# \*\*\*1AC

#### Same as Texas Round 2

# \*\*\*2AC

## \*\*\*Case – NATO

### A2: Austerity

#### Their alt cause is irrelevant – austerity solved now

Eide 2/11/13 (Barth, defense minister of Norway, “Closing the gap: Keeping NATO strong in an era of austerity” <http://www.nato.int/cps/en/SID-21281BCB-2C102202/natolive/opinions_98350.htm?selectedLocale=en>)

The good news is that we already have a solid conceptual basis for keeping NATO strong. At our Summit in Lisbon two and a half years ago, we adopted a new Strategic Concept for our Alliance. It describes the risks and threats that we are up against. And it highlights three essential core tasks to meet the Allies’ individual and shared interests – collective defence, crisis management, and cooperative security. But in order to carry out these tasks successfully, we need the right forces and the right capabilities. And at a time of financial difficulties for many of our nations, acquiring those forces and capabilities has become a formidable challenge. At our most recent NATO Summit in Chicago last May, our Heads of State and Government set the goal of “NATO Forces 2020”: modern, tightly connected forces that are equipped, trained, exercised and commanded so that they can operate, together with other allies – and with partners – in any environment. To help us reach this goal, we also agreed at Chicago to pursue two separate initiatives: Connected Forces and Smart Defence. Smart Defence is meant to be a new guiding principle for capability development. The aim here is to encourage multinational solutions to both maintaining and acquiring defence capabilities – in other words, nations working together to deliver capabilities that they cannot afford alone. Connected Forces has garnered fewer headlines, but it’s just as important as Smart Defence. Its objective is to maintain and strengthen the readiness and interoperability of our forces, even as our operations draw down. We will place a greater emphasis on NATO-led training and exercises, taking into account the specific regional knowledge and expertise of countries, including that of Norway and its Nordic neighbours. We also want to make better use of computer-assisted training and simulation. And we will take advantage of the U.S. offer to rotate elements of a U.S.-based combat brigade to Europe on an annual basis for exercises that can help turn the NATO Response Force into an effective, deployable capability, one that has experience operating in different environments and addressing different scenarios. (In this regard, I applaud Norway’s efforts to focus NATO’s military command structure on the unique strategic challenges in this and other regions of the Alliance, rather than taking a one-size-fits-all approach.) We are off to a good start in implementing both Smart Defence and the Connected Forces Initiative. But it is vital that we maintain the momentum. Our Libya operation two years ago demonstrated that European Allies and Canada can take the lead in NATO-led combat operations – and Norway’s air force performed brilliantly. But Libya also confirmed the Alliance’s over-reliance on some critical U.S. capabilities, especially strategic enablers like Intelligence, Surveillance and Reconnaissance, and air-to-air refuelling. This transatlantic capability gap is simply not sustainable in the long term. First, the fiscal crisis has hit the United States as well, and it will be cutting defence expenditure in the coming years (although hopefully avoiding the meat-axe cuts required by “sequestration”). The U.S. also has a revised defence strategy that shifts the emphasis of its force posture from Europe to the Middle East and the Asia-Pacific region.

## \*\*\*CASE – PQD

### A2: No PQD Spillover

#### The judiciary adheres to political question deference now—but open doctrinal repudiation would reverse that

Franck 92 Thomas, Murray and Ida Becker Professor of Law, New York University School of Law Wolfgang Friedmann Memorial Award 1999, *Political Questions/Judicial Answers*

Sensitive to this historical perspective, many scholars, but few judges, have openly decried the judiciary’s tendency to suspend at the water’s edge their jealous defense of the power to say what the law is. Professor Richard Falk, for example, has criticized judges’ “ad hoc subordinations to executive policy”5 and urged that if the object of judicial deference is to ensure a single coherent American foreign po1icy, then that objective is far more likely to be secured if the policy is made in accordance with rules “that are themselves not subject to political manipulation.”6 Moreover, as a nation publicly proclaiming its adherence to the rule of law, Falk notes, it is unedifying for America to refuse to subject to that rule the very aspect of its governance that is most important and apparent to the rest of the world.7 Professor Michael Tigar too has argued that the deference courts show to the political organs, when it becomes abdication, defeats the basic scheme of the Constitution because when judges speak of “the people” as “the ultimate guardian of principle” in political-question cases, they overlook the fact that “the people” are the “same undifferentiated mass” that “historically, unmistakably and, at times, militantly insisted that when executive power immediately threatens personal liberty, a judicial remedy must be available.” Professor Louis Henkin, while acknowledging that certain foreign relations questions are assigned by the Constitution to the discretion of the political branches, also rejects the notion that the judiciary can evade responsibility for deciding the appropriate limits to that discretion, particularly when its exercise comes into conflict with other rights or powers rooted in the Constitution or laws enacted in accordance with its strictures.9 His views echo earlier ones espoused by Professor Louis Jaffe, who argued that while the courts should listen to advice tendered by the political branches on matters of foreign pol icy and national security, “[t]his should not mean that the court must follow such advice, but that without it the court should not prostrate itself before the fancied needs of diplomacy and foreign policy. The claim of policy should be made concrete in the particular instance. Only so may its weight, its content, and its value be appreciated. The claims of diplomacy are not absolute; to question their compulsion is not treason.”° There has been little outright support from the judiciary for such open calls to repudiate the practice of refusing to adjudicate foreign affairs cases on their merits. While some judges do refuse to apply the doctrine, holding it inapplicable in the specific situation or passing over it in silence, virtually none have hitherto felt able to repudiate it frontally. On the other side, some judges continue to argue vigorously for the continued validity of judicial abdication in cases implicating foreign policy or national security. These proponents still rely occasion ally on the early shards of dicta and more rarely on archaic British precedents that run counter to the American constitutional ethos. More frequently today, their arguments rely primarily on a theory of constitutionalism—separation of powers—and several prudential reasons.

#### Making war powers justiciable causes a slippery slope to other issues

Miller 10 (Mathew Edwin, JD – University of Michigan Law School, Associate – Latham & Watkins LLP, “The Right Issue, the Wrong Branch: Arguments against Adjudicating Climate Change Nuisance Claims,” Michigan Law Review, November, 109 Mich. L. Rev. 257, Lexis)

However, to say that cases like American Electric Power are justiciable just because plaintiffs allege a public nuisance begs the question: Why should such claims automatically be justiciable? It contravenes the purpose and articulation of the political question doctrine to suggest that nuisances are categorically justiciable because political questions have historically excluded torts between private parties and have focused instead on governmental issues like gerrymandering, foreign policy, and federal employment. n70 Again, Baker demanded"discriminating" case-by-case inquiries, rejecting "resolution by any semantic cataloguing." n71 Similarly, the fact that other public nuisance claims have not presented political questions in the past should not preclude such a finding in the climate context. n72 Indeed, the argument for nonjusticiability rests on the notion that climate suits are unique and therefore defy classification among tort precedent. n73 [\*271] Extending the political question doctrine to a public nuisance allegation would surpass precedent in terms of claim-category application. Yet with respect to the theory behind the doctrine, such an extension is proper because cases like American Electric Power would push existing nuisance law to embrace acomplex, qualitatively unique phenomenon that cannot be prudentially adjudicated. n74 The Supreme Court has never held that torts cannot present political questions, so prudential constitutional principles should similarly apply to them. This Note simply argues that the facts, claims, parties, and relief demanded in this particular mode of litigation should fall under the nonjusticiability umbrella, wherever its limits may lie. n75 The following analysis of Baker invokes the American Electric Power situation specifically for the sake of convenience, but the arguments therein should be read to apply to injunctive climate nuisance claims generally.

[Continues to Footnote]

n75. This Note does not purport to suggest exactly where the line ought to be drawn in applying the political question doctrine to tort claims. A consideration of the potential doctrinal "slippery slope" - where courts might improperly refuse to adjudicate claims solely on the basis of complexity - is beyond the scope of the present discussion.

## \*\*\*OFFCASE

### 2AC T – Restrictions

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

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

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

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

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

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

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

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

553 U.S. 723.

#### Ex post is a prohibition and restriction

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

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

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

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

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

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

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

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

#### Prefer our interpretation –

#### A. Overlimits – core cases revolve around regulating the executive, not banning specific policies – their interpretation eliminates the role of topic literature across the areas

#### B. Aff Ground – Ban the policy affs are solved by agent counterplans – err aff because the range of good affs is small and the neg is strapped with generics

#### Reasonability 1st – competing interpretations crowds out substance and the topic is already limited by areas while our aff is located squarely in the literature

### 2AC Security K

#### Debate should be centered on the material implications of passing the plan-key to aff ground by creating a predicable framework and is key to create effective norms to solve conflict

Leahy 10 (Mary-Kate Leahy, Colonel, US military, “KEEPING UP WITH THE DRONES: IS JUST WAR THEORY OBSOLETE?,” http://www.dtic.mil/dtic/tr/fulltext/u2/a526187.pdf)

Failure to examine whether the laws of war remain relevant or should be modified is dangerous. If we delay or indefinitely defer this discussion the risks associated with this procrastination will continue to accumulate. Without broad agreement on the fundamental issue of who is a legal combatant, ordinary civilians who develop this technology and elected leaders who approve its employment potentially become targets at home and abroad. As the operators of weapon systems become more distant from the physical battlefield, the killing process is “sanitized”; UAS operators‟ exemption from physical danger creates a scenario in which “virtueless” war becomes the norm. In such an environment, the warrior ethos is potentially forever altered – and not for the good. Another risk we face if employment of this technology proceeds unchecked and its moral implications unexamined, is the arrival of the day when a “human in the loop” in UAS employment becomes unnecessary. If that day arrives, the principle of proportionality is irrelevant – because human assessment of the cost versus benefit decision regarding a military strike will have been eliminated. These are just a few of the eventualities which await us if we fail to adequately address how UAS changes the conduct of modern warfare. The seriousness of these issues makes this an issue of strategic importance for the United States, as well as both our friends and our adversaries around the globe.

#### Material implications key ---discourse doenst spill over

**Ghughunishvili 10**

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

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

#### Perm do the plan and non-mutually exclusive parts of the alternative---creates self-reflexivity which solves the link but avoids conservative cooption

Cole 10 (David Cole is a professor at Georgetown University Law Center, “Breaking Away,” http://www.newrepublic.com/article/magazine/politics/79752/breaking-away-obama-bush-aclu-guantanamo-war-on-terror)

To dismiss the changes Obama has introduced as merely rhetorical, however, as Goldsmith and others have done, is to miss the critical difference between lawless and law-abiding exercises of state power. The Constitution, domestic law, and international law permit democracies to take aggressive action to defend themselves against attacks like the ones we suffered on September 11. But they insist that when the state employs coercion to achieve security, it must abide by rules designed to forestall government abuse and respect human rights. Bush blatantly disregarded this principle; Obama has embraced it. It is true that, by the end of his term, Bush had been compelled to curtail his most aggressive assertions of power. Waterboarding was out, many of the disappeared prisoners had been transferred to Guantánamo and identified, the military commissions had been improved, and courts were reviewing Guantánamo detentions. But Bush adopted these changes grudgingly, after losing before the courts, Congress, and public opinion. And as the declassified torture memos illustrate, his administration continued to obstinately reinterpret the laws against torture and cruel, inhuman, and degrading treatment in order to permit the CIA to do precisely what Congress, the courts, and international law had forbade. By contrast, Obama has willingly accepted the limits of law. Critics on all sides undermine their credibility if they fail to acknowledge the significant differences between Obama and Bush. Liberals risk sounding as if no national security policy short of ordinary criminal law enforcement will suffice, while conservatives and moderates appear tone-deaf to the difference that the rule of law makes to the legitimacy of state power. For both advocates of civil liberties and defenders of Bush, it is tempting to accuse the Obama administration of being no better than its predecessor. But if we fail to recognize the changes he has instituted, we run the risk of contributing to a misleading historical narrative that will support future presidents who might choose to repeat Bush’s errors. On issues of executive power, history can play an important role. Even if Obama himself is unlikely to unleash the tactics of the previous administration, a future president might justify doing so by pointing to the fact that observers from across the political spectrum agreed that both Bush and Obama had embraced the same policy. There are, however, two areas in which Obama has come up painfully short, and that is on issues of transparency and accountability. These failures threaten to undermine the good that Obama has otherwise done, because if U.S. counterterrorism policy is to succeed, it is critical to restore the trust that Bush’s policies so recklessly squandered.

