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#### Interpretation – affs must restrict an entire topic list area

#### “In the area” means all of the activities

United Nations 13

(United Nations Law of the Sea Treaty, http://www.un.org/depts/los/convention\_agreements/texts/unclos/part1.htm)

PART I¶ INTRODUCTION¶ Article 1

Use of terms and scope¶ 1. For the purposes of this Convention:¶ (1) "Area" means the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction;¶ (2) "Authority" means the International Seabed Authority;¶ (3) "activities in the Area" means all activities of exploration for, and exploitation of, the resources of the Area;

#### Violation –

#### Vote neg –

#### Limits – any other interp allows every single type of restriction to be applied to every single country or geographic area in the world – creates hundreds of small tiny affs

#### Predictable Neg Ground – core topic literature about restrictions are in the context of restrictions that apply to entire areas – disads flexibility, war fighting, terrorism only link if it constrains overall force area – also guts neg counterplan ground because all of the net benefits besides politics require disad links

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#### War powers authority is enumerated in prior statutes---doesn’t include CIC power because it’s not a congressionally authorized source of Presidential power

Curtis Bradley 10, Richard A. Horvitz Professor of Law and Professor of Public Policy Studies, Duke Law School, Curtis, “CLEAR STATEMENT RULES AND EXECUTIVE WAR POWERS” http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2730&context=faculty\_scholarship

The scope of the President’s independent war powers is notoriously unclear, and courts are understandably reluctant to issue constitutional rulings that might deprive the federal government as a whole of the flexibility needed to respond to crises. As a result, courts often look for signs that Congress has either supported or opposed the President’s actions and rest their decisions on statutory grounds. This is essentially the approach outlined by Justice Jackson in his concurrence in Youngstown.1 For the most part, the Supreme Court has also followed this approach in deciding executive power issues relating to the war on terror. In Hamdi v. Rumsfeld, for example, Justice O’Connor based her plurality decision, which allowed for military detention of a U.S. citizen captured in Afghanistan, on Congress’s September 18, 2001, Authorization for Use of Military Force (AUMF).2 Similarly, in Hamdan v. Rumsfeld, the Court grounded its disallowance of the Bush Administration’s military commission system on what it found to be congressionally imposed restrictions.3 The Court’s decision in Boumediene v. Bush4 might seem an aberration in this regard, but it is not. Although the Court in Boumediene did rely on the Constitution in holding that the detainees at Guantanamo have a right to seek habeas corpus re‐ view in U.S. courts, it did not impose any specific restrictions on the executive’s detention, treatment, or trial of the detainees.5 In other words, Boumediene was more about preserving a role for the courts than about prohibiting the executive from exercising statutorily conferred authority.

#### Vote Negative-the framers of the constitution explicitly distinguished between “war powers” and “commander in chief powers”— their interpretation is imprecise and explodes limits

Stephen Heidt 13, A Memorandum on the Topic Area, Georgia State University, http://www.cedadebate.org/forum/index.php?topic=4846.0

First, the topic committee and voters need to understand that Presidential War Power is not Commander in Chief Power. The topic paper, following a trend in legal “scholarship” and news media, blurs the distinction between the categories by alluding to presidential war power as commander in chief power (p9 at note 13). But war power is categorically distinct from commander in chief power. This categorical distinction derives directly from the powers ¶ 2 ¶ enumerated in the Constitution. Those powers can be summarized as Congress declares war, Presidents execute wars. ¶ Constitutional evidence: ¶ Article 1, Section 8: “The Congress shall have the power: To declare war…to raise armies and support armies…to provide and maintain a Navy, to make rules for the Government and Regulation of the land and naval Forces, to provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions; to provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States…” ¶ Article 1, Section 9: “The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public safety may require it.” ¶ Article 1, Section 10 which reads: “No State shall, without the Consent of Congress…engage in War, unless actually invaded, or in such imminent Danger as will not admit delay.” ¶ Article II, Section 2: “The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several states…He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur…” ¶ To summarize: War powers are enumerated in Article 1 of the Constitution. Commander in Chief power is enumerated in Article 2. The framers of the Constitution kept the two entirely distinct, on purpose, as a means for resolving the tension between the danger that a strong president would risk dictatorship and the need for unfettered power of the executive to conduct and win war.

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#### US domestic politics will make or break Iran deal---Obama is successfully holding off new sanctions but opponents are looking for an opportunity to get back in the game

Omestad-U.S. Institute of Peace-2/18/14

<http://www.foreignpolicy.com/articles/2014/02/17/icebergs_ahead_iran_nuclear_talks>

American Politics. Similarly, Obama is bound by political fights at home. Any long-term nuclear deal with Iran will have to run a political gauntlet on Capitol Hill, where mistrust of Iran has only grown ever since the 1979 U.S. Embassy hostage crisis following Iran's revolution. "Moving toward a final agreement, the internal politics of the United States will be critical," said the European official. A warning flare of sorts has gone up in the form of an Iran sanctions bill introduced by Sen. Robert Menendez (D-NJ) and Sen. Mark Kirk (R-IL) after the interim deal was reached. For now, the administration has gotten a reprieve. White House opposition has peeled off some Senate Democratic support. Menendez changed course on Feb. 6 and asked that no vote take place for now. An influential lobby supporting the bill, the American Israel Public Affairs Committee, did likewise. The episode nonetheless is a reminder of political uncertainties on the American side of the nuclear talks. Fifty-nine senators have signed on as sponsors of the bill, which backers term a "diplomatic insurance policy" to strengthen Washington's hand in negotiations. It would create a framework for new sanctions -- which could be temporarily waived by the president -- unless Iran met certain conditions, including on non-nuclear issues like terrorism and missile tests. It also calls on the United States to support Israel if it strikes Iranian nuclear sites in "legitimate self-defense." Einhorn calls some of its provisions "poison pills." The proposal ran head-on into the White House strategy to wall off the nuclear talks from the other disputes with Iran, which have inspired their own sanctions. The interim deal bars new nuclear-related sanctions on Iran during its six months in force. Administration officials charged that new sanctions would derail the talks and, as one put it, "undermine the sanctions regime that we have built so meticulously over the course of the last several years." Similarly, Zarif told journalist Robin Wright that talks are "dead" if new sanctions materialize. Obama, who is said to be more engaged in internal Iran discussions than he has been in the nuclear dispute with North Korea, vowed to veto the bill if it reaches him. Current and former officials insist that ample leverage with Iran already exists. "Iran is still facing crippling sanctions. Iran already has a tremendous incentive to negotiate seriously," said Einhorn. Yet the lead U.S. negotiator in the Iran talks, Wendy Sherman, assured edgy senators on Feb. 4, "We have made it clear to Iran that, if it fails to live up to its commitments, or if we are unable to reach agreement on a comprehensive solution, we would ask the Congress to ramp up new sanctions." No doubt, the administration could get them. Both Republicans and Democrats who are wary of the Iran talks will be watching for them to break down -- and create a new opening to act.

#### The plan’s authority restriction is a loss for Obama—causes defections

Dr. Andrew J. Loomis, Visiting Fellow at the Center for a New American Security, and Department of Government at Georgetown University, 3/2/2007, Leveraging legitimacy in the crafting of U.S. foreign policy, http://citation.allacademic.com//meta/p\_mla\_apa\_research\_citation/1/7/9/4/8/pages179487/p179487-36.php

Declining political authority encourages defection. American political analyst Norman Ornstein writes of the domestic context, In a system where a President has limited formal power, perception matters. The reputation for success—the belief by other political actors that even when he looks down, a president will find a way to pull out a victory—is the most valuable resource a chief executive can have. Conversely, the widespread belief that the Oval Office occupant is on the defensive, on the wane or without the ability to win under adversity can lead to disaster, as individual lawmakers calculate who will be on the winning side and negotiate accordingly. In simple terms, winners win and losers lose more often than not. Failure begets failure. In short, a president experiencing declining amounts of political capital has diminished capacity to advance his goals. As a result, political allies perceive a decreasing benefit in publicly tying themselves to the president, and an increasing benefit in allying with rising centers of authority. A president’s incapacity and his record of success are interlocked and reinforce each other. Incapacity leads to political failure, which reinforces perceptions of incapacity. This feedback loop accelerates decay both in leadership capacity and defection by key allies. The central point of this review of the presidential literature is that the sources of presidential influence—and thus their prospects for enjoying success in pursuing preferred foreign policies—go beyond the structural factors imbued by the Constitution. Presidential authority is affected by ideational resources in the form of public perceptions of legitimacy. The public offers and rescinds its support in accordance with normative trends and historical patterns, non-material sources of power that affects the character of U.S. policy, foreign and domestic.

#### The GOP will exploit this to flip Democratic votes on Iran—causes sanctions

Josh Rogin, Daily Beast, 2/5/14, GOP Will Force Reid to Save Obama’s Iran Policy—Over and Over Again, www.thedailybeast.com/articles/2014/02/05/gop-will-force-reid-to-save-obama-s-iran-policy-over-and-over-again.html

Dozens of Republican senators joined Wednesday to demand that Harry Reid allow a floor vote on a new Iran sanctions bill. If he doesn’t, they are planning to make his life miserable.

