethics, 273

Prophetic or visionary minds are thinkers of the future- The future as an active object of desire propels us forth and we can draw from it the strength and motivation to be active in the here and now of a present that hangs on in-between the 'no longer' and the 'not yet' of advanced postmodernity- The present is always the future present: it will have made a positive difference in the world. Only the yearning for sustainable futures can construct a liveable present.

The sheer thinkability of the future is the necessary precondition for inhabiting creatively the present.

The anticipation of endurance, of making it to a possible 'tomorrow', transposes energies from the future back into the present. This is how sustainability enacts modes of creative becoming. This is a non-entropic model of energy-flow and hence of transferral of desire. Drawing energy from the thinkabilitv of the future means that our desires are sustainable to the extent that they engender the conditions of possibility for the future. In order to get there, a nomadic subject position of flow and multilayeredness is a major facilitator. This is not a leap of faith, but an active transposition, a transformation at the in-depth level, a change of culture akin to genetic mutations, but registered also at the ethical level.

#### B. There is still value to life regardless of wars against difference

Torbjörn Tännsjö 11, the Kristian Claëson Professor of Practical Philosophy at Stockholm University, 2011, “Shalt Thou Sometimes Murder? On the Ethics of Killing,” online: http://people.su.se/~jolso/HS-texter/shaltthou.pdf

I suppose it is correct to say that, if Schopenhauer is right, if life is never worth living, then according to utilitarianism we should all commit suicide and put an end to humanity. But this does not mean that, each of us should commit suicide. I commented on this in chapter two when I presented the idea that utilitarianism should be applied, not only to individual actions, but to collective actions as well.¶ It is a well-known fact that people rarely commit suicide. Some even claim that no one who is mentally sound commits suicide. Could that be taken as evidence for the claim that people live lives worth living? That would be rash. Many people are not utilitarians. They may avoid suicide because they believe that it is morally wrong to kill oneself. It is also a possibility that, even if people lead lives not worth living, they believe they do. And even if some may believe that their lives, up to now, have not been worth living, their future lives will be better. They may be mistaken about this. They may hold false expectations about the future.¶ From the point of view of evolutionary biology, it is natural to assume that people should rarely commit suicide. If we set old age to one side, it has poor survival value (of one’s genes) to kill oneself. So it should be expected that it is difficult for ordinary people to kill themselves. But then theories about cognitive dissonance, known from psychology, should warn us that we may come to believe that we live better lives than we do.¶ My strong belief is that most of us live lives worth living. However, I do believe that our lives are close to the point where they stop being worth living. But then it is at least not very far-fetched to think that they may be worth not living, after all. My assessment may be too optimistic.¶ Let us just for the sake of the argument assume that our lives are not worth living, and let us accept that, if this is so, we should all kill ourselves. As I noted above, this does not answer the question what we should do, each one of us. My conjecture is that we should not commit suicide. The explanation is simple. If I kill myself, many people will suffer. Here is a rough explanation of how this will happen: ¶ ... suicide “survivors” confront a complex array of feelings. Various forms of guilt are quite common, such as that arising from (a) the belief that one contributed to the suicidal person's anguish, or (b) the failure to recognize that anguish, or (c) the inability to prevent the suicidal act itself. Suicide also leads to rage, loneliness, and awareness of vulnerability in those left behind. Indeed, the sense that suicide is an essentially selfish act dominates many popular perceptions of suicide. ¶ The fact that all our lives lack meaning, if they do, does not mean that others will follow my example. They will go on with their lives and their false expectations — at least for a while devastated because of my suicide. But then I have an obligation, for their sake, to go on with my life. It is highly likely that, by committing suicide, I create more suffering (in their lives) than I avoid (in my life).