#### Climate securitization overcomes flawed notions of security discourse – encapsulates their impact

Trombetta 2008

Maria Julia, Environmental security and climate change: analyzing the discourse, Cambridge Review of International Affairs, 21:4, 585-602

The possibility of transforming into a threat something that has not yet materialized and allowing it to bring about the practices suggested by the Copenhagen School in the case of securitization presents a grim perspective. The possible adoption of a precautionary approach to security issues has been criticized on the grounds that it can justify preventive military actions, extensive surveillance measures, the inversion of the burden of proof or actions decided on the worst case scenario (Aradau and van Munster 2007). In the case of the environment, it is possible that the securitization of climate change would result in confrontational politics, with states adopting politics to protect their territory against sea-level rising and immigration; with the Security Council adopting resolutions to impose emission targets, and even military action against polluting factories; and surveillance systems to monitor individual emissions. This possibility, however, depends on taking for granted a security logic based on enemies and extraordinary measures. What is at stake in the climate security discourse is the possibility of introducing mechanisms to prevent emergencies within a system that tends to rely, on the one hand, on governing through emergencies and, on the other hand, on insurance and compensation. The securitization of climate is an attempt to evoke the symbolic power of an environmental discourse based on interdependence and prevention to establish a framework for security and energy governance at the global level. It is about renegotiating the spaces in which risk management and market mechanisms prevail, and those in which intervention and regulations are legitimated. Securitization remains a very political moment. Its implications largely depend on what is securitized and what means are employed to provide security.

#### No risk of endless warfare

**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**.

#### Legal restraints work---exception theory is self-serving and wrong

William E. Scheuerman 6, Professor of Political Science at Indiana University, Carl Schmitt and the Road to Abu Ghraib, Constellations, Volume 13, Issue 1

Yet this argument relies on Schmitt’s controversial model of politics, as outlined eloquently but unconvincingly in his famous Concept of the Political. To be sure, there are intense conflicts in which it is naïve to expect an easy resolution by legal or juridical means. But the argument suffers from a troubling circularity: Schmitt occasionally wants to define “political” conflicts as those irresolvable by legal or juridical devices in order then to argue against legal or juridical solutions to them. The claim also suffers from a certain vagueness and lack of conceptual precision. At times, it seems to be directed against trying to resolve conflicts in the courts or juridical system narrowly understood; at other times it is directed against any legal regulation of intense conflict. The former argument is surely stronger than the latter. After all, legal devices have undoubtedly played a positive role in taming or at least minimizing the potential dangers of harsh political antagonisms. In the Cold War, for example, international law contributed to the peaceful resolution of conflicts which otherwise might have exploded into horrific violence, even if attempts to bring such conflicts before an international court or tribunal probably would have failed.22¶ Second, Schmitt dwells on the legal inconsistencies that result from modifying the traditional state-centered system of international law by expanding protections to non-state fighters. His view is that irregular combatants logically enjoyed no protections in the state-centered Westphalian model. By broadening protections to include them, international law helps undermine the traditional state system and its accompanying legal framework. Why is this troubling? The most obvious answer is that Schmitt believes that the traditional state system is normatively superior to recent attempts to modify it by, for example, extending international human rights protections to individuals against states. 23 But what if we refuse to endorse his nostalgic preference for the traditional state system? Then a sympathetic reading of the argument would take the form of suggesting that the project of regulating irregular combatants by ordinary law must fail for another reason: it rests on a misguided quest to integrate incongruent models of interstate relations and international law. We cannot, in short, maintain core features of the (state-centered) Westphalian system while extending ambitious new protections to non-state actors.¶ This is a powerful argument, but it remains flawed. Every modern legal order rests on diverse and even conflicting normative elements and ideals, in part because human existence itself is always “in transition.” When one examines the so-called classical liberal legal systems of nineteenth-century England or the United States, for example, one quickly identifies liberal elements coexisting uneasily alongside paternalistic and authoritarian (e.g., the law of slavery in the United States), monarchist, as well as republican and communitarian moments. The same may be said of the legal moorings of the modern welfare state, which arguably rest on a hodgepodge of socialist, liberal, and Christian and even Catholic (for example, in some European maternity policies) programmatic sources. In short, it is by no means self-evident that trying to give coherent legal form to a transitional political and social moment is always doomed to fail. Moreover, there may be sound reasons for claiming that the contemporary transitional juncture in the rules of war is by no means as incongruent as Schmitt asserts. In some recent accounts, the general trend towards extending basic protections to non-state actors is plausibly interpreted in a more positive – and by no means incoherent – light.24¶ Third, Schmitt identifies a deep tension between the classical quest for codified and stable law and the empirical reality of a social world subject to permanent change: “The tendency to modify or even dissolve classical [legal] concepts…is general, and in view of the rapid change of the world it is entirely understandable” (12). Schmitt’s postwar writings include many provocative comments about what contemporary legal scholars describe as the dilemma of legal obsolescence. 25 In The Partisan, he suggests that the “great transformations and modifications” in the technological apparatus of modern warfare place strains on the aspiration for cogent legal norms capable of regulating human affairs (17; see also 48–50). Given the ever-changing character of warfare and the fast pace of change in military technology, it inevitably proves difficult to codify a set of cogent and stable rules of war. The Geneva Convention proviso that legal combatants must bear their weapons openly, for example, seems poorly attuned to a world where military might ultimately depends on nuclear silos buried deep beneath the surface of the earth, and not the success of traditional standing armies massed in battle on the open field. “Or what does the requirement mean of an insignia visible from afar in night battle, or in battle with the long-range weapons of modern technology of war?” (17).¶ As I have tried to show elsewhere, these are powerful considerations deserving of close scrutiny; Schmitt is probably right to argue that the enigma of legal obsolescence takes on special significance in the context of rapid-fire social change.26 Unfortunately, he seems uninterested in the slightest possibility that we might successfully adapt the process of lawmaking to our dynamic social universe. To be sure, he discusses the “motorization of lawmaking” in a fascinating 1950 publication, but only in order to underscore its pathological core.27 Yet one possible resolution of the dilemma he describes would be to figure how to reform the process whereby rules of war are adapted to novel changes in military affairs in order to minimize the danger of anachronistic or out-of-date law. Instead, Schmitt simply employs the dilemma of legal obsolescence as a battering ram against the rule of law and the quest to develop a legal apparatus suited to the special problem of irregular combatants.

#### The alternative is impossible---our expertise epistemology is key to confront global threats

**Cole, 12 –** professor of law at Georgetown (David, “Confronting the Wizard of Oz: National Security,

Expertise, and Secrecy” 44 Conn. L. Rev. 1617-1625 (2012), <http://scholarship.law.georgetown.edu/facpub/1085>)

Rana is right to focus our attention on the assumptions that frame modern Americans’ conceptions about national security, but his assessment raises three initial questions. First, it seems far from clear that there ever was a “golden” era in which national security decisions were made by the common man, or “the people themselves,” as Larry Kramer might put it.8 Rana argues that neither Hobbes nor Locke would support a worldview in which certain individuals are vested with superior access to the truth, and that faith in the superior abilities of so-called “experts” is a phenomenon of the New Deal era.9 While an increased faith in scientific solutions to social problems may be a contributing factor in our current overreliance on experts,10 I doubt that national security matters were ever truly a matter of widespread democratic deliberation. Rana notes that in the early days of the republic, every able-bodied man had to serve in the militia, whereas today only a small (and largely disadvantaged) portion of society serves in the military.11 But serving in the militia and making decisions about national security are two different matters. The early days of the Republic were at least as dominated by “elites” as today. Rana points to no evidence that decisions about foreign affairs were any more democratic then than now. And, of course, the nation as a whole was far less democratic, as the majority of its inhabitants could not vote at all.12 Rather than moving away from a golden age of democratic decision-making, it seems more likely that we have simply replaced one group of elites (the aristocracy) with another (the experts). Second, to the extent that there has been an epistemological shift with respect to national security, it seems likely that it is at least in some measure a response to objective conditions, not just an ideological development. If so, it’s not clear that we can solve the problem merely by “thinking differently” about national security. The world has, in fact, become more interconnected and dangerous than it was when the Constitution was drafted. At our founding, the oceans were a significant buffer against attacks, weapons were primitive, and travel over long distances was extremely arduous and costly. The attacks of September 11, 2001, or anything like them, would have been inconceivable in the eighteenth or nineteenth centuries. Small groups of non-state actors can now inflict the kinds of attacks that once were the exclusive province of states. But because such actors do not have the governance responsibilities that states have, they are less susceptible to deterrence. The Internet makes information about dangerous weapons and civil vulnerabilities far more readily available, airplane travel dramatically increases the potential range of a hostile actor, and it is not impossible that terrorists could obtain and use nuclear, biological, or chemical weapons.13 The knowledge necessary to monitor nuclear weapons, respond to cyber warfare, develop technological defenses to technological threats, and gather intelligence is increasingly specialized. The problem is not just how we think about security threats; it is also at least in part objectively based.

#### The alt invites worse conflict

Dipert 6 (Randall, PhD, Professor of Philosophy, University at Buffalo, Buffalo, “Preventive War and the Epistemological Dimension of the Morality of War,” https://www.law.upenn.edu/live/files/1291-dipert-preventive-war)

One might think that this principle would give little guidance in recommending anticipatory wars. However, let us suppose that John Rawls, following Raymond Aron and others, is correct in claiming that democratic states (‘liberal constitutional democracies’) have very few except legitimate reasons to go to war, and consequently rarely do go to war for ‘bad’ reasons (Rawls 1999: 47).42 Some wars might still occur because of epistemic mistakes or from (legitimate) mutual fear and distrust trust\*/something Rawls seems not to consider. Let us further suppose that this general level of warfare in a region or in the world gradually decreases in those places where there exist nothing but constitutional democracies. Let us further suppose that democracy can be imposed, or the conditions for democracy can be created, by the correct application of military force. Then there are circumstances in which, if the conditions for the permissibility of preventive of war are met, then preventive war is further recommended by this second principle. There is an interesting question here, beyond philosophical considerations, about whether a nation should formulate and announce policies of exactly what conditions will, and what conditions will not, trigger preventive war. 43 But there is another and telling side of this coin: what if we should have and announce a policy of never engaging in any preemptive or preventive war? Here I think we are encouraging a hostile enemy to prepare an offensive, including weapons development, right up an actual attack. If there do exist, or can possibly exist, truly devastating weapons, this is to invite their development and one’s own annihilation. Even a small nuclear power with ballistic missiles (perhaps positioning missiles on ocean freighters on the high seas) would be free to inflict devastating attacks. While large, stable countries such as China and the former USSR, have historically been deterred by the policy of massive nuclear retaliation, it is unlikely that all nuclear nations with ballistic missiles (including terrorist organizations), will remain deterrable. I believe that such a policy of banning or foreswearing preventive war would almost certainly result in more, rather than fewer, wars and deaths, because it would embolden more state-like entities to believe that they could succeed in an unjust war, especially in ideological wars whose ‘success’ consists simply in inflicting harm on its enemy at all costs.44 To announce a policy of rejecting any preemptive or preventive war is thus almost certainly mistaken and violates my second principle insofar as it increases possible threats. The rare and careful use of restricted preemptive and preventive war, under unspecified conditions, in the world we are likely to have for centuries\*/without, for example, militarily dominant international organizations willing to punish with force the illegitimate use of force\*/is actually likely to make the world more safe. This is not a conclusion that I am especially happy with.45

#### **The alternative collapses NATO which is critical to upholding deterrence which prevents the most proximate causes of war---the theory is useful despite flaws**

Lupovici 10 Amir, assistant professor in the Department of Political Sciences at Tel Aviv University, International Studies Quarterly, "The Emerging Fourth Wave of Deterrence Theory--Toward a New Research Agenda", onlinelibrary.wiley.com/doi/10.1111/j.1468-2478.2010.00606.x/pdf

The ﬁrst three waves of deterrence theory made some signiﬁcant theoretical contributions not only to the study of deterrence but with regard to security studies in general. These theories constituted how scholars thought about deterrence for many years, and in this way they helped to solidify the realist school of international relations (Jervis 1979:290–291).5 Essential inﬂuences of the third wave can also be seen in the framing of theoretical issues, such as enduring rivals (Huth and Russett 1993; and compare Lieberman 1995 with Stein 1996), conventional deterrence (Mearsheimer 1983; Shimshoni 1988), extended deterrence (Huth 1988), and psychological and cognitive understanding of decision making (Jervis 1985; Lebow and Stein 1987, 1989; Morgan 2003:134–142, 149–151; see also Levy 1992).6 Furthermore, the methodological impact of this wave can also be seen (Achen and Snidal 1989:161; Lebow and Stein 1990:346–351), not only in the ﬁeld of security studies but in international relations and political science as well (Maoz 2002:172–174; see also King, Keohane, and Verba 1994:24, 134– 135).¶ The ﬁrst three waves of deterrence theory also signiﬁcantly inﬂuenced policymaking. The un-intuitive implications of deterrence literature were evident in the strategies and relations of the superpowers, in particular with regard to the strategy of MAD aimed at stabilizing relations between opponents, as demonstrated in the SALT agreements of 1972 (Adler 1992; Garthoff 1994:647, 849– 852; Evangelista 1999). Deterrence theories allowed policymakers to organize strategic knowledge into a clear conceptual framework that was easier to ‘‘sell,’’ providing them with strategic language and jargon (Jervis 1979:291; Kaplan 1991:171–172) that included concepts such as massive retaliation, invulnerability, assured destruction, counterforce, pre-emptive strike, ﬁrst strike, second strike, and ﬂexible response. While some of these concepts were not completely new (Quester 1966:1–2; Chilton 1985:115), they gained inﬂuence primarily in the context of deterrence.¶ Scholars, mainly of the ﬁrst two waves, based the idea of deterrence upon apolitical and ahistorical arguments (Jervis 1979:322–323; Kaplan 1991:109; Trachtenberg 1991:40, 44–46), and as a result paid very little attention to its operation in reality. Ironically, this obfuscation of empirical contradictions and problems led to the consensus on its validity.7 As Adler argues, ‘‘because the science of nuclear strategy has no empirical reference points and data banks, it cannot be falsiﬁed’’ (Adler 1992:107).8 In other words, deterrence could become a heuristic tool, supplying simple, and even simplistic, solutions to complicated foreign policy problems. This made it more attractive than other strategic options to decision makers. Moreover, the concept of deterrence could force rationality on decision making, so that deterrence practices became a convincing—and even justiﬁable—option (Kaplan 1991:72–73; Morgan 2003:13).