The Republican Senate caucus is planning to use every parliamentary trick in the book to push Senate Majority Leader Harry Reid to allow a floor vote on a new Iran sanctions bill that the Obama administration strenuously opposes. The Obama White House has succeeded in keeping most Democrats in line against supporting quick passage of the “Nuclear Weapon Free Iran Act,” which currently has 59 co-sponsors, including 13 Democrats. Reid has faithfully shelved the bill, pending the outcome of negotiations between Iran and the world’s major powers—the so-called “P5+1.” But tomorrow, Republicans plan to respond by using an array of floor tactics—including bringing up the bill and forcing Reid to publicly oppose it—as a means of putting public pressure on Reid and Democrats who may be on the fence. “Now we have come to a crossroads. Will the Senate allow Iran to keep its illicit nuclear infrastructure in place, rebuild its teetering economy and ultimately develop nuclear weapons at some point in the future?” 42 GOP senators wrote in a letter sent to Reid late Wednesday and obtained by The Daily Beast. “The answer to this question will be determined by whether you allow a vote on S. 1881, the bipartisan Nuclear Weapon Free Iran Act, which is cosponsored by more than half of the Senate.” The GOP letter calls on Reid to allow a vote on the bill during the current Senate work period—in other words, before the chamber’s next recess. Senate GOP aides said that until they get a vote, GOP senators are planning to use a number of procedural tools at their disposal to keep this issue front and center for Democrats. Since the legislation is already on the Senate’s legislative calendar, any senator can bring up the bill for a vote at any time and force Democrats to publicly object. Senators can also try attaching the bill as an amendment to future bills under consideration. Senate Minority Leader Mitch McConnell has been a harsh critic of Reid’s shelving of the bill, so he could demand a vote on it as a condition of moving any other legislation. If those amendments are blocked by Reid, Senators can then go to the floor and make speech after speech calling out Reid for ignoring a bill supported by 59 senators—and calling on fence-sitting Democrats to declare their position on the bill. “This letter is a final warning to Harry Reid that if Democrats want to block this bipartisan legislation, they will own the results of this foreign policy disaster,” one senior GOP senate aide said. The Republican senators believe, based on recent polls, that the majority of Americans support moving forward with the Iran sanctions bill now. They also believe that if Reid did allow a vote, the bill would garner more than the 59 votes of its co-sponsors and that Democrats vulnerable in 2014 races would support it, pushing the vote total past a veto-proof two-thirds supermajority.

#### New sanctions cause negotiation collapse and Middle East War

Rachel Kleinfeld, Carnegie Endowment For International Peace, 1/31/14, Sanctions Could Disrupt Negotiations With Iran, carnegieendowment.org/2014/02/03/sanctions-could-disrupt-negotiations-with-iran/h02v

Facing skyrocketing inflation, a collapsing currency and a sudden loss of imported goods, Iranians voted last year to kick out Mahmoud Ahmadinejad and elected a government they thought might jump-start their economy. The new government of President Hassan Rouhani is not "moderate" - but it is practical. It would like a nuclear weapon, but it wants economic relief more. Rouhani knows his only bargaining chip to end sanctions is to stop the nuclear weapons program. But the Rouhani government is on a short leash. Iran's supreme leader, Ali Khamenei, holds the ultimate power - and he is skeptical that a deal can be struck. Hardliners in Iran who benefit from sanctions are against it, as are many in the U.S. Congress. Khamenei needs to walk a careful line: If he looks like he's capitulating too much, then he'll face domestic backlash. He knows he has only a few months to deliver. That is why the congressional threat of more sanctions - even if they take effect only if the deal fails - is so dire. Hardliners and Khamenei will take such legislation as proof that the United States wants regime change, not an end to Iran's nuclear program. Rouhani himself has said that if sanctions legislation passes, negotiations are off. So why have more than 50 senators signed up as co-sponsors of new sanctions? Some do want regime change. So would we all - Iran is a noxious, terrorist-supporting, human-rights-destroying government. But regime change wouldn't end the security threat. Even the "Green Movement" that marched for democracy a few years ago wanted to obtain a nuclear weapon. Others think that sanctions got Iran to the negotiating table, so more sanctions will push them even harder. This is a miscalculation. Negotiations have begun. Iran has allowed nuclear inspectors to seal up their nuclear plants. More sanctions will simply seem like bad faith on our part. They also could provide the excuse other countries are looking for to break with the sanctions regime. Bans on oil imports are causing real economic hardship to allies such as Japan who depended on Iran for much of their energy, and export bans are hurting European companies desperate to restart growth. If the United States looks like the bad guy, these governments are likely to give in to domestic pressure and reduce their sanctions against Iran. Finally, the American Israel Public Affairs Committee is lobbying Congress hard with the message that a vote against sanctions is a vote against Israel. To me, as a Jew and a Zionist, this is not only hogwash: It is allowing an unelected American nongovernmental organization to wrap itself in the Israeli flag while suggesting actions that threaten Israel. If we cannot end Iran's nuclear program with diplomacy, we will end it through war. Two years ago, the national security organization I founded worked with Pentagon planners on a simulation game to look at what would happen after the United States bombed Iran. In all the possible scenarios, Iran was likely to do one thing: attack Israel to open up a two-front war and further drag America into conflict in the Middle East. A vote for sanctions at this point is a vote for war - and for Iranian missile attacks on Israel.

#### Nuclear war

James A. Russell**,** Senior Lecturer, National Security Affairs, Naval Postgraduate School, ‘9 (Spring) “Strategic Stability Reconsidered: Prospects for Escalation and Nuclear War in the Middle East” IFRI, Proliferation Papers, #26, http://www.ifri.org/downloads/PP26\_Russell\_2009.pdf

Strategic stability in the region is thus undermined by various factors: (1) asymmetric interests in the bargaining framework that can introduce unpredictable behavior from actors; (2) the presence of non-state actors that introduce unpredictability into relationships between the antagonists; (3) incompatible assumptions about the structure of the deterrent relationship that makes the bargaining framework strategically unstable; (4) perceptions by Israel and the United States that its window of opportunity for military action is closing, which could prompt a preventive attack; (5) the prospect that Iran’s response to pre-emptive attacks could involve unconventional weapons, which could prompt escalation by Israel and/or the United States; (6) the lack of a communications framework to build trust and cooperation among framework participants. These systemic weaknesses in the coercive bargaining framework all suggest that escalation by any the parties could happen either on purpose or as a result of miscalculation or the pressures of wartime circumstance. Given these factors, it is disturbingly easy to imagine scenarios under which a conflict could quickly escalate in which the regional antagonists would consider the use of chemical, biological, or nuclear weapons. It would be a mistake to believe the nuclear taboo can somehow magically keep nuclear weapons from being used in the context of an unstable strategic framework. Systemic asymmetries between actors in fact suggest a certain increase in the probability of war – a war in which escalation could happen quickly and from a variety of participants. Once such a war starts, events would likely develop a momentum all their own and decision-making would consequently be shaped in unpredictable ways. The international community must take this possibility seriously, and muster every tool at its disposal to prevent such an outcome, which would be an unprecedented disaster for the peoples of the region, with substantial risk for the entire world.

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#### The United States Federal Government should file a declaration with the International Court of Justice submitting United States federal government authority to violate the Mine Ban Treaty to prohibit by introducing anti-personal landmines into hostilities for binding adjudication by the International Court of Justice. The United States federal government will ask that the case take priority.

#### Observation One: Theory. The CP is legitimate. It test an increase in restrictions by making them contingent on an ICJ ruling. Net benefits check abuse and provide a germane policymaking warrant for voting negative.

#### Observation Two: Net Benefits

#### ICJ credibility-Submitting US use of force decisions to ICJ jurisdiction is uniquely important for the credibility of the institution-strong ICJ is vital to global stability