#### There is an infinite value to life- your framework causes extinction

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

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

#### Any existence is better than nothing

Kateb 92, Professor of Politics at Princeton University, ‘92 (George, The Inner Ocean, pg. 141)

But neither of these responses will do in the nuclear situation. To affirm existence as such is to go beyond good and evil; it is to will its perpetual prolongation for no particular reason. To affirm existence is not to praise it or love it or find it good. These responses are no more defensible than their contraries—no more defensible than calling exis­tence absurd, or meaningless, or worthless. All such responses are appro­priate only for particulars. Existence does not have systemic attributes amenable to univocal judgments. At least some of us cannot accept the validity of revelation, or play on ourselves the trick of regarding existence as if it were the designed work of a personal God, or presume to call it good, and bless it as if it were the existence we would have created if we had the power, and think that it therefore deserves to exist and is justifia­ble just as it is. No: these argumentative moves are bad moves; they are hopeless stratagems. The hope is to go beyond the need for reasons, to go beyond the need for justifying existence, and in doing so to strengthen, not weaken, one's attachment. Earthly existence must be preserved whatever we are able or unable to say about it. There is no other human and natural existence. The alternative is earthly nothingness. Things are better than nothing; anything is better than nothing.

#### Value to life cannot be measures externally – their framework dehumanizes

Schwartz 02, Lecturer in Philosophy of Medicine at the Department of General Practice at the University of Glasgow ‘2 (Lisa, “Medical Ethic: A case-based approach, Chapter 6: A Value to Life: Who Decides and How?”)

The second assertion made by supporters of the quality of life as a criterion for decisionmaking is closely related to the first, but with an added dimension. This assertion suggests that the determination of the value of the quality of a given life is a subjective determination to be made by the person experiencing that life. The important addition here is that the decision is a personal one that, ideally, ought not to be made externally by another person but internally by the individual involved. Katherine Lewis made this decision for herself based on a comparison between two stages of her life. So did James Brady. Without this element, decisions based on quality of life criteria lack salient information and the patients concerned cannot give informed consent. Patients must be given the opportunity to decide for themselves whether they think their lives are worth living or not. To ignore or overlook patients’ judgement in this matter is to violate their autonomy and their freedom to decide for themselves on the basis of relevant information about their future, and comparative consideration of their past. As the deontological position puts it so well, to do so is to violate the imperative that we must treat persons as rational and as ends in themselves.

#### No endless violence

Gray 7—Director of the Centre for Strategic Studies and Professor of International Relations and Strategic Studies at the University of Reading, graduate of the Universities of Manchester and Oxford, Founder and Senior Associate to the National Institute for Public Policy, formerly with the International Institute for Strategic Studies and the Hudson Institute (Colin, July, “The Implications of Preemptive and Preventive War Doctrines: A Reconsideration”, <http://www.ciaonet.org/wps/ssi10561/ssi10561.pdf>)

7. A policy that favors preventive warfare expresses a futile quest for absolute security. It could do so. Most controversial policies contain within them the possibility of misuse. In the hands of a paranoid or boundlessly ambitious political leader, prevention could be a policy for endless warfare. However, the American political system, with its checks and balances, was designed explicitly for the purpose of constraining the executive from excessive folly. Both the Vietnam and the contemporary Iraqi experiences reveal clearly that although the conduct of war is an executive prerogative, in practice that authority is disciplined by public attitudes. Clausewitz made this point superbly with his designation of the passion, the sentiments, of the people as a vital component of his trinitarian theory of war. 51 It is true to claim that power can be, and indeed is often, abused, both personally and nationally. It is possible that a state could acquire a taste for the apparent swift decisiveness of preventive warfare and overuse the option. One might argue that the easy success achieved against Taliban Afghanistan in 2001, provided fuel for the urge to seek a similarly rapid success against Saddam Hussein’s Iraq. In other words, the delights of military success can be habit forming. On balance, claim seven is not persuasive, though it certainly contains a germ of truth. A country with unmatched wealth and power, unused to physical insecurity at home—notwithstanding 42 years of nuclear danger, and a high level of gun crime—is vulnerable to demands for policies that supposedly can restore security. But we ought not to endorse the argument that the United States should eschew the preventive war option because it could lead to a futile, endless search for absolute security. One might as well argue that the United States should adopt a defense policy and develop capabilities shaped strictly for homeland security approached in a narrowly geographical sense. Since a president might misuse a military instrument that had a global reach, why not deny the White House even the possibility of such misuse? In other words, constrain policy ends by limiting policy’s military means. This argument has circulated for many decades and, it must be admitted, it does have a certain elementary logic. It is the opinion of this enquiry, however, that the claim that a policy which includes the preventive option might lead to a search for total security is **not at all convincing**. Of course, folly in high places is always possible, which is one of the many reasons why popular democracy is the superior form of government. It would be absurd to permit the fear of a futile and dangerous quest for absolute security to preclude prevention as a policy option. Despite its absurdity, this rhetorical charge against prevention is a stock favorite among prevention’s critics. It should be recognized and dismissed for what it is, a debating point with little pragmatic merit. And strategy, though not always policy, **must be nothing if not pragmatic**.