#### CMR is a DA to the alternative – their criticism of security discourse would shut down U.S. power projection

### 2AC SOF CP

#### Perm do both

#### Perm – do the counterplan – “targeted killing” does not include Special Forces

Bachmann 13 (Sascha-Dominik, Associate Professor at the University of Bournemouth (UK), research focus on international legal subjects, “Targeted Killings: Contemporary Challenges, Risks and Opportunities”, http://jcsl.oxfordjournals.org/content/early/2013/05/31/jcsl.krt007.full)

An early example of ‘targeted killing’ in the history of armed conflict can be found in the military tactics applied mainly by snipers. Prominent and well-documented examples of sniper warfare can be found in the annals of the Eastern Front during World War II: German and Soviet forces used snipers to annihilate systematically the enemy’s mid-level military leadership: German losses to Soviet snipers were so severe during the battle for Stalingrad in autumn of 1942 that officers as well as non-commissioned officers had to adapt means of camouflage to blend in with their (enlisted) men and in order to avoid being targeted by enemy snipers.21 Operation ‘Neptune Spear’ as well as the alleged Israeli Mossad Operation to kill the Hamas official Mahmud al-Mabhuh in Dubai in 201122 involved the use of Special Forces on the ground, or intelligence operatives/assets respectively, constitute commando operations as well targeting operations in the wider sense. Such tactical capture and kill operations executed by Special Forces assets are not the focus of this short contribution: its focus is solely on targeted killing, as a means of warfare which is executed by using remotely piloted aircraft, UAVs or drones respectively, as weapons platform. Falling outside the scope of targeted killings discussed in this article is the continuing use of Improvised Explosive Devices (IEDs) in Iraq and Afghanistan by the Taliban and other affiliated groups. Targeted terrorism, involving the use of IEDs, suicide bombings or suicide attack squads as impressively shown in the 2011 Mumbai attacks, seem to constitute a hybrid form of unconventional warfare which combines elements of both, assassination and targeted killings in the widest sense. The scope of this article is on targeted killing as a means of warfare and hence does not warrant a further discussion of this form of attacks as a potential example for targeted killings. Targeted killing as a means of killing enemies of a state has been employed most frequently by the USA as part of its overall military strategy against Al-Qaeda and the Taliban.23 While the USA did not ‘invent’ this form of warfare it has taken the lead in advancing its development and overall design in respect of targeting processes, command and control as well as the use of increasingly sophisticated technology.24 The use of drones for executing kinetic, lethal, strikes against hostile and enemy targets has its tangible military benefits in terms of operational capabilities, readiness and its overall availability as a defensive as well as offensive form of warfare. Targeted killing by UCAS can be executed at very short notice and does not require the deployment of and the presence of substantial own forces in the theatre of operations. This availability and flexibility of using drones as a platform for the execution of targeted killings makes this form of warfare (without own casualties) so formidable when responding to present threats at an ad hoc basis. Consequently, both proliferation and expansion of the use of UCAS are increasing.25 Examples hereof are the present discussions in the UK to increase the availability of UAV systems for reconnaissance and combat, the RAF’s decision to relocate its UAV assets from the US to RAF Waddington near Lincoln and to establish a new Unmanned Air Systems Capability Development Centre (UASCDC) there. The overall capabilities of such airborne weapon platform systems has also found supporters among nations who were initially opposed to this form of warfare, such as Germany which for historical as well as political reasons has been known to be more reluctant to the use of force and to participate in combat operations in a more active role.26

#### Normal means counterplans are illegitimate – allows for do the plan minus a penny and is infinitely regressive since there is no literature that compares the plan and the counterplan nor a solvency advocate that seeks to exlude special operation forces

#### Can’t solve political question doctrine – they allow for linedrawing which our tojaki evidence says allows confusing precedent and application of the political question doctrine – Limited and confusing precedent means no future application of the CP- cant solve CMR or our add ons

Hansford and Spriggs 06 (Thomas G. Hansford, Department of Government and International Studies, University of South Carolina, and James, Department of Political Science, University of California, Davis, “The Politics of Precedent on the U.S. Supreme Court,” google books p 6)

Broadly speaking, the Court's legal interpretation of precedent takes¶ two forms; and it is these two forms of interpretation on which this book¶ will primarily focus. First, the Court can interpret a precedent positively¶ by relying on it as legal authority (Aldisert 1990; Baum 2001,142; Freed¶ 1996; Johnson 1985, 1986; McGuire and MacKuen 2001). When doing¶ so, for example, the Court can follow the precedent by indicating that it¶ is controlling or determinative for a dispute. The positive interpretation¶ of precedent thus involves the Court's explicit reliance on the case for at¶ least part of its justification for the outcome in the dispute before it. This¶ treatment of precedent can invigorate its legal authority and possibly ex-pand its scope.¶ Second, the Court can negatively interpret a precedent by restricting its reach or calling into question its continuing importance. The Court can,¶ for example, distinguish a precedent by finding it inapplicable to a new¶ factual situation, limit a case by restating the legal rule in a narrower¶ fashion, or even overrule a case and declare that it is no longer binding¶ law (see Baum 2001, 142; Gerhardt 1991, 98-109; Johnson 1985, 1986;¶ Maltz 1988, 382-88; Murphy and Pritchett 1979, 491-95). With this¶ kind of interpretation, the Court expresses some level of disagreement¶ with the precedent and, as a result, may undercut the legal authority of a precedent and diminish its applicability to other legal disputes.

#### The plan is key to challenge active sonar

Times Tribune 11/24/13

http://thetimes-tribune.com/news/health-science/sonar-tests-hazardous-to-sea-life-1.1589369

Sonar tests hazardous to sea life

Q: I understand the Navy is doing sonar testing and training in the oceans and that their activities will likely kill hundreds, if not thousands, of whales and other marine mammals. What can be done to stop this? A: Active sonar is a technology used on ships to aid in navigation, and the Navy tests and trains with it extensively in American territorial waters. The Navy also conducts missile and bomb testing in the same areas. But environmentalists and animal advocates contend that this is harming whales and other marine wildlife, and are calling on the Navy to curtail such training and testing exercises accordingly. "Naval sonar systems work like acoustic floodlights, sending sound waves through ocean waters for tens or even hundreds of miles to disclose large objects in their path," reports the nonprofit Center for Biological Diversity. "But this activity entails deafening sound: even one low-frequency active sonar loudspeaker can be as loud as a twin-engine fighter jet at takeoff." According to the CBD, sonar and other military testing can have an especially devastating effect on whales, given how dependent they are on their sense of hearing for feeding, breeding, nursing, communication and navigation. The group adds that sonar can also directly injure whales by causing hearing loss, hemorrhages and other kinds of trauma, as well as drive them rapidly to the surface or toward shore. In 2007, a U.S. appeals court sided with the Natural Resources Defense Council, which had contended that Navy testing violated the National Environmental Policy Act, Marine Mammal Protection Act and Endangered Species Act. But within three months of this ruling, then-President George W. Bush exempted the Navy, citing national security reasons. The exemption was subsequently upheld by the Supreme Court upon challenge, and the Navy released estimates that its training exercises scheduled through 2015 could kill upward of 1,000 marine mammals and seriously injure another 5,000. But in September a federal court in California sided with green groups in a lawsuit charging that the National Marine Fisheries Service failed to protect thousands of marine mammals from Navy warfare training exercises in the Northwest Training Range Complex along the coasts of California, Oregon and Washington. As a result, the NMFS must reassess its permits to ensure that the Navy's activities comply with protective measures under the Endangered Species Act. The ruling will no doubt be challenged. Also, the Navy still has the green light to use sonar and do weapons testing off the East Coast.

#### That results in submarine hulls to collapse

Hyson-Research Director and Co-Founder Sirius Institute-2K

Letter to chief of the marine mammal conservation division of NMFS, 4/3, http://www.interpac.net/~plntpuna/siriusa/VOD/vod-vol-3No-4.htm)

“Another matter ignored is that TIME REVERSED ACOUSTICS are used….even available in Scientific American.”

Another matter ignored is that TIME REVERSED ACOUSTICS are used, as detailed by Dr. Mathias Fink in the November 1999 Scientific American. In this article, Dr. Fink shows how any sound received by a LFAS array can be reversed in time (after recording) and sent back to the point of detection, massively amplified. This is known as a phase-conjugate system. At the proposed 240 dB levels of output reported, and using several ships in concert, where the powers of each are combined in phase, one can develop powers and intensities orders of magnitude more intense than a single array, in fact the increase is on the order of the SQUARE of the number of systems combined. Thus the 5 ship fleet proposed for testing when combined will have powers approaching 5 X 5 or 25 times as intense, and with 30 ships together (as projected for the DEPLOYED system, which is what the EIS should have actually covered) then the total power is some 30 X 30 or 900 times the power and intensity of a single 18 projector array hung under only one ship. These systems can create shock waves in the water, intense pressure waves traveling at 5500 feet per second. With sharp focusing, and by making two or more shock waves cross going different directions, the water cavitates, leaving a region of steam in the cavitated area. This area then collapses, like a large bubble, with the release of tremendous focused energy, analagous to an acoustic "laser" Suppose one projected a broad band sound into the water, and then listened. Some frequencies would cause, say, a submarine hull to resonate, just as the whales' ears and tissues do. One would then receive the reflected sounds from the submarines in the area using the LFAS arrays. One then "time reverses" and amplifies this sound and sends it back. The hull of the targeted submarine will then be resonated, "rung like hitting a bell", with this resonant frequency at extremely high intensities. This could cause a hull, especially near its crush depth, to rupture, sinking the sub, killing the crew. This is an acoustic weapon, with capabilities both in detection and offensive attack. Such acoustic weapons were outlawed years ago by joint treaty of the US and USSR and in the Geneva Conventions. Thus, the LFAS is a matter for Geneva and the United Nations, and other planetary governing bodies such as the World Court at the Hague, and is thus beyond the jurisdiction of the NMFS, and in fact, is a matter for strategic debate. This is "Star Wars" underwater. I have also been told that the completed system will include some 1200 separate units mounted on the bottom of the world's oceans. This increases the influence and magnitude of sound even more. Then, to understand the total impact of this development, we must include the parallel work of NATO allies, France and opposing countries, perhaps the Russians, Chinese or others. Rapid proliferation is likely, given the basic principles are even available in Scientific American.

#### That triggers accidential nuclear war

Wallace-Poli Sci, University of British Columbia-95

Submarine Proliferation and Regional Conflict

Journal of Peace Research vol 32 no 1

http://www.jstor.org.ezproxy.uky.edu/stable/425469?seq=1

In such circumstances, there are a number of ways in which a shooting war could begin accidentally. The most obvious starting- point would see a submarine initiating an attack against an underwater opponent by mistake or miscalculation. With luck, the shooting might stop there, but it need not. Other subs, hearing the distant battle, might assume general war had broken out and launch their own attacks. Political and military commanders, faced with the loss of powerful and expensive assets, would likely be under pressure to retaliate. Most ominously of all, once a submarine battle had begun, those submarines tasked with attacking surface vessels or land targets in the event of all-out war might, out of fear or ignorance, launch their weapons rather than risk their possible destruction. Thus might tactical confusion beneath the waves lead to a full-scale strategic battle above.