Meyer-American Society for International Law-3 http://hnn.us/articles/1465.html

George W. Bush drew fire from law and order advocates when in 2002 he "unsigned" (that is withdrew America from) the Treaty of Rome of 1998 that created an international criminal court. American scholars and humanists had led for many years in advocating establishment of such a court. That Court has only recently begun to function. It can try and punish persons allegedly guilty of crimes of international concern that their own nation has failed to prosecute. This self-made exemption from the Rule of Law will seem especially hypocritical as U.S. officialdom plans an international criminal tribunal to place former Iraqi leaders on trial. This recent isolation of America from global criminal law has received considerable attention. Not so the persistent American refusal to accept the compulsory jurisdiction of the International Court of Justice (ICJ), created largely by American efforts. The ICJ, also based at The Hague, has always been known semi-officially and in popular parlance as the "World Court." The new criminal court can only deal with crimes allegedly perpetrated by individuals. The role of the ICJ is confined to disputes between or among nation-states and such legal questions as may be raised by international organizations. The location of the two quite separate courts at The Hague and superficial similarity of their roles have resulted in persistent confusion as to their identity. That confusion has been compounded by the ignorance (or laziness) of headline writers who for the sake of its brevity called the criminal tribunal the "World Court" even before it began to work. When even minor disputes between nations are settled at the ICJ, there is a gain in the removal of potential irritants that can worsen relations. Some cases present issues so important that the Court's potential role as arbiter can be a significant factor in preserving peace. The protest at U.S. exemption of individuals from criminal jurisdiction has been widely reported. The continued refusal of the United States to subject its own actions, especially the use of force against others, to judgment by the ICJ has been treated as a non-event. The president who turned America's back on judgment under international law was Ronald Reagan. His action resulted from fear (especially after prominent condemnation by Senators Barry Goldwater and Daniel Patrick Moynihan) of an adverse Court ruling in Nicaragua's case against the U.S. Reagan withdrew American acceptance of mandatory jurisdiction that had been filed forty years earlier by President Truman, with unanimous support of the Senate. Republican representative Jim Leach of Iowa led opposition to President Reagan's action terminating consent to World Court jurisdiction. He said of the action of the president (put into office by his party) that "it lowers the United States to the level of international scofflaw…it symbolizes a retreat from support for the concept of international adjudication that dates back to the last century." (Hearing, House Subcomm. International Affairs Oct 30, 1985) Others agreed. Paul Simon, then senator from Illinois, in an Op-Ed in the New York Times, decried the self-inflicted wound to U S prestige. When the U.S. vetoed an otherwise unanimous Security Council call for U S compliance with the Court's ruling in the Nicaragua case, the L A Times editor's headline was "World Scofflaw" The Gorbachev regime reversed in 1998 a history of eight decades of Soviet boycott of the Court and its predecessor. The U.S. Congress acted in response. In the 1990 Foreign Relations Authorization Act there was included a call for "efforts to broaden, where appropriate the compulsory jurisdiction and enhance the effectiveness of the ICJ." There was no action taken to implement this by President G.W.H. Bush, father of the incumbent. Fifteen years earlier as U S ambassador to the U N, the earlier President Bush had officially declared in response to a U.N. survey: The United States firmly believes that a strong and active international Court is a central and indispensable element of an international legal order. Prevention of the use or threat of force to settle international disputes is essential to the maintenance of international security and is most effectively assured by the development of an international legal order and resort to a strong and respected Court. In July 1993, a congressionally created U.S. Commission on Improving the Effectiveness of the United Nations gave attention to the ICJ. It endorsed compulsory jurisdiction and recommended "to set a standard of leadership, the U.S. consider reaccepting the compulsory jurisdiction of the Court. No response from President Clinton. During a wide-ranging policy overview conducted in 1994 by the Senate Committee on Foreign Affairs, Senator Christopher Dodd raised "the issue of the World Court" and said: "I think it is sad indeed … that we have withdrawn ourselves from the jurisdiction of that Court. The Cold War is over. I think it important that we re-engage." Secretary of State Warren Christopher responded that he agreed. By his silence, President Clinton did not. That was about the last time public reference was made to U.S. refusal to accept compulsory jurisdiction. The individuals and groups previously concerned seemed to have abandoned the cause. Some had given up. Others were engaged in a new issue that had begun to seem urgent by the nineties of the 20th Century: They were distracted by the impact of the savage cruelties during the hostilities that marked the years following the break-up of the former Yugoslavia. They were appalled by the scale of the genocide in Rwanda. Demands to "do something" impacted national leaders and they turned to the Security Council of the United Nations for action. The Council responded by improvising temporary international criminal courts to try and punish criminal violation of human rights in Rwanda and the former Yugoslavia. This was not a new idea. Most well known early proposal was the call to "Hang the Kaiser," that was heard after the First World War. Intermittently discussed thereafter among publicists and in law reviews, the notion of criminal trials for war guilt was put into effect in temporary tribunals that sat in Nuremberg and Tokyo after World War II. To achieve such a result on a temporary basis seemed enough and nothing was done at the San Francisco conference that created the United Nations and the ICJ. In the last years of the twentieth century, the idea of an international criminal court became something of a cause. There came into being an "NGO Coalition for an International Criminal Court" that attracted many who had been supporters of a return to the ICJ's compulsory jurisdiction. The fruit of their efforts, joined by statesmen from several nations, was the Rome Conference of 1998 and the Treaty for a criminal tribunal of general international jurisdiction. This was the Court-to-be that was spurned by the Bush Administration. Not only that! So abhorrent was the thought of such a Court that Secretary Powell's State Department launched an international drive directed against vulnerable nations, seeking to have them abstain from joining and withdraw if they had; moreover some were persuaded to agree even to refuse extradition of alleged criminals. That the Bush administration thus has not only refused to submit to the criminal tribunal, but is actively seeking to torpedo it, has been considered reprehensible. This has sorely disappointed those who believe that crimes against humanity should not go unpunished. But President Bush cannot be fairly faulted for failing to return the United States to support an International legal system, such as was advocated by his father; one presided over, as the first president Bush urged, by a court to adjudge among the nations. He was not asked to do so and, not having been reminded, probably never gave it any thought. Postscript On May 11, 2003 Theodore Sorenson, President Kennedy's chief speechwriter, delivered the commencement address at American University in Washington, DC. In his speech he called the decision to withdraw from the World Court in 1986 a "mistake," adding: The World Court, established after World War I, to move disputes between nations from the battlefield to the courtroom, merits our full support. We must avoid a world in which any nation can decide on its own whether it has grounds to attack its neighbor, or seize its neighbor's resources. This country has both a history and an obligation of leadership in international jurisprudence. In today's unpromising, unpredictable, unruly world, stronger institutions of international justice would make the United States a safer place.

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#### The plans attempt to use law to create a legitimate form of violence normalizes it

Gregory 11 (Derek, Ph.D., Prof Department of Geography, University of British Columbia, “The everywhere war,” http://www.lsa.umich.edu/UMICH/eihs/Home/Events/gregory\_everywhere\_war.pdf)

I have argued elsewhere that the American way of war has changed since 9/11, though not uniquely because of it (Gregory 2010), and there are crucial continuities as well as differences between the Bush and Obama administrations: ‘The man who many considered the peace candidate in the last election was transformed into the war president’ (Carter 2011, 4). This requires a careful telling, and I do not mean to reduce the three studies I have sketched here to a single interpretative narrative. Yet there are connections between them as well as contradictions, and I have indicated some of these en route. Others have noted them too. Pakistan’s President has remarked that the war in Afghanistan has grave consequences for his country ‘just as the Mexican drug war on US borders makes a difference to American society’, and one scholar has suggested that the United States draws legal authority to conduct military operations across the border from Afghanistan (including the killing of bin Laden, codenamed ‘Geronimo’) from its history of extra-territorial operations against non-state actors in Mexico in the 1870s and 1880s (including the capture of the real Geronimo) (Margolies 2011). Whatever one makes of this, one of the most persistent threads connecting all three cases is the question of legality, which runs like a red ribbon throughout the prosecution of late modern war. On one side, commentators claim that new wars in the global South are ‘non-political’, intrinsically predatory criminal enterprises, that cartels are morphing into insurgencies, and that the origins of cyber warfare lie in the dark networks of cyber crime; on the other side, the United States places a premium on the rule and role of law in its new counterinsurgency doctrine, accentuates the involvement of legal advisers in targeting decisions by the USAF and the CIA, and even as it refuses to conﬁrm its UAV strikes in Pakistan provides arguments for their legality. The invocation of legality works to marginalise ethics and politics by making available a seemingly neutral, objective language: disagreement and debate then become purely technical issues that involve matters of opinion, certainly, but not values. The appeal to legality – and to the quasi-judicial process it invokes – thus helps to authorise a widespread and widening militarisation of our world. While I think it is both premature and excessive to see this as a transformation from governmentality to ‘militariality’ (Marzec 2009), I do believe that Foucault’s (2003) injunction – ‘Society must be defended’ – has been transformed into an unconditional imperative since 9/11 and that this involves an intensifying triangulation of the planet by legality, security and war. We might remember that biopolitics, one of the central projects of late modern war, requires a legal armature to authorise its interventions, and that necropolitics is not always outside the law. This triangulation has become such a common place and provides such an established base-line for contemporary politics that I am reminded of an interview with Zizek soon after 9/11 – which for him marked the last war of the twentieth century – when he predicted that the ‘new wars’ of the twenty-ﬁrst century would be distinguished by a radical uncertainty: ‘it will not even be clear whether it is a war or not’ (Deichmann et al. 2002).

Questioning the affirmatives ontology is a prior question to the advantages; the form of social relations their advocacy embodies rests on faulty epistemology and makes extinction inevitable

Willson 13 (Brain, is a Ph.D New College San Fransisco, Humanities, JD, American University, “Developing Nonviolent Bioregional Revolutionary Strategies,” http://www.brianwillson.com/developing-nonviolent-bioregional-revolutionary-strategies/)