#### The world is getting better

Pinker 07, Johnstone Family Professor at Harvard University, ‘7 (Steven, March 19, “A History of Violence” The New Republic, lexis)

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

## \*\*\*1AR

### Impact Defense

#### No moral authority to say death is okay

**Epstein, Chicago law professor, 1996**

(Richard, “SYMPOSIUM: THE TORT/CRIME DISTINCTION: A GENERATION LATER”, Februrary/April, 76 B.U.L. Rev. 1, lexis, ldg)

Similarly, on questions of method, I believe that the deontological approach is wrong insofar as it claims that its normative conclusions can be denied only on pain of self-contradiction. Today many writers believe that the protection of individual autonomy is not a primary goal of legal rules, but that, to the contrary, any "natural" distribution of talents is determined largely by luck and hence morally arbitrary. n5 Given this perspective, it follows that legal rules should introduce certain measures of sharing across individuals, if not by forced labor, then by systems of taxation and regulation that redistribute the fruits of individual labor. n6 One can argue against these views, but hardly on the ground that they are self-contradictory, or even that they are morally suspect in their effort to raise [\*3] the level of the least fortunate closer to the level enjoyed by those who have a greater share of natural abilities and endowments. A defense of the older regime of individual liberties and properties cannot rest on a simple assertion that people have rights and that other individuals are not allowed to do actions that violate those rights. n7 One has to show why any given configuration of rights is superior to its rival conceptions, an undertaking that typically requires an appeal to consequences, less for particular cases, and more for some overall assessment of how alternative legal regimes play out in the long run. In a word, one has to become a utilitarian of some stripe to justify rules in terms of the consequences they bring about. n8

#### Utilitarian consequences first

**Issac 2**—Professor of Political Science at Indiana-Bloomington, Director of the Center for the Study of Democracy and Public Life, PhD from Yale (Jeffery C., Dissent Magazine, Vol. 49, Iss. 2, “Ends, Means, and Politics,” p. Proquest)