#### Night raids increase blowback and collapse relations – turns their impact

OSF 11 (Open Society Foundations, with the Liaison Office, “The Cost of Kill/Capture: Impact of the Night Raid Surge on Afghan Civilians”, http://www.opensocietyfoundations.org/sites/default/files/Night-Raids-Report-FINAL-092011.pdf)

Increased night raids spark backlash The number of night raids has skyrocketed: publicly available statistics suggest a five - fold increase between February 2009 and December 2010. 3 International military conducted, on average, 19 night raids per night — a total of 1700 night raids — in the three-month period from roughly December 2010 to February 2011, according to the NATO-led International Security Assistance Force (ISAF). 4 ISAF has not released more up-to-date figures; however, interviews conducted for this report suggest a continuing trend of large numbers of night raids, possibly at even higher rates. In April 2011, a senior U.S. military advisor told the Open Society Foundations that as many as 40 raids might take place on a given night across Afghanistan. 5 International military officials argue that the increase in night raids has been their most successful strategy in the last year, although they have offered no evidence to support these claims. They argue that absent the ability to continue night raids, insurgent attacks would increase significantly. However, these touted gains have come at a high cost. The escalation in raids has taken the battlefield more directly into Afghan homes, sparking tremendous backlash among the Afghan population. The Afghan government calls the raids counter - productive to reconciliation efforts with insurgent groups, and a threat to Afghan sovereignty, given the limited Afghan control of night raids. Complaints over night raids have marred Afghan relations with international partners, particularly the United States, and have complicated long - term strategic partnership discussions.

#### Counterplan links to the net benefit – Special Forces conduct drone strikes

Currier 13 (Cora, covers national security, previously editorial staff at the New Yorker, “Everything We Know So Far About Drone Strikes”, http://www.propublica.org/article/everything-we-know-so-far-about-drone-strikes)

The CIA isn’t alone in conducting drone strikes. The military has acknowledged “direct action” in Yemen and Somalia. Strikes in those countries are reportedly carried out by the secretive, elite Joint Special Operations Command. Since 9/11, JSOC has grown more than tenfold, taking on intelligence-gathering as well as combat roles. (For example, JSOC was responsible for the operation that killed Osama Bin Laden.) The drone war is carried out remotely, from the U.S. and a network of secret bases around the world. The Washington Post got a glimpse – through examining construction contracts and showing up uninvited – at the base in the tiny African nation of Djibouti from which many of the strikes on Yemen and Somalia are carried out. Earlier this year, Wired pieced together an account of the war against Somalia’s al-Shabaab militant group and the U.S.’s expanded military presence throughout Africa.

#### Night raids require accountability – perception of impunity decreases effectiveness

OSF 11 (Open Society Foundations, with the Liaison Office, “The Cost of Kill/Capture: Impact of the Night Raid Surge on Afghan Civilians”, http://www.opensocietyfoundations.org/sites/default/files/Night-Raids-Report-FINAL-092011.pdf)

The increased number of night raids, with a potential to impact a greater number of non - combatants, should be matched by stronger transparency, accountability, and redress 20 mechanisms — issues that ISAF and U.S. forces have been weak on in the past, particularly with regard to Special Forces activities. ISAF has made efforts in the last year to try to address complaints about accountability for civilian casualty incidents more generally, including those resulting from night raids. ISAF has continued to su pport the development of a Civilian Casualty Tracking Cell since it was created in December 2008, as well as other reporting and investigation processes. Incidents that ISAF suspects of resulting in civilian casualties are investigated by the Joint Inciden t Assessment Teams (JIAT), with investigations supervised by a one - star general or equivalent. Particularly controversial or murky cases may involve a site investigation by the JIAT, often undertaken jointly with Afghan government counterparts. These prima rily involve an assessment of any evidence at the site, interviews with those troops involved, and with Afghan local officials. A Civilian Casualties Working Group was instituted in March 2011 to explore policy changes at an operational or tactical level that could better reduce civilian casualties and complaints. In the late spring and summer of 2011, ISAF demonstrated greater efforts to reach out to international and Afghan civil society by hosting or participating in conferences designed to allow civil society to engage with them on civilian casualty concerns , and taking more meetings with those raising independent concerns. 70 Though these are positive steps forward, other aspects of accountability have failed to improve, or even worsened. ISAF has app eared less responsive to independent monitors raising civilian casualty concerns than in the past. For example, ISAF has more often than not refused to discuss a number of suspected civilian casualty cases, provide evidence that those alleged to be civilia ns were in fact combatants, share video or other on - site evidence (which used to be forthcoming in the past), re - examine initial findings where contrary evidence surfaces, or to report the final results of investigations. 71 Public accountability also rema ins poor. Though press releases are often issued immediately following an incident, often noting if an investigation into civilian casualties is underway, the results of that investigation, or any subsequent information, is typically not made publicly avai lable later on. 72 When press releases announcing that insurgents are killed or detained have later been proven wrong, public corrections are rarely issued. Civilian casualty totals in the Civilian Casualty Tracking Cell do not always appear to be corrected to admit mistakes in initial reporting. 73 ISAF has not released public versions of the significant tactical directives since February 2010. 74 Accountability issues are particularly weak for night raids because the forces responsible for the vast majority o f night raids — the Special Forces Task Force Joint Special Operations Command (JSOC) (formerly under Admiral William McCraven ) — are the least transparent of international forces operating in Afghanistan. 75 As a rule, they do not accept interviews or meetings with independent monitors. Despite greater efforts to integrate them into ISAF - HQ, these forces report back to the Special Operations Command ( U.S. SOCOM) based in Tampa, Florida . Despite repeated inquiries, international military officials were not able to confirm that the ISAF tactical directives 21 applied to these forces, given their different command structure. ISAF officials noted that these forces follow all of the tactical directives in practice, including reporting incidents like suspected civilian cas ualties immediately . Some night raids are reportedly CIA operations . Though likely not constituting the majority of night raids, there is zero public accountability over CIA conduct during raids. In addition, it has been more difficult to raise concerns regarding night raids because of a strong presumption by ISAF and U.S. officials that these raids are accurate and effective. Because they are confident that night raid targeting has improved, ISAF and U.S. officials have shown a tendency to disbelieve allegations of civilian casualties. For example, after a night raid in May 2010 in Surkh Rod, Nangarhar, inquiries by the Afghan government, the UN, the Afghanistan Independent Human Rights Commission (AIHRC) , and Human Rights Watch all concluded that this had been a case of mistaken identity, which had led to the deaths of nine civilians. ISAF and U.S. officials steadfastly rejected these claims, and continued to view the raid as a success. It is troubling that in instances like this, separate and unanimou s inquiries by so many credible organizations are not sufficient to challenge ISAF’s internal assessments, which too often appear to rely upon their own officials rather than interviews with eyewitnesses. Because of the overall lack of transparency over t hese night raids, when those involved in civilian casualty incidents or other misconduct are disciplined, these responses rarely — if ever — are publicly acknowledged. The result is a perception of impunity for the entire practice, if not for international forces as a whole.

#### No internal link – even if Special Forces conduct targeted killing operations, it’s not their only duty – the plan doesn’t impact counter-prolif missions unless they include legally defined targeted killings

#### Can’t solve – must be applied equally to all platforms for targeted killing

Chesney 13 (Professor Robert Chesney, Associate Dean for Academic Affairs, University of Texas School of Law, Testimony before the United States House of Representatives Committee on the Judiciary, “Drones and the War on Terror: When Can the United States Target Alleged American Terrorists Overseas?” February 27, 2013, http://www.brookings.edu/~/media/Research/Files/Testimony/2013/02/27%20drones%20chesney/Robert%20Chesney%20Testimony\_House%20Committee%20on%20Judiciary\_%2002272013.pdf)

First, this conversation should focus on the use of lethal force against U.S. persons (i.e., citizens and lawful permanent residents) without respect to the weapons or weapons platform that might be involved. It is true that we have grown accustomed to equating lethal force in the counterterrorism setting with the use of “drones” (i.e., remotely-piloted aircraft). That is perhaps to be expected; drones are the focus of intense public curiosity and media scrutiny, and important policy questions arise as a result of their particular capacity for loitering, gathering intelligence, striking with immediacy, and projecting force into regions that are not easily accessible by ground forces. But if the task at hand is to identify the legal boundaries hemming in the government’s capacity to use lethal force overseas against U.S. persons, then it is a mistake to frame the issue solely in terms of drones. The same issue would arise, after all, if we were speaking instead of missiles launched by manned aircraft, sea-launched missiles, shells from artillery, or bullets from a rifle. Below, therefore, I refer to the use of lethal force without specifying particular weapons or weapons platforms.,

#### Special operation forces fail – they are under-resourced

Robinson 13 (Linda, adjunct senior fellow for U.S. national security and foreign policy at the Council on Foreign Relations (CFR) “The Future of U.S. Special Operations Forces” Council of Foreign Relations Report - Council Special Report No. 66)

OPERATIONAL SHORTFALLS The most glaring and critical operational deficit is the fact that, accord- ing to doctrine, the theater special operations commands are supposed to be the principal node for planning and conducting special operations in a given theater—yet they are the most severely under resourced commands. Rather than world-class integrators of direct and indirect capabilities, theater special operations commands are egregiously short of sufficient quantity and quality of staff and intelligence, analytical, and planning resources. They are also supposed to be the principal advisers on special operations to their respective geographic combatant com- manders, but they rarely have received the respect and support of the four-star command. The latter often redirects resources and staff that are supposed to go to the theater special operations commands, which routinely receive about 20 percent fewer personnel than they have been formally assigned.'2 Furthermore, career promotions from TSOC staff jobs are rare, which makes those assignments unattractive and results in a generally lower-quality workforce. Finally, a high proportion of the personnel are on short-term assignment or are reservists with inade- quate training. Because of this lack of resources, theater special operations commands have been unable to fulfill their role of planning and conducting special operations.

#### CX proves we use SOF all the time for CT-proves the cp solves none of the case sicne the executive will just use Bin-Landen style raids instread of drones-we kill non immiennt threats

#### Boumediene destroys unit cohesion now – questions over functional soveirgnty

Ford 9 (Fred K., Colonel, U.S. Army Judge Advocate General's Corps, “KEEPING BOUMEDIENE OFF THE BATTLEFIELD: EXAMINING POTENTIAL IMPLICATIONS OF THE BOUMEDIENE V. BUSH DECISION TO THE CONDUCT OF UNITED STATES MILITARY OPERATIONS” <http://www.dtic.mil/dtic/tr/fulltext/u2/a511535.pdf>)

IV. Conclusion. In the penultimate paragraph of his dissent in Boumediene, Supreme Court Chief Justice John Roberts asked the important question “who has won?” The apparent answer to that question is that no one wins. Not the detainees, as Chief Justice Roberts writes, for they are left “with only the prospect of further litigation to determine the content of their new habeas right.” And, not the U.S Congress, he writes, as its role in legislating “has been unceremoniously brushed aside,” and not the “Great Writ,” (the Writ of Habeas Corpus), as it has been relegated to application at some “jurisdictionally quirky outpost” (Guantanamo Bay). Forebodingly, Chief Justice Roberts concludes who has not won: [A]nd not the rule of law, unless by that is meant the rule of lawyers, who will now arguably have a greater role than military and intelligence officials in shaping policy for alien enemy combatants. And certainly not the American people, who today lose a bit more control over the conduct of this Nation’s foreign policy to unelected, politically unaccountable judges.27 In a Boumediene environment, military personnel would know that essentially every prisoner is a federal case. The federal court would in a real sense be there on the battlefield too, dictating the conduct of military operations. Plans, procedures, and military tactics would undoubtedly change if Boumediene were applied to the battlefield. In an environment where the U.S. exercised functional control, the Boumediene protections, and perhaps even more domestic legal protections, would apply to detained personnel. In the traditional battlefield environment, however, where the U.S. does not exercise functional control, it would be business as usual for our military forces. DoD, or a court, would conduct the functional analysis, and Soldiers would know, in theory, during planning stages and during execution of a mission whether habeas rights lie with the enemy they may detain. In the worst-case scenario, the military planners would make the wrong decision on whether functional sovereignty lies with the U.S. The result is, essentially, Guantanamo all over again, a painful and untenable situation not only for the military but also for the Executive Branch and the court system which may have to hear the cases. Soldiers know the business of seizing and holding terrain, and it is difficult enough to fight a war against an enemy that ascribes to and follows Geneva. Fighting against an enemy that laughs at Geneva, beheading prisoners and killing civilians, as does our current terrorist foe, is even more daunting. Extending Boumediene to the battlefield makes a difficult military situation only worse. On a spectrum of negative repercussions, extending Boumediene to the battlefield is the practical equivalent of placing a pile of rocks into a Soldier’s already full rucksack; tauntingly and spitefully laughing in the face of servicemembers who have risked their lives on dangerous missions and friends, family and a Nation whose loved ones were lost on those missions; and presenting the enemy on a legal silver platter former captives to return to the fight or valuable intelligence information only to be used by the enemy to kill more Americans. The impact and effect would be felt from the higest levels of the Department of Defense, to theater commanders, to commanders on the ground, to the Soldier in the field executing a mission, to a regretting Nation. Boumediene should not and cannot be extended.