I. Industrial civilization is on a collision course with life itself. Facilitating its collapse is a deserved and welcomed correction, long overdue. Collapse is inevitable whether we seek to facilitate it or not. Nonetheless, whatever we do, industrial civilization, based as it is on mining and burning finite and polluting fossil fuels, cannot last because it is destroying the ecosystem and the basis of local, cooperative life itself. It knows no limits in a physically finite world and thus is unsustainable. And the numbers of our human species on earth, which have proliferated from 1.6 billion in 1900 to 7 billion today, is the consequence of mindlessly eating oil – tractors, fertilizers, pesticides, herbicides – while destroying human culture in the process. Our food system itself is not sustainable. Dramatic die-off is part of the inevitable correction in the very near future, whether we like it or not. Human and political culture has become totally subservient to a near religion of economics and market forces. Technologies are never neutral, with some being seriously detrimental. Technologies come with an intrinsic character representing the purposes and values of the prevailing political economy that births it. The Industrialism process itself is traumatic. It is likely that only when we experience an apprenticeship in nature can we be trusted with machines, especially when they capital intensive & complicated. The nation-state, intertwined more than ever with corporate industrialism, will always come to its aid and rescue. Withdrawal of popular support enables new imagination and energy for re-creating local human food sufficient communities conforming with bioregional limits. II. The United States of America is irredeemable and unreformable, a Pretend Society. The USA as a nation state, as a recent culture, is irredeemable, unreformable, an anti-democratic, vertical, over-sized imperial unmanageable monster, sustained by the obedience and cooperation, even if reluctant, of the vast majority of its non-autonomous population. Virtually all of us are complicit in this imperial plunder even as many of us are increasingly repulsed by it and speak out against it. Lofty rhetoric has conditioned us to believe in our national exceptionalism, despite it being dramatically at odds with the empirically revealed pattern of our plundering cultural behavior totally dependent upon outsourcing the pain and suffering elsewhere. We cling to living a life based on the social myth of US America being committed to justice for all, even as we increasingly know this has always served as a cover for the social secret that the US is committed to prosperity for a minority thru expansion at ANY cost. Our Eurocentric origins have been built on an extraordinary and forceful but rationalized dispossession of hundreds of Indigenous nations (a genocide) assuring acquisition of free land, murdering millions with total impunity. This still unaddressed crime against humanity assured that our eyes themselves are the wool. Our addiction to the comfort and convenience brought to us by centuries of forceful theft of land, labor, and resources is very difficult to break, as with any addiction. However, our survival, and healing, requires a commitment to recovery of our humanity, ceasing our obedience to the national state. This is the (r)evolution begging us. Original wool is in our eyes: Eurocentric values were established with the invasion by Columbus: Cruelty never before seen, nor heard of, nor read of – Bartolome de las Casas describing the behavior of the Spaniards inflicted on the Indigenous of the West Indies in the 1500s. In fact the Indigenous had no vocabulary words to describe the behavior inflicted on them (A Short Account of the Destruction of the Indies, 1552). Eurocentric racism (hatred driven by fear) and arrogant religious ethnocentrism (self-righteous superiority) have never been honestly addressed or overcome. Thus, our foundational values and behaviors, if not radically transformed from arrogance to caring, will prove fatal to our modern species. Wool has remained uncleansed from our eyes: I personally discovered the continued vigorous U.S. application of the “Columbus Enterprise” in Viet Nam, discovering that Viet Nam was no aberration after learning of more than 500 previous US military interventions beginning in the late 1790s. Our business is killing, and business is good was a slogan painted on the front of a 9th Infantry Division helicopter in Viet Nam’s Mekong Delta in 1969. We, not the Indigenous, were and remain the savages. The US has been built on three genocides: violent and arrogant dispossession of hundreds of Indigenous nations in North America (Genocide #1), and in Africa (Genocide #2), stealing land and labor, respectively, with total impunity, murdering and maiming millions, amounting to genocide. It is morally unsustainable, now ecologically, politically, economically, and socially unsustainable as well. Further, in the 20th Century, the Republic of the US intervened several hundred times in well over a hundred nations stealing resources and labor, while imposing US-friendly markets, killing millions, impoverishing perhaps billions (Genocide #3). Since 1798, the US military forces have militarily intervened over 560 times in dozens of nations, nearly 400 of which have occurred since World War II. And since WWII, the US has bombed 28 countries, while covertly intervening thousands of times in the majority of nations on the earth. It is not helpful to continue believing in the social myth that the USA is a society committed to justice for all , in fact a convenient mask (since our origins) of our social secret being a society committed to prosperity for a few through expansion at ANY cost. (See William Appleman Williams). Always possessing oligarchic tendencies, it is now an outright corrupt corporatocracy owned lock stock and barrel by big money made obscenely rich from war making with our consent, even if reluctant. The Cold War and its nuclear and conventional arms race with the exaggerated “red menace”, was an insidious cover for a war preserving the Haves from the Have-Nots, in effect, ironically preserving a western, consumptive way of life that itself is killing us. Pretty amazing! Our way of life has produced so much carbon in the water, soil, and atmosphere, that it may in the end be equivalent to having caused nuclear winter. The war OF wholesale terror on retail terror has replaced the “red menace” as the rhetorical justification for the continued imperial plunder of the earth and the riches it brings to the military-industrial-intelligence-congressional-executive-information complex. Our cooperation with and addiction to the American Way Of Life provides the political energy that guarantees continuation of U.S. polices of imperial plunder. III. The American Way Of Life (AWOL), and the Western Way of Life in general, is the most dangerous force that exists on the earth. Our insatiable consumption patterns on a finite earth, enabled by but a one-century blip in burning energy efficient liquid fossil fuels, have made virtually all of us addicted to our way of life as we have been conditioned to be in denial about the egregious consequences outsourced outside our view or feeling fields. Of course, this trend began 2 centuries earlier with the advent of the industrial revolution. With 4.6% of the world’s population, we consume anywhere from 25% to nearly half the world’s resources. This kind of theft can only occur by force or its threat, justifying it with noble sounding rhetoric, over and over and over. Our insatiable individual and collective human demands for energy inputs originating from outside our bioregions, furnish the political-economic profit motives for the energy extractors, which in turn own the political process obsessed with preserving “national (in)security”, e.g., maintaining a very class-based life of affluence and comfort for a minority of the world’s people. This, in turn, requires a huge military to assure control of resources for our use, protecting corporate plunder, and to eliminate perceived threats from competing political agendas. The U.S. War department’s policy of “full spectrum dominance” is intended to control the world’s seas, airspaces, land bases, outer spaces, our “inner” mental spaces, and cyberspaces. Resources everywhere are constantly needed to supply our delusional modern life demands on a finite planet as the system seeks to dumb us down ever more. Thus, we are terribly complicit in the current severe dilemmas coming to a head due to (1) climate instability largely caused by mindless human activities; (2) from our dependence upon national currencies; and (3) dependence upon rapidly depleting finite resources. We have become addicts in a classical sense. Recovery requires a deep psychological, spiritual, and physical commitment to break our addiction to materialism, as we embark on a radical healing journey, individually and collectively, where less and local becomes a mantra, as does sharing and caring, I call it the Neolithic or Indigenous model. Sharing and caring replace individualism and competition. Therefore, A Radical Prescription Understanding these facts requires a radical paradigmatic shift in our thinking and behavior, equivalent to an evolutionary shift in our epistemology where our knowledge/thinking framework shifts: arrogant separateness from and domination over nature (ending a post-Ice Age 10,000 year cycle of thought structure among moderns) morphs to integration with nature, i.e., an eco-consciousness felt deeply in the viscera, more powerful than a cognitive idea. Thus, we re-discover ancient, archetypal Indigenous thought patterns. It requires creative disobedience to and strategic noncooperation with the prevailing political economy, while re-constructing locally reliant communities patterned on instructive models of historic Indigenous and Neolithic villages.

Vote negative; daring to imagine a political alternative to fear is key to change the technical legalistic frame that creates the conditions for violence

Ben-Asher 10 (NOA BEN-ASHER is a Assistant Professor of Law, Pace Law School, “Legalism and Decisionism in Crisis ,” http://moritzlaw.osu.edu/lawjournal/issues/volume71/number4/ben-asher.pdf)

“I am grateful for your hospitality and the hospitality of the people of Egypt”—thus begins President Obama’s address to the Muslim world in Cairo in June of 2009.300 Throughout this speech the President reaches out to Islam with rhetoric of gratitude, hospitality, and peace. He urges Muslims and non-Muslims to “have the courage to make a new beginning, keeping in mind what has been written.”301 And what has been written? Obama then quotes the Talmud—“The whole of the Torah is for the purpose of promoting peace”—302 and the New Testament—“Blessed are the peacemakers, for they shall be called sons of God.”303 Interestingly, though, he first quotes a passage from the Koran that, by contrast, does not mention peace: “O mankind! We have created you male and female and we have made you into nations and tribes so that you may know one another.” 304 Here, mankind has been divided into nations not for war or peace or prosperity or progress, but for one purpose: “so that you may know one another.” Knowledge of the other person and nation is the sole purpose of the separation of mankind into nations—says the Koran text that closes Obama’s speech. This was our definition of hospitality: conscious listening to the other, welcoming the face of the other, and occupying a relation of deference to the other. Perhaps Obama’s concluding words may help us understand what deference to the other might mean in this context—“It’s a faith in other people, and it’s what brought me here today.”305 This rhetoric of friendship, hospitality, and responsibility towards Islam is different from the strictly legalistic rhetoric of religious liberty pursued elsewhere by the President and by others. Such rhetoric is important, especially in times of hostilities, because it dares to imagine a political and legal alternative to fear, vulnerability, and enmity. Vice President Dick Cheney declared shortly after September 11, 2001, that we should consider the current period not an emergency at all, but “the new normalcy.”306 Necessity, enmity, and catastrophe have indeed become the normal politics shared by many Legalists and Decisionists in emergency powers debates. Legalist and Decisionist disagreements often turn on the balance of powers and the proper role of law in the “war on terror.” Should the primary tools for fighting terror be norms or decisions? Legalists have argued for the former and Decisionists for the latter. Legalists have argued that the rule of law must survive at all times. Decisionists have insisted that the key to the nation’s survival is a strong, decisive executive branch that is sometimes unbound by legal norms. But despite these disagreements, many versions of Decisionism and Legalism have conceded that the state of emergency has indeed become “the new normalcy.” This Article argues that we should develop an alternative vision of the human and the state as they exist in times of crisis.