As a result, the most important political questions are simply not asked. It is assumed that U.S. military intervention is an act of "aggression," but no consideration is given to the aggression to which intervention is a response. The status quo ante in Afghanistan is not, as peace activists would have it, peace, but rather terrorist violence abetted by a regime--the Taliban--that rose to power through brutality and repression. This requires us to ask a question that most "peace" activists would prefer not to ask: What should be done to respond to the violence of a Saddam Hussein, or a Milosevic, or a Taliban regime? What means are likely to stop violence and bring criminals to justice? Calls for diplomacy and international law are well intended and important; they implicate a decent and civilized ethic of global order. But they are also vague and empty, because they are not accompanied by any account of how diplomacy or international law can work effectively to address the problem at hand. The campus left offers no such account. To do so would require it to contemplate tragic choices in which moral goodness is of limited utility. Here what matters is not purity of intention but the intelligent exercise of power. Power is not a dirty word or an unfortunate feature of the world. It is the core of politics. Power is the ability to effect outcomes in the world. Politics, in large part, involves contests over the distribution and use of power. To accomplish anything in the political world, one must attend to the means that are necessary to bring it about. And to develop such means is to develop, and to exercise, power. To say this is not to say that power is beyond morality. It is to say that power is not reducible to morality. As writers such as Niccolo Machiavelli, Max Weber, Reinhold Niebuhr, and Hannah Arendt have taught, an unyielding concern with moral goodness undercuts political responsibility. The concern may be morally laudable, reflecting a kind of personal integrity, but it suffers from three fatal flaws: (1) It fails to see that the purity of one's intention does not ensure the achievement of what one intends. Abjuring violence or refusing to make common cause with morally compromised parties may seem like the right thing; but if such tactics entail impotence, then it is hard to view them as serving any moral good beyond the clean conscience of their supporters; (2) it fails to see that in a world of real violence and injustice, moral purity is not simply a form of powerlessness; it is often a form of complicity in injustice. This is why, from the standpoint of politics--as opposed to religion--pacifism is always a potentially immoral stand. In categorically repudiating violence, it refuses in principle to oppose certain violent injustices with any effect; and (3) it fails to see that politics is as much about unintended consequences as it is about intentions; it is the effects of action, rather than the motives of action, that is most significant. Just as the alignment with "good" may engender impotence, it is often the pursuit of "good" that generates evil. This is the lesson of communism in the twentieth century: it is not enough that one's goals be sincere or idealistic; it is equally important, always, to ask about the effects of pursuing these goals and to judge these effects in pragmatic and historically contextualized ways. Moral absolutism inhibits this judgment. It alienates those who are not true believers. It promotes arrogance. And it undermines political effectiveness.

### Perm

#### Politics is good & they read Lacan backwards; the gap between symbolic and real holds the potential for utopian change not queer assimilation

Brenkman 2002

John, Distinguished Professor of English and Comparative Literature at the CUNY Graduate Center and Baruch College, Narrative, Vol. 10, No. 2, pg. 189-190

What I have challenged is the claim that this discourse defines, or even dominates, the political realm as such. It is the discourse of conservative Catholicism and [End Page 189] Christian fundamentalism, and even though it resonates in strands of liberal discourse, it represents an intense reaction, backlash, against changes that have already taken place in American society, many of them as the direct result of feminism and the gay and lesbian movement. It is indeed important not to underestimate the depth and danger of this reaction, but it is a reactionary, not a foundational, discourse. The uncoupling of sexuality and reproduction is ubiquitous in American culture today as a result of multiple developments beyond the expansion of gay rights and the right to abortion, including birth control, divorce, and changing patterns of family life, as well as consumerism and mass culture; it may well be that the sheer scope, and irreversibility, of these developments also intensifies the targeting of gays by conservative ideology and Christian fundamentalist movements. But that is all the more reason to recognize that the deconstruction of the phobic figuration of the queer is a struggle to be pursued inside as well as outside politics. I stand by my claim that Edelman builds a psychoanalytic theory of the political realm, in the sense that he gives a psychoanalytic account of what the political realm is. Politics in his account fuses the Symbolic order to the social order and, in response to the Symbolic's inherent failure to symbolize the Real of the drives that unhinge every human being's integration into the social-symbolic order, generates a subtending futurist-nostalgic fantasy of sexuality as reproduction. Because the fantasy too is everywhere exceeded by reality, this mechanism in turn produces the homophobic figuration Edelman has described in "The Future is Kid Stuff": "the order of social reality demands some figural repository for what the logic of its articulation is destined to foreclose, for the fracture that persistently haunts it as the death within itself" ("Future is Kid Stuff" 28). I cited Claude Lefort at some length because he visits the same precincts of the psychoanalytic theory of discourse in order to formulate the discursive dynamic of democracy. But rather than conceptualizing the entire social-political order as a psychic apparatus as Edelman does, Lefort draws on Lacan's notion of the inherent gap between symbolization and the "real" to formulate the modern state's representation of the "real" of the social. Since the democratic state limits its own powers and thus delimits civil society as the nonpolitical space it impossibly must represent, the gap between symbolic and real is the opening of political conflict and change, not an endless replication or reaffirmation of the social order. Every ideological or political articulation—whether the particular discourses of power (law, economics, aesthetics, etc.) or the institution of the state itself—holds a potentiality for change because of, not in spite of the fact that its representation of the "real" fails. Therein lies the crux of the difference between Edelman's position and my own.