#### No risk aversion or second-guessing – the plans government liability mechanism and indemnification means that military leaders will be able to continue operations without fear of personal suits or having to pay remedies of their own pocket – that’s 1AC Kent

#### More evidence – sovereign immunity solves second guessing and risk aversion

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."

#### Judicial restrictions into terrorism policy high now

Kent, Constitutional Law prof, 10-8-13 (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)

But the refusal to allow Bivens damages remedies in these national security cases is exceptional in another sense: the Supreme Court has never been more assertive in adjudicating national security and foreign relations issues than it has in recent years. The last decade saw the executive lose (or have its legal arguments offered as amicus curiae rejected) time after time in Supreme Court cases concerning questions judicial power and justiciability in foreign relations and national security.11 In the most high profile of these cases, the ones concerning the post-9/11 war on terror, the Court emphatically asserted its authority and rejected or ignored the notion that deference

to the executive was appropriate because of the national security or foreign affairs dimensions of the disputes.12 In these war-on-terror cases as well as in other national security or foreign relations contexts, the Supreme Court has ruled repeatedly against the executive and, in so doing, approved judicial review of the executive’s national security actions, in suits where plaintiffs sought prospective, injunctive-type remedies against the government.13 Remedies of that type are typically thought to involve much more judicial intrusion into executive functioning than would a retrospective award of money damages,14 and in some instances injunctive-type remedies were implied by the courts from a jurisdictional statute or said to be required by the Constitution itself, rather than being expressly created by Congress. In addition, the war-on-terror decisions in Rasul, Hamdi, Hamdan and Boumediene were intended by the Court to have, and did in fact have, enormously significant practical effects—restructuring the worldwide interrogation, detention and military commission policies of the executive branch.15 The many critics who think the judiciary has not done enough to remedy perceived excesses in the war-on-terror are missing the larger picture of unprecedented judicial assertiveness and effectiveness.16

### 2AC State Secrets

#### No impact – 1AC jaffer says courts can hide state secrets even when adjudicating national security cases because of CIPA and security cleared mechanisms – prefer our evidence, it cites 120 terrorism cases and empirics

Vladeck et al 08 (Steven, A CRITIQUE OF “NATIONAL SECURITY COURTS”, A REPORT BY THE CONSTITUTION PROJECT’S LIBERTY AND SECURITY COMMITTEE & COALITION TO DEFEND CHECKS AND BALANCES, June 23,

http://www.constitutionproject.org/pdf/Critique\_of\_the\_National\_Security\_Courts.pdf)

Advocates of national security courts that would try terrorism suspects claim that traditional Article III courts are unequipped to handle these cases. This claim has not been substantiated, and is made in the face of a significant — and growing — body of evidence to the contrary. A recent report released by Human Rights First persuasively demonstrates that our existing federal courts are competent to try these cases. The report examines more than 120 international terrorism cases brought in the federal courts over the past fifteen years. It finds that established federal courts were able to try these cases without sacrificing either national security or the defendants’ rights to a fair trial.3 The report documents how federal courts have successfully dealt with classified evidence under the Classified Information Procedures Act (CIPA) without creating any security breaches. It further concludes that courts have been able to enforce the government’s Brady obligations to share exculpatory evidence with the accused, deal with Miranda warning issues, and provide means for the government to establish a chain of custody for physical evidence, all without jeopardizing national security.

#### No link – ex post review won’t impact the state secrets privilege – qualified immunity solves

Vladeck, editor- Journal of National Security Law & Policy, 12 (Steve Vladeck, professor of law and the associate dean for scholarship at American University Washington College of Law, senior editor of the Journal of National Security Law & Policy, “Bivens and/as Immunity: Richard Klingler Responds on Al-Aulaqi–and I Reply,” July 25, <http://www.lawfareblog.com/2012/07/bivens-andas-immunity-richard-klingler-responds-on-al-aulaqi-and-i-reply/>)

To be clear, that doesn’t mean Aulaqi should win; it just means I don’t think these concerns go to the existence vel non of a cause of action under Bivens–the first of a veritable smorgasbord of procedural issues raised by the suit. Richard thinks that this understanding makes me naive. But a closer reading of both my original post and the forthcoming article by Carlos Vazquez and me to which it linked should make abundantly clear that I take these concerns very seriously–I just think they come into play in other places. Qualified immunity, for example, allows government officers to move to terminate suits like Aulaqi long before any discovery takes place, and the denial thereof is immediately appealable (case in point: Padilla v. Yoo). So in a case in which the defendant’s conduct did not violate “clearly established” law, the concerns Richard articulated will quickly and readily be disposed of at the motion-to-dismiss stage even with recognition of a Bivens cause of action, with minimal intrusion into sensitive military affairs. The same can be said for the amorphous separation-of-powers concerns Richard identified (which are usually handled through either qualified immunity or, in appropriate cases, the political question doctrine), and the state secrets privilege (and “potentially adverse security consequences”). Indeed, what’s wholly missing from Richard’s critique (and all of these lower-court opinions) is any explanation for why these other doctrines don’t adequately account for the government’s (and government officer’s) interests on a case-specific basis. If such arguments are out there, I’m all ears… Instead, what Richard is ultimately arguing in his response is that Bivens should effectively be understood as an absolute immunity doctrine in suits implicating military affairs. It’s not just that this isn’t what Stanley held (see above); it’s that this fundamentally misunderstands not just the Court’s original decision in Bivens itself, but the analytical approach it has taken even in the subsequent cases narrowing Justice Brennan’s original reasoning. 3. How I Learned to Stop Worrying and Love [Damages Suits] Finally, although Richard limits his view of the limited judicial role that courts should play in military affairs to damages suits, he never explains why damages are more intrusive than situations in which courts have shown more of a willingness to intervene–e.g., detainee habeas cases. As Andrew Kent pointed out over at Slate, there’s more than a little tension in a body of law that embraces suits that interfere with ongoing governmental operations while disfavoring those that pursue liability after the allegedly unlawful conduct has ceased. And it wasn’t Justice Brennan, but rather Justice Harlan (the younger), who explained in Bivens that “the presumed availability of federal equitable relief against threatened invasions of constitutional interests appears entirely to negate the contention that the status of an interest as constitutionally protected divests federal courts of the power to grant damages absent express congressional authorization.” To be sure, Andrew and I come out differently on how that tension should be resolved, but it’s hard to disagree with his descriptive thesis. And if it’s the Constitution that requires a cause of action in those contexts (see, e.g., Boumediene), is the argument utterly implausible that the Constitution might also counsel in favor of relief in a case where a U.S. citizen’s constitutional rights are violated, no defenses are available, and no other remedies will make him (or his decedents) whole? Indeed, wouldn’t it make it easier to argue against such aggressive judicial intervention if the more moderate, retrospective review provided by damages suits were available ex post? Richard is absolutely right that the Supreme Court has shown increasing hostility toward Bivens suits, and that this hostility has included a departure from some of the analytical underpinnings of Justice Brennan’s opinion for the Court. But that doesn’t change the simple and ineluctable fact that Bivens is a cause of action the existence of which cannot be left to case-specific factual circumstances. The answer may be that Richard would disclaim Bivens remedies even for egregious governmental misconduct against innocent bystanders for which there is no viable defense so long as the subject-matter is “national security.” To be clear, those may not be the facts of Aulaqi. But on Richard’s view, the facts just don’t matter–and never will.

#### No spillover – the aff court cannot amend the substance of state secrets, only reinterpret its use – means it won’t end the privilege

Windsor 12 (Lindsay – J.D. candidate and Master of Security Studies candidate at Georgetown University, “IS THE STATE SECRETS PRIVILEGE IN THE CONSTITUTION? THE BASIS OF THE STATE SECRETS PRIVILEGE IN INHERENT EXECUTIVE POWERS & WHY COURT-IMPLEMENTED SAFEGUARDS ARE CONSTITUTIONAL AND PRUDENT”, 2012, 43 Geo. J. Int'l L. 897, lexis)

Nonetheless, deciding cases or controversies before the Court is within its field of expertise. n158 Such cases include separation of powers controversies between federal branches and enforcing checks on executive power. n159 Though a court could not amend the substance of the state secrets privilege, it could amend the procedure for its invocation in one of two ways: pursuant to congressional authorization or by interpreting its own rules of procedure. First, if Congress enacts specific legislation under its Article I powers requiring the President to follow certain procedures in invoking the privilege, then a court could enforce that procedure in a case before it. Second, the Court could reinterpret the procedural requirements for the privilege. The Reynolds Court specifically wrote a court should not always "insist[] upon an examination of the evidence, even by the judge alone, in chambers." n160 But in national security cases implicating core civil liberties, the Court could find that plaintiffs' necessity routinely requires different procedures to satisfy the Court that national security matters are at stake. n16

#### Navy power dead - Rising powers and budget cuts

Gibbons-Neff 13

[Thomas, Free Beacon, Expert: U.S. Naval Supremacy Is in Trouble, 8/1/13, <http://freebeacon.com/expert-u-s-naval-supremacy-is-in-trouble/>]

Former U.S. Deputy Undersecretary of the Navy Seth Cropsey told an audience at the Heritage Foundation Thursday afternoon that American sea power and global projection is “in trouble.” Cropsey appeared at Heritage to highlight the release of his new book Mayday: The Decline of American Naval Supremacy. Michaela Dodge, policy analyst of defense and strategic policy at the Heritage Foundation, highlighted the current plight of U.S. naval forces before Cropsey’s speech. Under current sequestration cuts, the Navy will be reduced from approximately 285 ships to 195 in the next thirty years, Dodge said. While Cropsey was quick to criticize sequestration’s effects on U.S. Naval power, his main focus was the looming threat posed by China. Cropsey highlighted the fact that the last Maritime strategic review was conducted over six years ago and did not mention China at all. “The 2007 strategy did not mention China, not once.” Cropsey said. “The Chinese have made it clear that its policy is to deny the United States access to the Western Pacific.” “China’s military budget continues to grow … in double percentage points each year,” Cropsey added. With countries in various stages of unrest, Cropsey pointed to the fact that countries **like** Iran, China, and Russia have already begun projecting naval power in various parts of the globe. Cropsey pointed to the fact that Russia is in the process of having a permanent twelve-ship presence in the Mediterranean Sea. With rival countries encroaching on American sea power Cropsey lamented the state of the U.S. 6th fleet—the group of ships responsible for Mediterranean operations. “The Eastern Med has reverted back to instability… and the U.S. 6th Fleet … that once composed of two carrier battle groups, today consists of a command ship based in Italy and three [surface ships],” Cropsey said. Cropsey also stressed the threat of the recently tested DF-21D a Chinese anti-ship ballistic missile designed to destroy large surface ships from over 1,200 miles away.

# \*\*\*1AR

## T

### 1AR-We Meet

#### The plan is a judicial restriction on war power authority:

#### A. Applying due process limits executive authority over targeted Killing-that’s McKelvey from the 2AC-Our evidence reflects recent court decisions and the DOJ position which is more qualified and predictable than their evidence. Judicial review IS due process, this is not about the groups-ev is about the case the aff is about.

#### B. Constitutional rights are judicial restrictions on executive authority-our interpretation is precise, has an intent to define, and is within the context of the Al-Aulaqi targeted killing case.

#### C. Their argument conflates policy from authority-Judicial review on face restricts the current authority claimed by the Executive to say due process does not apply to targeted killing.

#### Restrictions can happen after the fact

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

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

#### Vladeck is aff-ex ante court not a check-the aff is because it says BEFORE THE FACT the president cant drone without due process and enforces that after the fact.;

#### No ground IL-every TK aff is based on making the program legit-destroy aff ground-

#### It is a MAY question not a CAN question---that’s Taylor, prefer, otherwise you end up mixing burdens

### 1AR- Interpretation flawed

#### ---Constitutional rights are a check on executive authority-you should prefer our evidence, CAC says restrictions are limits on authority not prohibitions

#### A. It is a predictable limit on the topic supported by court rulings, official DOJ positions and topic literature. Arbitrary interpretations undermine research and fairness by constantly moving the goal post of what the topic means.