### Case – Credibility

#### Multilat fails-single shot solutions fail

**Held, Durham IR professor, 2013**

(Davdi, “Gridlock: the growing breakdown of global cooperation”, 5-24, <http://www.opendemocracy.net/thomas-hale-david-held-kevin-young/gridlock-growing-breakdown-of-global-cooperation>, ldg)

The Doha round of trade negotiations is deadlocked, despite eight successful multilateral trade rounds before it.  Climate negotiators have met for two decadeswithout finding a way to stem global emissions.  The UN is paralyzedin the face of growing insecurities across the world, the latest dramatic example being Syria.  Each of these phenomena could be treated as if it was independent, and an explanation sought for the peculiarities of its causes.  Yet, such a perspective would fail to show what they, along with numerous other instances of breakdown in international negotiations, have in common. Global cooperation is gridlocked across a range of issue areas. The reasonsfor thisare not the result of any singleunderlying causal structure, but rather of several underlying dynamicsthat work together.  Global cooperation today is failing not simply because it is very difficult to solve many global problems – indeed it is – but because previous phases of global cooperation have been incredibly successful,producing unintended consequences that have overwhelmed the problem-solving capacities of theveryinstitutions that created them.It is hard to see how this situation can be unravelled, given failures ofcontemporaryglobal leadership, theweaknesses of NGOsin converting popular campaigns into institutional change and reform, and the domestic political landscapes of the most powerful countries.

#### Multilateral coop will always structurally fail regardless of their internal link

**Barma et al., Naval Postgraduate School national security affairs professor, 2013**

(Naazneen, “The Mythical Liberal Order”, National Interest, March/April, <http://nationalinterest.org/print/article/the-mythical-liberal-order-8146>, ldg)

Assessed against its ability to solve global problems, the current system is fallingprogressively furtherbehind on the most important challenges, includingfinancial stability, the “responsibility to protect,” and coordinated action on climate change, nuclear proliferation, cyberwarfare and maritime security. The authority, legitimacy and capacity of multilateral institutions dissolve when the going gets tough—when member countries have meaningfully different interests (as in currency manipulations), when the distribution of costs is large enough to matter (as in humanitarian crises in sub-Saharan Africa) or when the shadow of future uncertainties looms large (as in carbon reduction). Like a sports team that perfects exquisite plays during practice but fails to execute against an actual opponent,global-governance institutions have sputtered precisely when theirsupposedskillsand multilateral capitalare neededmost.  WHY HAS this happened? The hopeful liberal notion that these failures of global governance are merely reflections of organizational dysfunction that can be fixed by reforming or “reengineering” the institutions themselves, as if this were a job for management consultants fiddling with organization charts, is a costly distraction from the real challenge. A decade-long effort to revive the dead-on-arrival Doha Development Round in international trade is the sharpest example of the cost of such a tinkering-around-the-edges approach and its ultimate futility. Equally distracting and wrong is the notion held by neoconservatives and others that global governance is inherently a bad idea and that its institutions are ineffective and undesirable simply by virtue of being supranational.  The root cause of stalled global governance is simpler and more straightforward. “Multipolarization” has come faster and more forcefully than expected. Relatively authoritarian and postcolonial emerging powers have become leading voices that undermine anything approachinginternationalconsensus and, with that, multilateral institutions. It’s not just the reasonable demand for more seats at the table. That might have caused something of a decline in effectiveness but also an increase in legitimacy that on balance could have rendered it a net positive. Instead, global governance has gotten the worst of both worlds: a decline in both effectiveness and legitimacy. The problem is not one of a few rogue states acting badly in an otherwise coherent system. There has been no real breakdown per se. There just wasn’t all that much liberal world order to break down in the first place. The new voices are more than just numerous and powerful. They are truly distinct from the voices of an old era, and they approach the global system in a meaningfully different way.

#### Multilat is terminally screwed and small measures can’t save it

**Hellmann, Transatlantic Academy senior fellow, 2013**

(Gunther, “The Decline of Multilateralism”, 5-2, <http://blog.gmfus.org/2013/05/02/the-decline-of-multilateralism/>, ldg)

WASHINGTON—It is becoming increasingly difficult to argue against retrenchment in Europe and North America. Economic crises anddomestic political stagnation absorb energy and consume financial resources. Global military engagements in faraway places cost lives and treasureand often yield limited success. There is growing disillusionment with democracy promotion. Coalitions of sovereign state defenders like the BRICS (Brazil, Russia, India, China, and South Africa) make life for the guardians of the liberal world order ever more challenging. The upshot is multilateral fatigue in both Europe and North America. This is a perilous state of affairs because state-transcending global problems are proliferating. “Global Trends 2030,” a study published by the U.S. National Intelligence Council last December, predicts that “the current, largely Western dominance of global structures … will have been transformed by 2030 to be more in line with the changing hierarchy of new economic players.” Yet even if this were to happen, the report argues, it remains unclear to what degree new or reformed institutions “will have tackled growing global challenges.” One might be forgiven for taking this to be an overly optimistic projection.Based on current trends, the outlook is much gloomier, due mainly to the political contagion effects of sovereigntism, the fixation on state sovereignty//////// as an absolute value, and minilateralism. Moisés Naím, who initially coined the term, defined minilateralism as getting together the “smallest possible number of countries needed to have the largest possible impact on solving a particular problem.” The problem is that the smallest possible number may quickly grow very large; Naím’s own book, The End of Power, provides ample evidence that this is so. Consider, for instance, the number and political weight of countries needed to address the problems in the aftermath of a military escalation in the Middle East and Persian Gulf. The minimum number of countries required to effectively regulate global warming does not look any more encouraging. In other words, sovereigntism and minilateralism are symptoms of the crisis of liberal world order — manifestations of The Democratic Disconnect — and not a recipe for curing its ills. In the old days when multilateralism was not yet qualified politically with such adjectives as “assertive” (Madeleine Albright) or “effective” (EU), it served as a descriptor for a fundamental transformation of interstate collaboration in the second half of the 20th century. In an influential article, John Ruggie, a Harvard professor and former high-ranking UN official, showed that the actual practice of multilateralism by the liberal democracies of North America and Europe after World War II was based on a set of generalized principles of conduct. These principles rendered segments of the post-war international order into more reliable cooperative settings, such as the United Nations, or islands of peaceful change, such as the zone of European integration. A readiness to give up sovereignty or, at least to cooperate on the basis of reciprocity, were characteristic elements of multilateralism and what came to be called the “liberal world order.” This liberal order is under strain today because its creators and guardians have themselvesstrayed from these principles. In the security field, “coalitions of the willing” have undermined multilateralism not only in the UN context, but also in NATO. In economic and financial matters, the politics of European sovereign debt crisis management illustrates both the dangers ofexecutive federalism and the limits of diffuse reciprocity among Europe’s nation states in the world’s most integrated region. “Responsible stakeholders,” the former Deputy Secretary of State Robert Zoellick once said, do more than merely “conduct diplomacy to promote their national interests…They recognize that the international system sustains their peaceful prosperity, so they work to sustain that system.” What was meant as advice to China when Zoellick gave that speech in 2005 can easily be redirected at the liberal democracies of North America and Europe today. There areno easy ways out. Even if the slide toward retrenchment can be stopped, the prospects do not seem bright for the kind of bold new initiatives for global institutional reform that are required. It is debatable whether calls for “democratic internationalism” or a new alignment among “like-minded democracies” can do the trick, but Europe and North America need to realize that their stakes in the liberal order are much higher than those of relative newcomers. Indeed, overcoming crises at home hinges at least in part on sustaining a conducive global environment. Readjusting the balance between minilateralism and multilateralism will help.

### Case – Laws of War

#### ---No impact to Nanotech --- Regulations and the separation of development from research and development makes disasters unlikely

Phoenix & Treder 2003

Chris, co-founder and Director of Research, Center for Responsible Nanotechnology, has studied nanotechnology for more than 15 years, BS in Symbolic Systems and MS in Computer Science from Stanford and Mike co-founder and Executive Director of CRN, Research Fellow with the Institute for Ethics and Emerging Technologies “Safe Utilization of Advanced Nanotechnology” http://crnano.org/safe.htm

Development of nanotechnology must be undertaken with care to avoid accidents; once a nanotechnology-based manufacturing technology is created, it must be administered with even more care. Irresponsible use of molecular manufacturing could lead to black markets, unstable arms races ending in immense destruction, and possibly a release of grey goo. Misuse of the technology by inhumane governments, terrorists, criminals, and irresponsible users could produce even worse problems—grey goo is a feeble weapon compared to what could be designed. It seems likely that research leading to advanced nanotechnology will have to be carefully monitored and controlled. However, the same is not true of product research and development. The developer of nanotechnology-built products does not need technical expertise in nanotechnology. Once a manufacturing system is developed, product designers can use it to build anything from cars to computers, simply by reusing low-level designs that have previously been developed. A designer may safely be allowed to play with pieces 1,000 atoms on a side (one billion atoms in volume). This is several times smaller than a bacterium and 10,000,000 times smaller than a car. Working with modular “building blocks” of this size would allow almost anything to be designed and built, but the blocks would be too big to do the kind of molecular manipulation that is necessary for nano-manufacturing or to participate in biochemical reactions. A single block could contain a tiny motor or a computer, allowing products to be powered and responsive. As long as no block contained machinery to do mechanochemistry, the designer could not create a new kind of nanofactory. Once designed and built, a product of molecular manufacturing could be used by consumers just like a steel or plastic product. Of course, some products, such as cars, knives, and nail guns, are dangerous by design, but this kind of danger is one that we already know how to deal with. In the United States, Underwriter's Laboratories (UL), the Food and Drug Administration, and a host of industry and consumer organizations work to ensure that our products are as safe as we expect them to be. Nanotechnology products could be regulated in the same way. And if a personal nanofactory could only make approved products, it could be widely distributed, even for home use, without introducing any special risks.