#### Heteronormativity is explicitly written into the law --- Policy strategies are critical to counter fundamentalist gains in American politics.

Chambers & Carver 2008

Samuel Allen and Terrell, Judith Butler and Political Theory: Troubling Politics, pg. 156-157

Finally, heteronormativity can also be subverted at the level of public policy. The trend in recent years, particularly in the US, has been to make heteronormativity more explicit by *writing it into the law*, where it previously was not mentioned (and for potentially subversive countertrends, see Carver 2007). The Federal Defense of Marriage Act (DOMA) and the dozens of state DOMAs all serve to codify the presumption of heteronormativity by announcing it plainly. In one sense, this is a dramatic setback in the struggle for equal civil rights for lesbian and gay citizens – a fact that should not be downplayed. Nevertheless, in the politics of norms the very effort required to defend heteronormativity outwardly suggests a certain weakening of the norm. And legislators across the US have made it clear that they see themselves as responding to an imminent threat. This threat is certainly not, as those legislators would have it, against the 'sacred institution of marriage', but it may well be a threat to heteronormativity, to the easy presumption of heterosexuality. Perhaps the legalisation of gay marriage will prove subversive on this front, if and when it happens. Perhaps it will not (Warner 1999). However, and in any event, from within the theory of subversion that we have articulated here, the most subversive move of all would come, on the level of national public policy, in simply *eliminating state-sactioned marriage altogether*.

#### ---Ceeding the political causes a Christian Right takeover --- Internal link turns the K and the root cause for queer exclusion from politics.

Brenkman 2002

John , Distinguished Professor of English and Comparative Literature at the CUNY Graduate Center and Baruch College, Narrative, Vol. 10, No. 2, pg. 176-177

How then to analyze or theorize this struggle? A motif in Edelman's analysis takes the rhetoric and imagery of the Christian Right and traditional Catholicism to be a more insightful discourse than liberalism when it comes to understanding the underlying politics of sexuality today. I think this is extremely misguided. The Right does not have a truer sense of the social-symbolic order than liberals and radicals; it simply has more reactionary aims and has mobilized with significant effect to impose its phobic and repressive values on civil society and through the state. The Christian Right is itself a "new social movement" that contests the feminist and gay and lesbian social movements. To grant the Right the status of exemplary articulators of "the" social order strikes me as politically self-destructive and theoretically just plain wrong.

### FLEX

**total flex causes worse decision-making in crises**

Deborah N. **Pearlstein 9**, lecturer in public and international affairs, Woodrow Wilson School of Public & International Affairs, July 2009, "Form and Function in the National Security Constitution," Connecticut Law Review, 41 Conn. L. Rev. 1549, lexis nexis