#### B. Negative Ground-Due process locks in good link ground to core generics related to deference and the political question doctrine.

#### ---Their interpretation is flawed

#### A. Topic Education-our affirmative is about the legal authority to engage in targeted killing without due process-their interpretation undermines precise debates over the question of authority.

#### B. Affirmative Ground-Ban specific policies like drones are dead in the water to any type of agent counterplan. You should err affirmative because the range of good affirmatives is very small this year and the negative is strapped with an arsenal of generics. Their interpretation would destroy the targeted killing area of the topic AND the detention area.

#### No topical version of the aff---Vladeck---ex ante is a rubber stamp, executive can ignore it if he wants, either no t aff or we are the T aff/

### 1AR Impact

#### Unlimited topic is better than an arbitaryly limited obe, the neg can cope with lots of affs because the literature only has a few good ones not solved by agent CPs arbitrary limits make being aff impossible

#### Aff ground outweighs neg ground, 1AC is the starting point and if it loses because of an obvious CP the overall quality of the debate will be lower

#### Default to reasonability, your role is not to craft the topic, t is not a strategy have a high threshold otherwise going for it is over incentivized which trades off with substance

## k

### OV

#### Root cause is nonsense-no single reason for anything-prefer proximate causes

#### Their ethics say death is bad-logically more death would be worse-our impact access their framework

#### Greatest good for the greatest number key-tunnel vision

**Isaac 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.

#### Squo is structurally improving---all factors

Bjorn Lomborg 10/16, Adjunct Professor at the Copenhagen Business School, "A Better World Is Here", 2013, www.project-syndicate.org/commentary/on-the-declining-costs-of-global-problems-by-bj-rn-lomborg

COPENHAGEN – For centuries, optimists and pessimists have argued over the state of the world. Pessimists see a world where more people means less food, where rising demand for resources means depletion and war, and, in recent decades, where boosting production capacity means more pollution and global warming. One of the current generation of pessimists’ sacred texts, The Limits to Growth, influences the environmental movement to this day.¶ The optimists, by contrast, cheerfully claim that everything – human health, living standards, environmental quality, and so on – is getting better. Their opponents think of them as “cornucopian” economists, placing their faith in the market to fix any and all problems.¶ But, rather than picking facts and stories to fit some grand narrative of decline or progress, we should try to compare across all areas of human existence to see if the world really is doing better or worse. Together with 21 of the world’s top economists, I have tried to do just that, developing a scorecard spanning 150 years. Across ten areas – including health, education, war, gender, air pollution, climate change, and biodiversity – the economists all answered the same question: What was the relative cost of this problem in every year since 1900, all the way to 2013, with predictions to 2050.¶ Using classic economic valuations of everything from lost lives, bad health, and illiteracy to wetlands destruction and increased hurricane damage from global warming, the economists show how much each problem costs. To estimate the magnitude of the problem, it is compared to the total resources available to fix it. This gives us the problem’s size as a share of GDP. And the trends since 1900 are sometimes surprising.¶ Consider gender inequality. Essentially, we were excluding almost half the world’s population from production. In 1900, only 15% of the global workforce was female. What is the loss from lower female workforce participation? Even taking into account that someone has to do unpaid housework and the increased costs of female education, the loss was at least 17% of global GDP in 1900. Today, with higher female participation and lower wage differentials, the loss is 7% – and projected to fall to 4% by 2050.¶ It will probably come as a big surprise that climate change from 1900 to 2025 has mostly been a net benefit, increasing welfare by about 1.5% of GDP per year. This is because global warming has mixed effects; for moderate warming, the benefits prevail.¶ On one hand, because CO2 works as a fertilizer, higher levels have been a boon for agriculture, which comprises the biggest positive impact, at 0.8% of GDP. Likewise, moderate warming prevents more cold deaths than the number of extra heat deaths that it causes. It also reduces demand for heating more than it increases the costs of cooling, implying a gain of about 0.4% of GDP. On the other hand, warming increases water stress, costing about 0.2% of GDP, and negatively affects ecosystems like wetlands, at a cost of about 0.1%.¶ As temperatures rise, however, the costs will rise and the benefits will decline, leading to a dramatic reduction in net benefits. After the year 2070, global warming will become a net cost to the world, justifying cost-effective climate action now and in the decades to come.¶ Yet, to put matters in perspective, the scorecard also shows us that the world’s biggest environmental problem by far is indoor air pollution. Today, indoor pollution from cooking and heating with bad fuels kills more than three million people annually, or the equivalent of a loss of 3% of global GDP. But in 1900, the cost was 19% of GDP, and it is expected to drop to 1% of GDP by 2050.¶ Health indicators worldwide have shown some of the largest improvements. Human life expectancy barely changed before the late eighteenth century. Yet it is difficult to overstate the magnitude of the gain since 1900: in that year, life expectancy worldwide was 32 years, compared to 69 now (and a projection of 76 years in 2050).¶ The biggest factor was the fall in infant mortality. For example, even as late as 1970, only around 5% of infants were vaccinated against measles, tetanus, whooping cough, diphtheria, and polio. By 2000, it was 85%, saving about three million lives annually – more, each year, than world peace would have saved in the twentieth century.¶ This success has many parents. The Gates Foundation and the GAVI Alliance have spent more than $2.5 billion and promised another $10 billion for vaccines. Efforts by the Rotary Club, the World Health Organization, and many others have reduced polio by 99% worldwide since 1979.¶ In economic terms, the cost of poor health at the outset of the twentieth century was an astounding 32% of global GDP. Today, it is down to about 11%, and by 2050 it will be half that.¶ While the optimists are not entirely right (loss of biodiversity in the twentieth century probably cost about 1% of GDP per year, with some places losing much more), the overall picture is clear. Most of the topics in the scorecard show improvements of 5-20% of GDP. And the overall trend is even clearer. Global problems have declined dramatically relative to the resources available to tackle them.¶ Of course, this does not mean that there are no more problems. Although much smaller, problems in health, education, malnutrition, air pollution, gender inequality, and trade remain large.¶ But realists should now embrace the view that the world is doing much better. Moreover, the scorecard shows us where the substantial challenges remain for a better 2050. We should guide our future attention not on the basis of the scariest stories or loudest pressure groups, but on objective assessments of where we can do the most good.

#### Quality of life is skyrocketing worldwide by all measures

**Ridley**, visiting professor at Cold Spring Harbor Laboratory, former science editor of *The Economist*, and award-winning science writer, **2010**

(Matt, *The Rational Optimist*, pg. 13-15)

If my fictional family is not to your taste, perhaps you prefer statistics. Since 1800, the population of the world has multiplied six times, yet **average life expectancy has more than doubled and real income has risen more than nine times**. Taking a shorter perspective, in 2005, compared with 1955, the average human being on Planet Earth earned nearly three times as much money (corrected for inflation), ate one-third more calories of food, buried one-third as many of her children and could expect to live one-third longer. She was less likely to die as a result of war, murder, childbirth, accidents, tornadoes, flooding, famine, whooping cough, tuberculosis, malaria, diphtheria, typhus, typhoid, measles, smallpox, scurvy or polio. She was less likely, at any given age, to get cancer, heart disease or stroke. She was more likely to be literate and to have finished school. She was more likely to own a telephone, a flush toilet, a refrigerator and a bicycle. All this during a half-century when the world population has more than doubled, so that far from being rationed by population pressure, the goods and services available to the people of the world have expanded. It is, by any standard, an astonishing human achievement. Averages conceal a lot. **But even if you break down the world into bits**, **it is hard to find any region that was worse off in 2005 than it was in 1955**. Over that half-century, real income per head ended a little lower in only six countries (Afghanistan, Haiti, Congo, Liberia, Sierra Leone and Somalia), life expectancy in three (Russia, Swaziland and Zimbabwe), and infant survival in none. In the rest they have rocketed upward. Africa’s rate of improvement has been distressingly slow and patchy compared with the rest of the world, and many southern African countries saw life expectancy plunge in the 1990s as the AIDS epidemic took hold (before recovering in recent years). There were also moments in the half-century when you could have caught countries in episodes of dreadful deterioration of living standards or life chances – China in the 1960s, Cambodia in the 1970s, Ethiopia in the 1980s, Rwanda in the 1990s, Congo in the 2000s, North Korea throughout. Argentina had a disappointingly stagnant twentieth century. But overall, after fifty years, **the outcome for the world is** remarkably, astonishingly, **dramatically positive**. The average South Korean lives twenty-six more years and earns fifteen times as much income each year as he did in 1955 (and earns fifteen times as much as his North Korean counter part). The average Mexican lives longer now than the average Briton did in 1955. The average Botswanan earns more than the average Finn did in 1955. **Infant mortality is lower today in Nepal than it was in Italy in 1951**. The proportion of Vietnamese living on less than $2 a day has dropped from 90 per cent to 30 per cent in twenty years. The rich have got richer, but the poor have done even better. **The poor in the developing world grew their consumption twice as fast as the world as a whole between 1980 and 2000**. The Chinese are ten times as rich, one-third as fecund and twenty-eight years longer-lived than they were fifty years ago. Even Nigerians are twice as rich, 25 per cent less fecund and nine years longer-lived than they were in 1955. **Despite a doubling of the world population**, even **the raw number of people living in absolute poverty** (defined as less than a 1985 dollar a day) **has fallen since the 1950s**. The percentage living in such absolute poverty has dropped by more than half – to less than 18 per cent. That number is, of course, still all too horribly high, but the trend is hardly a cause for despair: at the current rate of decline, it would hit zero around 2035 – though it probably won’t. The United Nations estimates that poverty was reduced more in the last fifty years than in the previous 500.

### AT: Sequencing

#### 1-the K kills politics so we never get to aff and 2-it sequences to the wrong politics since we're impact turning-doing their alt first destroys all of the security architectures we say are good.

### Fw

#### Roll of the ballot is material implementation of the plan vs squo or another policy-key to decision making-otherwise neg picks random problems with the 1nc and hyperinflates their importance-abdicating the discussion of how TKs fit into LOAC creates a norm where there is no regime for the conduct-states won’t just abandon them becase they are concerned for their security-even if the alt makes the US peaceful it makes the rest of the world violent-that’s Leahy.

#### Even if fiat isn’t real you can vote aff if our impacts are true-proves our scholarship and representations are useful in debates

#### Impact turning your framework-opening security up to deliberation is bad-hippies suck

#### Alt solvency is key to determine if plan is bad-if there is no other way to engage in security debates than the affirmative is more desiberable than abandoning the only mechanism that exists to stop conflict.

#### Nitty gritty discussion solves the worst aspects of TK-proves our framework and takes out your link args-Jaffer and Haftez are the only cards spec to the plan-audience costs mean exec decision making is improved

Orna **Ben-Naftali**, Head of the International Law Division and of the Law and Culture Division, The Law School, The College of Management Academic Studies, Spring 200**3**, ARTICLE: 'We Must Not Make a Scarecrow of the Law': A Legal Analysis of the Israeli Policy of Targeted Killings, 36 Cornell Int'l L.J. 233

Our analysis concludes that while a specific act of preemptive killing may be legal if it meets the above-specified requirements, the policy of state targeted preemptive killings is not. Furthermore, some specific acts of targeted killings may generate state responsibility, while others may constitute a war crime entailing criminal accountability. These conclusions, emanating from the reading of the three legal texts applicable to the context, and informed by a sensibility that coheres them, do not rest on a negation of the importance of the national interest in security. On the contrary, these conclusions incorporate and express the way it should be balanced with a minimum standard of humanity and against the relevant context.

This delicate, ever precarious balance is at the heart of the democratic discourse. A democratic state is not a meek state. True, it is fighting with "one hand tied behind its back,"n342 as soberly observed by Chief Justice Barak of the Israeli Supreme Court, but democratic sensibilities internalize this limitation on State power, not as a source of weakness but as a sign of strength. Democracies require a public discourse forever alert to the importance of human rights, suspicious of the way power is used, and committed to the rule of law. The legal culture, in turn, while not a substitute for this public discourse, is never absent from it and indeed serves as a catalyst for its development.