#### ---No impact --- Super-intelligent computers preclude nanotech disaster.

Bostrom 2002

Nick, Dep’t of Philosophy & Director, Future of Humanity Institute, Oxford University, Journal of Evolution and Technology, Vol. 9, March 2002 “Existential Risks: Analyzing Human Extinction Scenarios and Related Hazards”

Some technologies seem to be especially worth promoting because they can help in reducing a broad range of threats. Superintelligence is one of these. Although it has its own dangers (expounded in preceding sections), these are dangers that we will have to face at some point no matter what. But getting superintelligence early is desirable because it would help diminish other risks. A superintelligence could advise us on policy. Superintelligence would make the progress curve for nanotechnology much steeper, thus shortening the period of vulnerability between the development of dangerous nanoreplicators and the deployment of adequate defenses. By contrast, getting nanotechnology before superintelligence would do little to diminish the risks of superintelligence. The main possible exception to this is if we think that it is important that we get to superintelligence via uploading rather than through artificial intelligence. Nanotechnology would greatly facilitate uploading [39]. Other technologies that have a wide range of risk-reducing potential include intelligence augmentation, information technology, and surveillance. These can make us smarter individually and collectively, and can make it more feasible to enforce necessary regulation. A strong prima facie case therefore exists for pursuing these technologies as vigorously as possible.[21]

#### The plan doesn’t change the fact that the US thinks it is in a global armed conflict with al qaeda-that’s the only thing that can satisfy Europe-courts will force their hand

**Parker, former British Security Service officer, 2012**

(Tom, “U.S. Tactics Threaten NATO”, 9-17, <http://nationalinterest.org/commentary/us-tactics-threaten-nato-7461?page=1>, ldg)

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

## 2NC

### Ov

#### The aff creates a telos of peace enforced through liberal violence---their evidence just proves that voting negative to refuse to partake in a self-fulfilling system of scenario-planning solves the case better by elevating non-violence as a priori---only a risk the aff naturalizes a more sanitized violence by overdetermining peace

Dalby 11 Simon Dalby, Carleton University "PEACE AND GEOPOLITICS: IMAGINING PEACEFUL GEOGRAPHIES" Nov 2011 http-server.carleton.ca/~sdalby/papers/PEACEFUL\_GEOGRAPHIES.pdf