It is in part for such reasons that studies of organizational performance in crisis management have regularly found that "planning and effective [\*1604] response are causally connected." n196 Clear, well-understood rules, formalized training and planning can function to match cultural and individual instincts that emerge in a crisis with commitments that flow from standard operating procedures and professional norms. n197 Indeed, "the less an organization has to change its pre-disaster functions and roles to perform in a disaster, the more effective is its disaster [sic] response." n198 In this sense, **a decisionmaker with absolute flex**ibility **in an emergency-unconstrained by protocols or plans-may be systematically more prone to error than a decision-maker who is in some way compelled to follow procedures and guidelines, which have incorporated professional expertise, and which are set as effective constraints in advance**.¶ **Examples of excessive flexibility producing adverse consequences are ample**. Following Hurricane **Katrina**, one of the most important lessons independent analysis drew from the government response was the extent to which the disaster was made worse as a result of the lack of experience and knowledge of crisis procedures among key officials, the absence of expert advisors **replacing those rules with more than the most general guidance about custodial intelligence collection.** available to key officials (including the President), and the failure to follow existing response plans or to draw from lessons learned from simulations conducted before the fact. n199 Among the many consequences, [\*1605] basic items like food, water, and medicines were in such short supply that local law enforcement (instead of focusing on security issues) were occupied, in part, with breaking into businesses and taking what residents needed. n200¶ Or **consider the widespread abuse of prisoners at U.S. detention facilities such as Abu Ghraib**. Whatever the theoretical merits of applying coercive interrogation in a carefully selected way against key intelligence targets, n201 the systemic torture and abuse of scores of detainees was an outcome no one purported to seek. There is substantial agreement among security analysts of both parties that the prisoner abuse scandals have produced predominantly negative consequences for U.S. national security. n202 While there remain important questions about the extent to which some of the abuses at Abu Ghraib were the result of civilian or senior military command actions or omissions, one of the too often overlooked findings of the government investigations of the incidents is the unanimous agreement that the abuse was (at least in part) the result of structural organization failures n203 -failures that one might expect to [\*1606] produce errors either to the benefit or detriment of security.¶ In particular, military investigators looking at the causes of Abu Ghraib cited vague guidance, as well as inadequate training and planning for detention and interrogation operations, as key factors leading to the abuse. Remarkably, "pre-war planning [did] not include[] planning for detainee operations" in Iraq. n204 Moreover, **investigators cited failures at the policy level- decisions to lift existing detention and interrogation strictures without** n205 As one Army General later investigating the abuses noted: "**By October 2003, interrogation policy in Iraq had changed three times in less than thirty days and it became very confusing as to what techniques could be employed and at what level non-doctrinal approaches had to be approved**." n206 It was thus unsurprising that detention and interrogation operations were assigned to troops with grossly inadequate training in any rules that were still recognized. n207 The **uncertain effect of broad, general guidance**, coupled [\*1607] with the competing imperatives of guidelines that differed among theaters of operation, agencies, and military units, caused serious confusion among troops and led to decisionmaking that it is overly kind to call arbitrary. n208¶ Would the new functionalists disagree with the importance of government planning for detention operations in an emergency surrounding a terrorist nuclear attack? Not necessarily. Can an organization anticipate and plan for everything? Certainly not. But **such findings should at least call into question the inclination to simply maximize flex**ibility **and discretion in an emergency, without, for example, structural incentives that might ensure the engagement of professional expertise**. n209 Particularly if one embraces the view that the most potentially damaging terrorist threats are **nuclear and biological terrorism**, involving highly technical information about weapons acquisition and deployment, a security policy **structure based on nothing more than general popular mandate and political instincts is unlikely to suffice**; **a structure that systematically excludes knowledge of and training in emergency response will almost certainly result in mismanagement**. n210 In this light, a general take on role effectiveness might suggest favoring a structure in which the engagement of relevant expertise in crisis management is required, leaders have incentives to anticipate and plan in advance for trade-offs, and [\*1608] organizations are able to train subordinates to ensure that plans are adhered to in emergencies. Such **structural constraints could help increase the likelihood that something more than arbitrary attention has been paid before transcendent priorities are overridden.**

**Oversight stops arbitrariness, not flex**

Stephen **Holmes 9**, Walter E. Meyer Professor of Law, New York University School of Law, “The Brennan Center Jorde Symposium on Constitutional Law: In Case of Emergency: Misunderstanding Tradeoffs in the War on Terror”, April, California Law Review, 97 Calif. L. Rev. 301, Lexis