We therefore reject the notion that the policy of targeted killings, designed by Israel as a way to combat terrorist attacks, is beyond the purview of the rule of law.n343 We also deny the purist position suggesting that the legalistic nitty-gritty preoccupation with details entailed in the above discussion is likely to obscure and legitimize a harrowing policy; n344 one that, on principle, should be condemned. n345 This position in fact maintains that the legality or illegality of targeted state killings is not a legitimate issue of discussion; that while an emergency situation may exceptionally necessitate the deed, it should never be elevated to the sphere of the Word. n346 We appreciate the sensibility of this position, but, alas, do not find it sensible. Indeed, nor would the people who consider themselves victims of the policy of targeted killings, and appeal to the courts to intervene. n347 Purity belongs to the Platonic world of ideas; it is a necessary ideal to strive for, even if forever unachievable in this all too fallible City of Man. n348 In the best of all possible worlds law would be superfluous; in this world, it is a necessary, albeit insufficient means to achieve some possible betterment. This article hopes to contribute to this modest goal.

### Turn case

#### -deterrence descalates the impact to their multilat link argument

#### -is nothing Pakistan can do without aff-allowing them to sue gives them the agency to contest the terms

#### -aff doesn’t create that fear-India already afraid of Pakistani tactical nukes-alt wont sway their fears

#### -Trombetta-climate framing spurs action-people want to avoid dieng.

#### -risk –cooption-only predictions made by conservatives which is worse

#### -debate determines the risk; they need to beat our arg, if we are so obvi incorrect no reason the shouldn’t have to engage.

Bostrum, Philosophy prof at Oxford, 02 (Nick, Existential Risks: Analyzing Human Extinction Scenarios and Related Hazards, Published in the Journal of Evolution and Technology, Vol. 9, No. 1 (2002), http://www.nickbostrom.com/existential/risks.html)

The unique challenge of existential risks Risks in this sixth category are a recent phenomenon. This is part of the reason why it is useful to distinguish them from other risks. We have not evolved mechanisms, either biologically or culturally, for managing such risks. Our intuitions and coping strategies have been shaped by our long experience with risks such as dangerous animals, hostile individuals or tribes, poisonous foods, automobile accidents, Chernobyl, Bhopal, volcano eruptions, earthquakes, draughts, World War I, World War II, epidemics of influenza, smallpox, black plague, and AIDS. These types of disasters have occurred many times and our cultural attitudes towards risk have been shaped by trial-and-error in managing such hazards. But tragic as such events are to the people immediately affected, in the big picture of things – from the perspective of humankind as a whole – even the worst of these catastrophes are mere ripples on the surface of the great sea of life. They haven’t significantly affected the total amount of human suffering or happiness or determined the long-term fate of our species. With the exception of a species-destroying comet or asteroid impact (an extremely rare occurrence), there were probably no significant existential risks in human history until the mid-twentieth century, and certainly none that it was within our power to do something about. The first manmade existential risk was the inaugural detonation of an atomic bomb. At the time, there was some concern that the explosion might start a runaway chain-reaction by “igniting” the atmosphere. Although we now know that such an outcome was physically impossible, it qualifies as an existential risk that was present at the time. For there to be a risk, given the knowledge and understanding available, it suffices that there is some subjective probability of an adverse outcome, even if it later turns out that objectively there was no chance of something bad happening. If we don’t know whether something is objectively risky or not, then it is risky in the subjective sense. The subjective sense is of course what we must base our decisions on.[2] At any given time we must use our best current subjective estimate of what the objective risk factors are.[3] A much greater existential risk emerged with the build-up of nuclear arsenals in the US and the USSR. An all-out nuclear war was a possibility with both a substantial probability and with consequences that might have been persistent enough to qualify as global and terminal. There was a real worry among those best acquainted with the information available at the time that a nuclear Armageddon would occur and that it might annihilate our species or permanently destroy human civilization.[4] Russia and the US retain large nuclear arsenals that could be used in a future confrontation, either accidentally or deliberately. There is also a risk that other states may one day build up large nuclear arsenals. Note however that a smaller nuclear exchange, between India and Pakistan for instance, is not an existential risk, since it would not destroy or thwart humankind’s potential permanently. Such a war might however be a local terminal risk for the cities most likely to be targeted. Unfortunately, we shall see that nuclear Armageddon and comet or asteroid strikes are mere preludes to the existential risks that we will encounter in the 21st century. The special nature of the challenges posed by existential risks is illustrated by the following points: · Our approach to existential risks cannot be one of trial-and-error. There is no opportunity to learn from errors. The reactive approach – see what happens, limit damages, and learn from experience – is unworkable. Rather, we must take a proactive approach. This requires foresight to anticipate new types of threats and a willingness to take decisive preventive action and to bear the costs (moral and economic) of such actions. · We cannot necessarily rely on the institutions, moral norms, social attitudes or national security policies that developed from our experience with managing other sorts of risks. Existential risks are a different kind of beast. We might find it hard to take them as seriously as we should simply because we have never yet witnessed such disasters.[5] Our collective fear-response is likely ill calibrated to the magnitude of threat. · Reductions in existential risks are global public goods [13] and may therefore be undersupplied by the market [14]. Existential risks are a menace for everybody and may require acting on the international plane. Respect for national sovereignty is not a legitimate excuse for failing to take countermeasures against a major existential risk. · If we take into account the welfare of future generations, the harm done by existential risks is multiplied by another factor, the size of which depends on whether and how much we discount future benefits [15,16]. In view of its undeniable importance, it is surprising how little systematic work has been done in this area. Part of the explanation may be that many of the gravest risks stem (as we shall see) from anticipated future technologies that we have only recently begun to understand. Another part of the explanation may be the unavoidably interdisciplinary and speculative nature of the subject. And in part the neglect may also be attributable to an aversion against thinking seriously about a depressing topic. The point, however, is not to wallow in gloom and doom but simply to take a sober look at what could go wrong so we can create responsible strategies for improving our chances of survival. In order to do that, we need to know where to focus our efforts.

#### Fear motivations action---means are fine

Eric A. **Posner and** Adrian **Vermeule 3**, law profs at Chicago and Harvard, Accommodating Emergencies, September, <http://www.law.uchicago.edu/files/files/48.eap-av.emergency.pdf>

Against the view that panicked government officials overreact to an emergency, and unnecessarily curtail civil liberties, we suggest a more constructive theory of the role of fear. Before the emergency, government officials are complacent. They do not think clearly or vigorously about the potential threats faced by the nation. After the terrorist attack or military intervention, their complacency is replaced by fear. Fear stimulates them to action. Action may be based on good decisions or bad: fear might cause officials to exaggerate future threats, but it also might arouse them to threats that they would otherwise not perceive. **It is impossible to say in the abstract whether decisions and actions provoked by fear are likely to be better than decisions and actions made in a state of calm**. But our limited point is that there is no reason to think that the fear-inspired decisions are likely to be worse. For that reason, the existence of fear during emergencies does not support the antiaccommodation theory that the Constitution should be enforced as strictly during emergencies as during non-emergencies.

C. The Influence of Fear during Emergencies

Suppose now that the simple view of fear is correct, and that it is an unambiguously negative influence on government decisionmaking. Critics of accommodation argue that this negative influence of fear justifies skepticism about emergency policies and strict enforcement of the Constitution. However, this argument is implausible. It is doubtful that fear, so understood, has more influence on decisionmaking during emergencies than decisionmaking during non-emergencies.

The panic thesis, implicit in much scholarship though rarely discussed in detail, holds that citizens and officials respond to terrorism and war in the same way that an individual in the jungle responds to a tiger or snake. The national response to emergency, because it is a standard fear response, is characterized by the same circumvention of ordinary deliberative processes: thus, (i) the response is instinctive rather than reasoned, and thus subject to error; and (ii) the error will be biased in the direction of overreaction. While the flight reaction was a good evolutionary strategy on the savannah, in a complex modern society the flight response is not suitable and can only interfere with judgment. Its advantage—speed—has minimal value for social decisionmaking. No national emergency requires an immediate reaction—except by trained professionals who execute policies established earlier—but instead over days, months, or years people make complex judgments about the appropriate institutional response. And the asymmetrical nature of fear guarantees that people will, during a national emergency, overweight the threat and underweight other things that people value, such as civil liberties.

But if decisionmakers rarely act immediately, then the tiger story cannot bear the metaphoric weight that is placed on it. Indeed, the flight response has nothing to do with the political response to the bombing of Pearl Harbor or the attack on September 11. The people who were there—the citizens and soldiers beneath the bombs, the office workers in the World Trade Center—no doubt felt fear, and most of them probably responded in the classic way. They experienced the standard physiological effects, and (with the exception of trained soldiers and security officials) fled without stopping to think. It is also true that in the days and weeks after the attacks, many people felt fear, although not the sort that produces a irresistible urge to flee. **But this kind of fear is not the kind in which cognition shuts down**. (Some people did have more severe mental reactions and, for example, shut themselves in their houses, but these reactions were rare.) The fear is probably better described as a general anxiety or jumpiness, an anxiety that was probably shared by government officials as well as ordinary citizens.53

While, as we have noted, there is psychological research suggesting that normal cognition partly shuts down in response to an immediate threat, we are aware of no research suggesting that people who feel anxious about a non-immediate threat are incapable of thinking, or thinking properly, or systematically overweight the threat relative to other values. Indeed, it would be surprising to find research that clearly distinguished “anxious thinking” and “calm thinking,” given that anxiety is a pervasive aspect of life. People are anxious about their children; about their health; about their job prospects; about their vacation arrangements; about walking home at night. No one argues that people’s anxiety about their health causes them to take too many precautions—to get too much exercise, to diet too aggressively, to go to the doctor too frequently—and to undervalue other things like leisure. So it is hard to see why anxiety about more remote threats, from terrorists or unfriendly countries with nuclear weapons, should cause the public, or elected officials, to place more emphasis on security than is justified, and to sacrifice civil liberties.

Fear generated by immediate threats, then, causes instinctive responses that are not rational in the cognitive sense, not always desirable, and not a good basis for public policy, but it is not this kind of fear that leads to restrictions of civil liberties during wartime. The internment of Japanese Americans during World War II may have been due to racial animus, or to a mistaken assessment of the risks; it was not the direct result of panic; indeed there was a delay of weeks before the policy was seriously considered.54 Post-9/11 curtailments of civil liberties, aside from immediate detentions, came after a significant delay and much deliberation. The civil libertarians’ argument that fear produces bad policy trades on the ambiguity of the word “panic,” which refers both to real fear that undermines rationality, and to collectively harmful outcomes that are driven by rational decisions, such as a bank run, where it is rational for all depositors to withdraw funds if they believe that enough other depositors are withdrawing funds. Once we eliminate the false concern about fear, it becomes clear that the panic thesis is indistinguishable from the argument that during an emergency people are likely to make mistakes. But if the only concern is that during emergencies people make mistakes, there would be no reason for demanding that the constitution be enforced normally during emergencies. Political errors occur during emergencies and nonemergencies, but the stakes are higher during emergencies, and that is the conventional reason why constitutional constraints should be relaxed.

### Cole-Fill in-1AR

#### Perm do both-solves their link arguments-incorporate criticism to create better legal change.

#### Conservates can’tcoopt the plan-Shueman-studies prove legal restraints work

#### To dismiss the changes of the plan as merely rhetorical misses the critical difference between lawless and law-abiding exercises of state power-their alt creates a historical narrative that gives the executive a blank check-that’s Cole-turns all of their impacts-try or die for legal norms-Dunlap says abandoning objective law causes soldiers to act according to their individual moral beliefs-that wreaks havoc on war fighting

### Disco

#### Empirical studies prove there is no correlation between threatening discourse and conflict-material shapes state decesions more than discourse-that’s Ghazalini-Proves our SOP impact defense-Grey says SOP precludes great power war from adventurism-

#### Discursive Othering doesn’t cause war

Rodwell 5 (Jonathan Rodwell is a PhD student at Manchester Met. researching the U.S. Foreign Policy of the late 70's / rise of ‘neo-cons’ and Second Cold War, “Trendy But Empty: A Response to Richard Jackson,” http://www.49thparallel.bham.ac.uk/back/issue15/rodwell1.htm)