This paper suggests this focus on war and violence has to be read against rapidly shifting geographies and the recent general trend of reduced violence in human affairs. Whether this is the promise of the liberal peace, a transitory imperial pax, something more fundamental in human affairs, or a temporary historical blip remains to be seen, but substantial empirical analyses do suggest that violence is declining (Human Security Report 2011). This stands in stark contrast to realist assertions of war as the human condition as well as to repeated warnings about the supposed dangers to international order of rising Asian powers. Likewise the remilitarization of Anglo-Saxon culture since 9/11 has suggested that warring is a routine part of modern life. But the nature of war has changed in some important ways even if contemporary imperial adventures in peripheral places look all too familiar to historians. Peace, all this crucially implies, is a matter of social processes, not a final Telos, a resolution of the tensions of human life, nor a utopia that will arrive sometime. In Christian terms the aspirational "Kingdom of God" is a work in progress. Nick Megoran (2011) in particular has suggested that the geography discipline needs to think much more carefully about peace making and the possibilities of non-violence as modes of political action. The key question is focused on in the Megoran's pointed refusal to accept the simplistic dismissal of the efficacy of non-violence given the obvious prevalence of violence. The point of his argument is that non-violence is a political strategy in part to respond to violence, to initiate political actions in ways that are not hostage to the use of force. In doing so, especially in his discussion of resistance to Nazi policies in Germany during the war, Megoran (2011) underplays the important points about legitimacy as part of politics, and likewise hints at the important contrast between non-violence as a strategic mode of political action. Implied here is that while war may be politics by other means, to gloss the classic Clausewitzian formulation, non¬violence is politics too. But politics plays in the larger geopolitical context, and this must not be forgotten in deliberations concerning the possible new initiatives geographers might take in thinking carefully about disciplinary contributions to peace research and practice. Contemporary social theory might point to Michel Foucault, and the argument drawn from his writings that politics is the extension of war rather than the other way round. Given the interest in biopolitics and geogovernance within the discipline these matters are obviously relevant but the connection to peace needs to be thought carefully beyond formulations that simply assume it as the opposite of wars (Morrissey 2011). This is especially the case given the changing modes of contemporary warfare and the advocacy of violence as an appropriate policy in present circumstances. The modes of warfare at the heart of liberalism suggest that the security of what Reid and Dillon (2009) call the biohuman, the liberal consuming subject, involves a violent series of practices designed to pacify the world by the elimination of political alternatives. The tension here suggests an imperial peace, a forceful imposition of a state of non-war. In George W. Bush's terms justifying the war on terror, a long struggle to eliminate tyranny (Dalby 2009a). Peace is, in this geopolitical understanding, what comes after the elimination of opposition. In late 2011 such formulations dominated discussions of the death of Colonel Gadaffi in Libya. The dramatic transformation of human affairs in the last couple of generations do require that would-be peaceful geographers look both to the importance of non-violence and simultaneously to how global transformations are changing the landscape of violence and social change, all of it still under the threat of nuclear devastation should major inter-state war occur once again. The re-emergence of non-violence as an explicit political strategy, and in particular the use of Gene Sharp's (1973) ideas of non-violent direct action in recent events pose these questions very pointedly. Geographers have much to offer in such re-thinking that may yet play their part in a more global understanding of how interconnected our fates are becoming and how inappropriate national state boundaries are as the premise for political action in a rapidly changing biosphere. But to do so some hard thinking is needed on geopolitics, and on how it works as well as how peace-full scholarship might foster that which it desires. Linking the practical actions of non-violence from Tahrir Square to those of the Occupy Wall Street actions, underway as the first draft of this paper was keyboarded, requires that we think very carefully about the practices that now are designated in terms of globalization. Not all this is novel, but the geopolitical scene is shifting in ways that need to be incorporated into the new thinking within geography about war, peace, violence and what the discipline might have to say about, and contribute to, non-violence as well as to contestations of contemporary lawfare (Gregory 2006). Whether the delegitimization of violence as a mode of rule will be extended further in coming decades is one of the big questions facing peace researchers. The American reaction to 9/11 set things back dramatically, an opportunity to respond in terms of response to a crime and diplomacy was squandered, but the wider social refusal to accept repression and violence as appropriate modes of rule has interesting potential to constrain the use of military force. The professionalization of many high technology militaries also reduces their inclination to involve themselves in repressing social movements, although here Mikhail Gorbachev's refusal to use the Red Army against dissidents in Eastern Europe in the late 1980s remains emblematic of the changes norms of acceptable rule that have been extended in the last few generations. Geopolitics has mostly been about rivalries between great powers and their contestations of power on the large scale. These specifications of the political world focus on states and the perpetuation of threats mapped as external dangers to supposedly pacific polities. Much geopolitical discourse specifies the world as a dangerous place, hence precisely because of these mappings, one supposedly necessitating violence in what passes for a realist interpretation of great powers as the prime movers of history (Mearsheimer 2001). Geopolitical thinking is about order and order is in part a cartographic notion. Juliet Fall (2010) once again emphasizes the importance of taken for granted boundaries as the ontological given of contemporary politics. Politics is about the cartographic control of territories, as Megoran (2011) too ponders regarding the first half of the twentieth century, but it also about much more than this, despite the fascination that so many commentators have with the ideal form of the supposedly national territorial state. Part of what geographers bring to the discussion of peace is a more nuanced geographical imagination than that found in so much of international studies (Dalby 2011a). On the other hand much of the discussion of peace sees war as the problem, peace as the solution. Implied in that is geopolitics as the problem, mapping dangers turns out to be a dangerous enterprise insofar as it facilitates the perpetuation of violence by representing other places as threats to which our place is susceptible. But this only matters if this is related to the realist assumptions of the inevitability of rivalry, the eternal search for power as key to humanity's self-organisation and the assumption that organized violence is the ultimate arbiter (Dalby 2010). Critical geopolitics is about challenging such contextualizations, and as such its relationships to peace would seem to be obvious, albeit as Megoran (2011) notes mostly by way of a focus on what Galtung (1969, 1971) calls negative peace. Given the repeated reinvention of colonial tropes in contemporary Western political discourse such critique remains an essential part of a political geography that grants peoples "the courtesy of political geography" (Mitchell and Smith 1991). Undercutting the moral logics of violence, so frequently relying on simplistic invocations of geographical inevitability, to structure their apologetics, remains a crucial contribution. Both the practical matters of recent history and the scholarly contributions by geographers do not allow simple binary distinctions of peace and war to be used as the premise of either scholarship or political practice. History and scholarship suggest rather that peace is what comes after war; the relationship is temporal, stages in matters of violence, geography and reorganizing facts on the ground. Historically in the era of European warfare, coincident with the rise of modernity, that many people hope is now near its end, peace was that which was imposed by the victors, who in turn were the most powerful in whatever contest was followed by a "peace". Much recent geographical scholarship suggests that post conflict re-construction is a mode of peace building literally (Kirsch and Flint 2011). But those of us who would challenge war as a human institution, or think about non-violence as a strategy for a better world, will not be satisfied with a geography that is concerned only to pick up the pieces and reconfigure them after they have been shattered by the latest round of organized violence. The key points are that reconstruction is a violent transformation of society, a world where frequently neo-liberal globalization is seen as the imposition of social forms that will not resist its logics. Hence peace is what victors impose, an imperial peace that may eventually be quite welcome to those who benefit from the new arrangements. Is peace then post-war? Perhaps it can be understood in these terms. But the corollary is the equally important point that peace is also frequently what comes before the next war. The normal human situation these days is a matter of non-war, but it is far from clear where security is enforced that this is more than a limited form of negative peace. Without large-scale de-militarization then peace is just what happens between wars. But given this then one additional key point that geographers interested in war need to pay attention to is the matter of how peace fails, how conflict escalates and how geography matters in these processes (Flint et al 2009). Peacekeeping is frequently about geographical separation as the Orwellian names for contemporary walls in terms of lines of peace have it. But there is much more geographical thinking to be done about these matters and the scales of interactions across supposedly peaceful borders, not least where what matters most is state security and its ordering principles rather than local interactions across frontiers. This is so not least because of the marked current trend to build fences around states as the supposed solution to numerous security challenges (Jones 2011). Putting matters into historical context also suggests that war is not what it used to be, at least not after the events of the 1940s. Negative peace is about preventing conflict; non¬violence is about political strategies to delegitimise violence, to challenge the human norms of behavior that allow cultures of violence. It is important to link this to the issues of what are now called lawfare (Morrissey 2011), the use of law as power and coercion to set the rules of social and political life too. This has been a key part of the US strategy for a long time; shaping institutions to the benefit of the US economy as been what much of international relations has been about, but the larger benefits of constraining conflict are part of the larger process that international law struggles to legitimize. Rules of conduct matter in the international system and the wide-scale repudiation of the American invasion of Iraq in 2003 demonstrated this point clearly. The United Nations effectively made war illegal although the number of ways round that formal restriction has been considerable. War departments were renamed defence departments the world over, and policing, surveillance, spying as well as military action became increasingly reconfigured in terms of security. The United Nations executive committee however was named the Security Council not the Peace Council, and the rhetoric ever since has suggested that peace has to be conjoined with security, with the latter not the former paramount. Apparently peace without security isn't worth bothering about. It's peace and security. Which suggests that war is perhaps the opposite of security as well as of peace. But perhaps security is to be contrasted to violence instead? All of which requires careful conceptual thinking about the current geopolitical borders. Crucial, but unremarked upon by many political geographers, is the simple fact that there is now widespread agreement that borders between states are fixed finally (Zacher 2001). Demarcation disputes, and no doubt some very interesting arguments about changing coastal boundaries as sea levels rise in coming decades will continue, but the territorial fixity assumption has changed one fundamental facet of warfare between states. Given the importance of territorial disputes historically as a cause of wars this point is important. So too is the finding that it matters greatly how these disputes are handled. Treated as "realist" matters of power politics territorial matters are more likely to lead to war than if diplomacy and conflict resolution are taken seriously (Vasquez and Henehan 2011). The exceptions here do seem to prove the rule: Palestine and Kashmir are two flashpoints where attempts to move borders, or at least the refusal to accept their imposition, are key to continued violence. Fixing geographical borders removes one major historical cause of interstate warfare. Territorial aggrandizement is now mostly a thing of the past, as the reconstruction of Bosnia and the refusal to change antecedent boundaries illustrates, albeit very painfully. The title of Gearoid O'Tuathail and Carl Dahlman's (2011) book is Bosnia Remade, not Bosnia Removed, and that matters in terms of how politics is now literally mapped. This norm matters greatly and the importance of agreement on frontiers and their delimitation tragically continues in the southern areas of what until recently was the singular state of Sudan in particular. CONTEMPORARY GEOPOLITICAL CHANGES While there is optimism over the territorial covenant on both the small scale and the very large scale the fixity of boundaries has not prevented either the violence of what Mary Kaldor (2006) called the new wars after the cold war, nor imperial adventures by the United States, the United Kingdom, Canada and other metropolitan states. Indeed looking at the macro-scale patterns of imperial power the question is whether current Middle East warring is but the latest phase of "Anglosphere" imperial violence (Megoran 2009). Robert Fisk's (2006) subtitle to his huge book on the region is blunt in posing the matter as the conquest of the Middle East. Understanding the United States and the United Kingdom, with various settler colonies as extensions of an Anglosphere suggests only that the patterns of conquest, and indirect but violent rule have shifted to another region of the planet, from North America in the eighteenth century to South Asia and then Africa in the nineteenth and early twentieth century, finally now the pattern is extended to the Middle East in the latter part of the twentieth and early twenty-first century. This shifting pattern of Anglosphere violence is the updated logic of Kevin Phillips (1997) argument about the Cousin's Wars as key to the rise of British and subsequently American power. Thus focusing on the specific geographies of the war on terror is a useful antidote to the hugely exaggerated claims of Islamic threats as a global phenomenon invoking the need for an American lead world war (Podhoretz 2007). But elsewhere violence has followed resources, at least to the sources of valuable ones and oil in particular (Le Billon and Cervantes 2009). Mary Kaldor's (2006) analysis of the new wars suggests both that globalization matters in terms of the patterns of connection that fuel and fund violence, and also in that the role of political violence is often about control of population and economic assets rather than a matter of territorial control. Militias and gangs, as well as would be micro-nationalists are not the warring entities of nation states in violent competition invading each other's territories; they are more diffuse arrangements, something more analogous to medieval geographies rather than the violent interactions of discrete clearly demarcated modern states. This is not unrelated to the imposition of the cartography of the territorial covenant, even if it has generated whole new categories of geopolitics, of ungoverned areas and regional peripheral regions where violence persists, and drones, interventions and mercenaries are commonplace. Over the last few decades the potential for major power warfare seems to have lessened, whatever about great power interventions in peripheral places. The global economy has, of late, required much greater cooperation between political elites. The looming crises of climate change that make unilateral action less efficacious, suggest the possibilities of less confrontational assumptions as the premise in geopolitics. While resource wars get headlines, much of environmental politics is about cooperation and treaty-making rather than warfare (Dinar 2011). Much of the contemporary violence that grabs the attention of headline writers is matters of conflict, competition and rivalry but it is not the classical war Clausewitz pointed to as the contest between two autonomous combatants in a struggle of wills fought until one forces the other to concede. Much of this might fit into his categories of small wars, but that in itself is significant if it supports the contention that great powers have given up the use of major war, if not police actions, as policy.

### fw

#### Compromising is intolerable--- an ethic of peace requires our relationship to the other to be a condition of human existence prior to any community or state that is founded on interrelationship rather a subject that purchases its security from the insecurity of others. If the foundations for their advocacy are wrong, it will inevitably cause intolerable violence, which is a reason to vote negative, letting the ends justify the means is the entire system we are criticizing---deontology first

Burke 4 (Associate Professor of Politics and International Relations @ University of New South Wales, “Just War or Ethical Peace? Moral Discourses of Strategic Violence after 9/11,” http://www.chathamhouse.org/sites/default/files/public/International%20Affairs/Blanket%20File%20Import/inta\_386.pdf)

The formal rigidity of just war theory, which allows it to tolerate the killing of innocents provided it is done within its rules, fetishizes procedure over complexity and 'intention’ over effects. Just war theory avoids the complexity of events by quarantining its system of moral judgment within a temporal space limited to the planning and conduct of high-intensity military operations. It then ignores their aftermath, the larger causal consequences of conflict, and the long history of foreign policy and geopolitical manipulation that breeds and precedes conflict. In contrast, ethical peace is not a rule-bound normative theory but a context-sensitive ethical orientation concerned with the likely outcomes of decisions and actions. Rules and principles—such as avoidable harm—will be important, but they must not be fetishized to a point where the intention of the theory becomes corrupted. In this way, ethical peace makes no claims to be a universal political or ethical theory, but would be driven by a view that the protection of innocent life is a universally applicable principle—unlike just war theory which, even as it asserts that it has universal moral validity, uses concepts like 'proportionality' and the 'double effect’ to remove thousands of people from the space of moral concern. Just war theory is particularly dangerous because, even as it claims universal moral validity, it avoids the ultimate moral test of universality: in this case, the imperative that innocents everywhere affected by a strategic action or process be protected. In the hands of Elshtain, it makes humanitarian arguments for war against Iraq to protect the innocent, but allows for the Iraqi innocent, military and civilian, to be slaughtered; it rightly condemns the 'despicable deeds' of the 9/11 terrorists, but says nothing about the Bush administration's suspension of international norms at Guantanamo Bay or the long list of Faustian pacts (for bases, cooperation and military aid) struck with abusive regimes in Russia, Algeria, Pakistan, China, Kyrgyzstan, Tajikistan and Uzbekistan as an integral part of the 'just war against terror’. Ethical peace, in contrast, holds that such compromises are intolerable; that, as Ken Booth and Tim Dunne argue after Gandhi, 'ends and means amount to the same thing'; that 'a daily victory over terror’ can be won by 'employing the means ... that are the moral equivalent of the ends we seek’.97 Ethical peace aims to create a genuinely universal moral community, rather than the selective and restricted one imagined by both realist and just war theorists. Just war theory colludes with realism by basing its doctrines on the fiction of the liberal body politic, built on a 'social contract’ which simultaneously submerges individual identity' into the state and divides people from each other