Concerted efforts to shirk and deflect responsibility, moreover, provide an illuminating context in which to reconsider Vice President Dick Cheney's mantra, "The risks of inaction are far greater than the risk of action." n41 The risks of inaction, in Cheney's worldview, are the risks of being "**strangled by law**," n42 in Jack Goldsmith's phrase, of being hamstrung by due process of law and constitutional checks and balances. Cheney's warnings about the hazards of failing to act, therefore, suggest that the metaphor of a tradeoff between liberty and security is not as anti-dogmatic and anti-hysterical as one might have initially thought. Behind the associated images of balances and scales, we find in fact that a spurious urgency is being invoked to justify a psychological or ideological unwillingness to submit proposed policies to a nonpartisan and professionally conducted **c**ost-**b**enefit **a**nalysis. This is the ultimate paradox of the anti-liberal approach to national security. The misleading hypothesis of a tradeoff between liberty and security has been used, surreptitiously, to prevent the application of cost-benefit thinking to alternative proposals for managing [\*321] the risk of terrorism, including nuclear terrorism.¶ Cheney's maxim about the risks of inaction escapes being false only by being meaningless. Given the scarcity of resources, **every action is** an **inaction**; heightening security in one respect opens up security vulnerabilities along other dimensions. For example, assigning the majority of the CIA's Arabic speakers to Iraq means withdrawing them from other missions; if the attention of high-level officials is devoted to one problem, it will not be devoted to another.¶ And here is another familiar example. American intelligence agencies reportedly hesitate to hire native Farsi-or Pashto-or Arabic-speaking agents because the best-qualified candidates have relatives in Muslim countries, where reliable background checks are difficult to carry out. n43 This is a serious problem because only CIA and FBI agents fluent in these languages are capable of recruiting and handling informants. n44 This example, too, illustrates that the **real tradeoffs** in the **war on terror** do not involve a sacrifice of liberty for security, but rather a willingness to increase one risk in order to reduce another risk. In this case, American intelligence has to run the risk of hiring compromised personnel n45 in order to reduce the risk of failing to understand the enemy. The tradeoffs necessary in the war on terror, as I have been arguing, almost always involve this sort of gamble. The question is: who has the right to choose the set of security risks that we, as a country, would be better off running?¶ Policymakers misunderstand worst-case reasoning when they use it to hide from themselves and others the opportunity costs of their risky choices. The commission of this elementary fallacy by Vice President Cheney and other architects of the U.S. response to 9/11 has been extensively documented by Ron Suskind. n46 Allocating national-security resources without paying attention to opportunity costs is equivalent to spending binges under soft budget constraints, an arrangement notorious for its unwelcome consequences. One cannot reasonably multiply "the magnitude of possible harm from an attack" (for example, a nuclear sneak attack by al Qaeda using WMD supplied by Saddam Hussein) by the low "probability of such an attack" n47 and then conclude that one must act immediately to preempt that remote threat without [\*322] first scanning the horizon and inquiring about other low-probability catastrophic events that are equally likely to occur. One cannot say that a one-percent possibility of a terrifying Saddam-Osama WMD handoff justifies placing seventy percent of our national-security assets in Iraq. But this seems to be how the Bush administration actually "reasoned," perhaps because of its go-it-alone fantasies, as if scarce resources were not a problem. Or, perhaps those responsible for national security during the Bush years succumbed to commission bias, namely, the overpowering feeling, in the wake of a devastating attack, that inaction is intolerable. This uncontrollable urge to act is often experienced in emergencies, namely, in situations where decision makers need to do something but do not know what to do.¶ Among President Bush's many unfortunate bequests to President Obama is the desperate "readiness" problem that afflicts the American military, overstretched in Iraq and Afghanistan and therefore unprepared to meet a third crisis elsewhere in the world. This problem was a direct result of the Bush administration's **failure to take** scarcity of resources and **op**portunity **costs into account**. What **secret and unaccountable exec**utive **action made possible**, it turns out, was **not flex**ible adaptation to the demands of the situation but rather profligacy, **arbitrariness** and a **failure to set priorities** in a semi-rational way. Defenders of the half-truth that the capacity to adapt is increased when rules are bent or broken seem to have a **weak grasp of the** elementary **distinction between flex**ibility **and arbitrariness**.¶ The Founders, by contrast, understood quite well the difference between the flexible and the arbitrary. The ground **rules** for decision making that they built into the American constitutional structure were meant to maximize the first while minimizing the second. From their perspective, therefore, the question "Can there be too much power to fight terrorism?" is poorly formulated. The right question to ask is: can there be too much **arbitrary exec**utive **action** in the United States' armed struggle with al Qaeda, potentially **wasting** scarce **resources** that could be more usefully deployed in another way? And the answer to this second question is **obviously "yes."**