To be specific if the U.S. and every other nation is continually reproducing identities through ‘othering’ it is a constant and universal phenomenon that fails to help us understand at all why one result of the othering turned out one way and differently at another time. For example, how could one explain how the process resulted in the 2003 invasion of Iraq but didn’t produce a similar invasion of Afghanistan in 1979 when that country (and by the logic of the Regan administrations discourse) the West was threatened by the ‘Evil Empire’. By the logical of discourse analysis in both cases these policies were the result of politicians being able to discipline and control the political agenda to produce the outcomes. So why were the outcomes not the same? To reiterate the point how do we explain that the language of the War on Terror actually managed to result in the eventual Afghan invasion in 2002? Surely it is impossible to explain how George W. Bush was able to convince his people (and incidentally the U.N and Nato) to support a war in Afghanistan without referring to a simple fact outside of the discourse; the fact that a known terrorist in Afghanistan actually admitted to the murder of thousands of people on the 11h of Sepetember 2001. The point is that if the discursive ‘othering’ of an ‘alien’ people or group is what really gave the U.S. the opportunity to persue the war in Afghanistan one must surly wonder why Afghanistan. Why not North Korea? Or Scotland? If the discourse is so powerfully useful in it’s own right why could it not have happened anywhere at any time and more often? Why could the British government not have been able to justify an armed invasion and regime change in Northern Ireland throughout the terrorist violence of the 1980’s? Surely they could have just employed the same discursive trickery as George W. Bush? Jackson is absolutely right when he points out that the actuall threat posed by Afghanistan or Iraq today may have been thoroughly misguided and conflated and that there must be more to explain why those wars were enacted at that time. Unfortunately that explanation cannot simply come from the result of inscripting identity and discourse. On top of this there is the clear problem that the consequences of the discursive othering are not necessarily what Jackson would seem to identify. This is a problem consistent through David Campbell’s original work on which Jackson’s approach is based[iii]. David Campbell argued for a linguistic process that ‘always results in an other being marginalized’ or has the potential for ‘demonisation’[iv]. At the same time Jackson, building upon this, maintains without qualification that the systematic and institutionalised abuse of Iraqi prisoners first exposed in April 2004 “is a direct consequence of the language used by senior administration officials: conceiving of terrorist suspects as ‘evil’, ‘inhuman’ and ‘faceless enemies of freedom creates an atmosphere where abuses become normalised and tolerated”[v]. The only problem is that the process of differentiation does not actually necessarily produce dislike or antagonism. In the 1940’s and 50’s even subjected to the language of the ‘Red Scare’ it’s obvious not all Americans came to see the Soviets as an ‘other’ of their nightmares. And in Iraq the abuses of Iraqi prisoners are isolated cases, it is not the case that the U.S. militarily summarily abuses prisoners as a result of language. Surely the massive protest against the war, even in the U.S. itself, is also a self evident example that the language of ‘evil’ and ‘inhumanity’ does not necessarily produce an outcome that marginalises or demonises an ‘other’. Indeed one of the points of discourse is that we are continually differentiating ourselves from all others around us without this necessarily leading us to hate fear or abuse anyone.[vi] Consequently, the clear fear of the Soviet Union during the height of the Cold War, and the abuses at Abu Ghirab are unusual cases. To understand what is going on we must ask how far can the process of inscripting identity really go towards explaining them? As a result at best all discourse analysis provides us with is a set of universals and a heuristic model

### Deterrence Good

Deterrence is empirically successful-fosters rational decision making on costs and benefits prevents large scale wars-only become possible when it breaks down-the alt does that by abandoning securitization-invites ideological conflicts that can’t be descalted by the alt since the premise of opponents hatred is that we exist-try or die for threats-that’s Lupovici-the impact is great power nuclear conflict- that’s Dipert

<womp>

Lupovici 8 [Amir, Post-Doctoral Fellow Munk Centre for International Studies, Why the Cold War Practices of Deterrence are Still Prevalent: Physical Security, Ontological Security and Strategic Discourse, [http://www.cpsa-acsp.ca/ papers-2008/Lupovici.pdf](http://www.cpsa-acsp.ca/papers-2008/Lupovici.pdf)]

Since deterrence can become part of the actors’ identity, it is also involved in the actors’ will to achieve ontological security, securing the actors’ identity and routines. As McSweeney explains, ontological security is “the acquisition of confidence in the routines of daily life—the essential predictability of interaction through which we feel confident in knowing what is going on and that we have the practical skill to go on in this context.” These routines become part of the social structure that enables and constrains the actors’ possibilities (McSweeney, 1999: 50-1, 154-5; Wendt, 1999: 131, 229-30). Thus, through the emergence of the deterrence norm and the construction of deterrence identities, the actors create an intersubjective context and intersubjective understandings that in turn affect their interests and routines. In this context, deterrence strategy and deterrence practices are better understood by the actors, and therefore the continuous avoidance of violence is more easily achieved. Furthermore, within such a context of deterrence relations, rationality is (re)defined, clarifying the appropriate practices for a rational actor, and this, in turn, reproduces this context and the actors’ identities. Therefore, the internalization of deterrence ideas helps to explain how actors may create more cooperative practices and break away from the spiral of hostility that is forced and maintained by the identities that are attached to the security dilemma, and which lead to mutual perception of the other as an aggressive enemy. As Wendt for example suggests, in situations where states are restrained from using violence—such as MAD (mutual assured destruction)—states not only avoid violence, but “ironically, may be willing to trust each other enough to take on collective identity”. In such cases if actors believe that others have no desire to engulf them, then it will be easier to trust them and to identify with their own needs (Wendt, 1999: 358-9). In this respect, the norm of deterrence, the trust that is being built between the opponents, and the (mutual) constitution of their role identities may all lead to the creation of long term influences that preserve the practices of deterrence as well as the avoidance of violence. Since a basic level of trust is needed to attain ontological security,21 the existence of it may further strengthen the practices of deterrence and the actors’ identities of deterrer and deterred actors. In this respect, I argue that for the reasons mentioned earlier, the practices of deterrence should be understood as providing both physical and ontological security, thus refuting that there is necessarily tension between them. Exactly for this reason I argue that Rasmussen’s (2002: 331-2) assertion—according to which MAD was about enhancing ontological over physical security—is only partly correct. Certainly, MAD should be understood as providing ontological security; but it also allowed for physical security, since, compared to previous strategies and doctrines, it was all about decreasing the physical threat of nuclear weapons. Furthermore, the ability to increase one dimension of security helped to enhance the other, since it strengthened the actors’ identities and created more stable expectations of avoiding violence.

### Alt s

Impact calc should be filtered through alt solvency-national security decesions have always been state based-their alt arguments are romanticism-epistemological shifts don’t overcome engrained ideological pre-dispositions-that’s Cole

#### Alt gets ignored-just a be nice request

**McCormack 10** (Tara, is Lecturer in International Politics at the University of Leicester and has a PhD in International Relations from the University of Westminster. 2010, (Critique, Security and Power: The political limits to emancipatory approaches, page 59-61)

In chapter 7 I engaged with the human security framework and some of the problematic implications of ‘emancipatory’ security policy frameworks. In this chapter I argued that the shift away from the pluralist security framework and the elevation of cosmopolitan and emancipatory goals **has served to** **enforce international power inequalities rather than lessen them**. Weak or unstable states are subjected to greater international scrutiny and international institutions and other states have greater freedom to intervene, but the citizens of these states have **no way of controlling or influencing** these international institutions or powerful states. This shift away from the pluralist security framework **has not challenged the status quo**, which may help to explain why major international institutions and states **can easily adopt** a more cosmopolitan rhetoric in their security policies. As we have seen, the shift away from the pluralist security framework has entailed a shift towards a more openly hierarchical international system, in which states are differentiated according to, for example, their ability to provide human security for their citizens or their supposed democratic commitments. In this shift, the old pluralist international norms of (formal) international sovereign equality, non-intervention and ‘blindness’ to the content of a state are overturned. Instead, international institutions and states have more freedom to intervene in weak or unstable states in order to ‘protect’ and emancipate individuals globally. Critical and emancipatory security theorists argue that the goal of the emancipation of the individual means that security must be reconceptualised away from the state. As the domestic sphere is understood to be the sphere of insecurity and disorder, the international sphere represents greater emancipatory possibilities, as Tickner argues, ‘if security is to start with the individual, its ties to state sovereignty must be severed’ (1995: 189). For critical and emancipatory theorists there must be a shift towards a ‘cosmopolitan’ legal framework, for example Mary Kaldor (2001: 10), Martin Shaw (2003: 104) and Andrew Linklater (2005). For critical theorists, one of the fundamental problems with Realism is that it is unrealistic. Because it prioritises order and the existing status quo, Realism attempts to impose a particular security framework onto a complex world, ignoring the myriad threats to people emerging from their own governments and societies. Moreover, traditional international theory serves to obscure power relations and omits a study of why the system is as it is: [O]mitting myriad strands of power amounts to exaggerating the simplicity of the entire political system. Today’s conventional portrait of international politics thus too often ends up looking like a Superman comic strip, whereas it probably should resemble a Jackson Pollock. (Enloe, 2002 [1996]: 189) Yet as I have argued, contemporary critical security theorists seem to show a marked lack of engagement with their problematic (whether the international security context, or the Yugoslav break-up and wars). **Without concrete engagement and analysis**, however, **the critical project is undermined and critical theory becomes nothing more than a request that people behave in a nicer way to each other**. Furthermore, whilst contemporary critical security theorists argue that they present a more realistic image of the world, through exposing power relations, for example, their lack of concrete analysis of the problematic considered **renders them actually unable to engage** with existing power structures and the way in which power is being exercised in the contemporary international system. For critical and emancipatory theorists the central place of the values of the theorist mean that it cannot fulfil its promise to critically engage with contemporary power relations and emancipatory possibilities. Values must be joined with engagement with the material circumstances of the time.

### Knowledge Production

#### Zero risk of their impact---instrumental knowledge production doesn’t cause violence and discursive criticism could never solve it anyway

Ken Hirschkop 7, Professor of English and Rhetoric at the University of Waterloo, July 25, 2007, “On Being Difficult,” Electronic Book Review, online: http://www.electronicbookreview.com/thread/criticalecologies/transitive

This defect - not being art - is one that theory should prolong and celebrate, not remedy. For the most egregious error Chow makes is to imagine that obstructing instrumentalism is somehow a desirable and effective route for left-wing politics. The case against instrumentalism is made in depth in the opening chapter, which argues with reference to Hiroshima and Nagasaki that "[t]he dropping of the atomic bombs effected what Michel Foucault would call a major shift in epistemes, a fundamental change in the organization, production and circulation of knowledge" (33). It initiates the "age of the world target" in which war becomes virtualized and knowledge militarized, particularly under the aegis of so-called "area studies".

It's hard not to see this as a Pacific version of the notorious argument that the Gulag and/or the Holocaust reveal the exhaustion of modernity. And the first thing one has to say is that this interpretation of war as no longer "the physical, mechanical struggles between combative oppositional groups" (33), as now transformed into a matter technology and vision, puts Chow in some uncomfortable intellectual company: like that of Donald Rumsfeld, whose recent humiliation is a timely reminder that wars continue to depend on the deployment of young men and women in fairly traditional forms of battle. Pace Chow, war can indeed be fought, and fought successfully, "without the skills of playing video games" (35) and this is proved, with grim results, every day.

But it's the title of this new epoch - the title of the book as well - that truly gives the game away. Heidegger's "Age of the World Picture" claimed that the distinguishing phenomena of what we like to call modernity - science, machine technology, secularization, the autonomy of art and culture - depended, in the last instance, on a particular metaphysics, that of the "world conceived of and grasped as a picture", as something prepared, if you like, for the manipulations of the subject. Against this vision of "sweeping global instrumentalism" Heidegger set not Mallarmé, but Hölderlin, and not just Hölderlin, but also "reflection", i.e., Heidegger's own philosophy.

It's a philosophical reprise of what Francis Mulhern has dubbed "metaculture", the discourse in which culture is invoked as a principle of social organization superior to the degraded machinations of "politics", degraded machinations which, at the time he was composing this essay, had led Heidegger to lower his expectations of what National Socialism might achieve. In the fog of metaphysics, every actually existing nation - America, the Soviet Union, Germany - looks just as grey, as does every conceivable form of politics. For the antithesis of the "world picture" is not a more just democratic politics, but no politics at all, and it is hard to see how this stance can serve as the starting point for a political critique.

If Chow decides to pursue this unpromising path anyhow, it is probably because turning exploitation, military conquest and prejudice into so many epiphenomena of a metaphysical "instrumentalism" grants philosophy and poetry a force and a role in revolutionising the world that would otherwise seem extravagant. Or it would do, if "instrumentalism" was, as Chow claims a "demotion of language", if language was somehow more at home exulting in its own plenitude than merely referring to things.

Poor old language. Apparently ignored for centuries, it only receives its due when poststructuralists force us to acknowledge it. In their hands, "language flexes its muscles and breaks the chains of its hitherto subordination to thought" and, as a consequence, "those who pursue poststructuralist theory in the critical writings find themselves permanently at war with those who expect, and insist on, the transparency - that is, the invisibility - of language as a tool of communication" (48).

We have been down this road before and will no doubt go down it again. In fact, it's fair to say this particular journey has become more or less the daily commute of critical theory, though few have thought it ought to be described in such openly military terms. There is good reason, however, to think Chow's chosen route will lead not to the promised land of resistance and emancipation, but to more Sisyphean frustration. In fact, there are several good reasons.