through their membership of states, creating a claustrophobic apartheid of moral obligation. The security of such a 'body politic', as it was imagined by Hobbes, Locke, Rousseau, Bentham and Hegel, is always purchased with the insecurity of others, and just war theory entrenches this relativistic ethic even as it claims to moderate its destructive implications.98 The social contract is an ontology of violence, of secure communities embodied and sustained by violence; and when married to the cynical, instrumental imperatives of the modem war machine, it promises not freedom from terror but a future lived within its bloody walls. Ethical peace refuses to channel its ethical obligations solely through the state, or rely on it to protect us violently, because in doing so the state may well violently endanger us and everyone whom its actions affect. Ethical peace seeks to create an 'ethical relation' that cannot be limited to or controlled by the state; it channels its ethical obligations above, below and beyond the state; it makes the ethical responsibility to the Other not a gift or indulgence of the state that can be forsaken in emergencies, but a condition of human existence prior to any community or state.99 This is the image of justice harboured and nurtured by ethical peace, one that is never content to seek justice with war, to fight terror with a terror tamed and moralized, to risk a future emptied of fairness and hope. Ethical peace struggles against terror lawfully, ethically, example by difficult example, dreaming of a future in which justice, strategy and war will be for ever strangers.

#### The judge should take on the role of the analyst. Only a psychoanalytic lens makes possible effective policymaking and avoids serial policy failure. Their decision making skills will be useless absent our interruption.

Fotaki 10 (Marianna, Organization Studies Group @ Manchester Business School, Why do public policies fail so often? Exploring health policy-making as an imaginary and symbolic construction, Organization 2010 17: 703, Sage, 713-716)

Towards an alternative conception of public policy-making So far, I have suggested that health policies often fail because the fantasmatic foundations of the policy-making process are not acknowledged as such. Using the example of patient choice, I have also suggested that the reasons for its re-introduction into the UK health care system and throughout Europe, despite limited success in the past, might be better understood through applying the psychoanalytic conception of subjective fantasy. In exploring the limits and possibilities of one particular policy, my aim was to demonstrate how powerful social fantasies are created and how their splitting from organizational reality enables the idealization of the health task. Lacanian and Kleinian psychoanalysis were drawn upon to put forward the article’s key arguments and to further the understanding of the less tangible processes present in public policy making. I have brought together the mental processes that Klein has described and which were then used extensively to explain organizational phenomena, with my central argument about the (unrecognized) role of the imaginary aspects of the policy-making process. Both theories in their own unique ways highlighted the role of fantasy as a necessary stimulant for policy development but also as an impediment to its realization. I have combined the idea of fragmented subjectivity taken from Lacan’s work and socially sanctioned defences from object relations theory, to offer an alternative conception of public policy formation and to explore the reasons behind frequent policy failures. The Lacanian ontology of the subject was used to highlight the role of fantasy as an enabler of social projects. Having its roots in unconscious mental life, fantasy becomes the stimulant driving forward public policies such as patient choice, even though many of these policies are bound to fail as is the case for all imaginary projects. But failure is not necessarily seen as an adverse outcome, but rather as an opportunity to rethink the ideas of purposefulness and teleology in the context of organizations and social endeavours more generally. The Lacanian perspective introduces the productive element held in the recognition of the inevitability of failure, by unveiling the imaginary nature of striving for idealistic policies and the liberating potential of accepting loss. His conception of loss is so much more radical than in object relations theory, where mourning can bring some sort of reparation and make up for it. In Lacan’s work loss originates in the longings of the individual psyche for completeness, which is unattainable, and yet this is what sustains us as desiring subjects. If we lacked loss there would be nothing to desire. Human desire, for Lacan, is a constitutive aspect of human subjectivity and is not driven by rational considerations, as economists would like us to believe. If anything the subject is enmeshed in its imaginary constructs in order to deflect the reality of the human condition. Nor is it a desire for the promised outcome only, but rather (or also) for the symbol that the outcome stands for. Put differently, the incessant search in the subject is for the signified meaning and not for the signifier itself. I have suggested that many public policies are intrinsically idealistic as they are instigated by way of setting desire in motion. So in the case of individual choice in health, the underlying fantasy that drives this policy is the fantasy of freedom (of choice), and by extension the fantasy of control over the uncontrollable. While its stated aim is to achieve diverse (and potentially conflicting) public policy objectives, the policy reflects the contradictions of human subjectivity on a societal level as well. In other words, the patient choice paradox is that it overtly ignores the unconscious motivations implicit in the everyday reality of patient–doctor encounter (for example, by assuming that rationality over-rides patients’ fears and vulnerabilities), and yet takes (unwittingly) account of the fantasy, which is illusory but is also an indispensable aspect of our existence. The analysis moved then towards the thesis that policy tends to be idealistic because it is not meant to withstand an immediate reality test but to express mythical, imaginary and arguably unrealizable societal aspirations and longings. In this sense the discrepancies and discontinuities present in patient choice policy are but an expression of the contradictions that sustain the lack, fragmentation and splitting of the subject, and so are the unspoken, conflicting and often impossible societal tasks performed by public institutions. I have also argued that by distancing itself from operational reality, public policy making expresses societal strife and desire on a fantasy level, whilst health organizations are left in the position of a dependent subject, having passively to reflect it without being able to implement unworkable policies. For this reason, the stated objectives that choice policy is expected to achieve (such as equity and efficiency for example), may be used to deflect attention away from the need to admit the deeper defensive role of health care policy (see also Fotaki, 2006). Yet because the tacit and unspoken functions of health policy related to death anxiety and inexorable facts of life are relegated to the unconscious, they give rise to all kinds of defensive policy rhetoric by policy makers who identify with the ideals they proclaim and then feel obliged to justify them. While policy makers express societal fantasies projected onto them by their constituencies, various professional groups or patient advocates are in their own ways involved in the construction of unattainable ideals, as they too pursue and legitimize their specific projects. The role of fantasy in relation to patient choice seems obvious, but can this be generalized across all policy making processes in relation to health or other areas of public policy making? The answer is an unequivocal yes. The fantasmatic structuration of public policy making is revealed in the difficulty of accepting the limitations that are intrinsic to human predicament and ‘to give up the dream of being all, of living forever, of narcissistic omnipotence and of living in the world that never frustrates our desires’ (Moi, 2004: 869). Health and social care is about dealing with the finitude of our physical bodies. Yet these concerns are no less relevant to the education system, for example, which is unconsciously preoccupied with ensuring the survival of future generations (see Obholzer, 1994) or economic development and the idea of ‘progress’ more generally, all of which enact omnipotent fantasies of the limitless possibilities in their own distinct ways. Being a part of the symbolic order, which is structured in lack and loss, these imaginary pursuits cannot be easily (if at all) translated into workable policy objectives. But where does this all leave policy makers and how can they purposefully integrate Lacanian and Kleinian insights by bringing them to bear on policy formation and implementation? A legitimate question is: if policies are about societal fantasies that cannot be fulfilled, would this not mean that all policies are bound to fail? More fundamentally, aren’t policies meant to address real issues rather than fantasmatic pursuits that cannot be realized? These are important questions as public policies are first and foremost about addressing issues that most of us care about, and a great deal of effort goes into their design and articulation. Therefore, I would not wish to suggest that policies are not about engaging with real problems. In contrast, my proposition is that socially constructed objects of fantasy are stirred up successfully only when policies concern issues that matter. Such is the case of patient choice for example. Yet if policy-making is not to remain locked in searching for unattainable fantasms (of choice for all), originating in the imaginary reflections of the illusory self, we would have to recognize them for what they are. If, on the other hand, we carry on mis-taking them for reality, they will continue to mirror the misrecognized vision of ourselves and our society. The unique strength of psychoanalytic thought is that it demonstrates the injustice towards the other and alienation of the subject whenever we cling to impossible fantasies originating in the imaginary (Leeb, 2008). The emancipatory potential of psychoanalysis on the other hand, lies in its power to highlight (and dispel) the imaginary nature of the subjective drive for unity, certainty and stability which underpins various societal projects. But psychoanalysis does not only warn us about the consequences of mistaking the infinite desires of the psyche with the finitude of human bodies. More crucially it acknowledges the productive role of fantasy, and of its failure, in the social arena. In so doing, psychoanalysis presents us with a way of bridging fantasy with reality in our social and political endeavors. The incorporation of psychoanalytic insights, I have suggested, as a necessary means for rethinking health policy making, is not meant to supplant economic and political explanations of social and organizational life. Instead it is offered to elucidate the co-existence and subtle interplay between psychic mechanisms and calculating rationality that policy makers, politicians, professionals and users of services rely on to make their decisions. Both theories of Lacanian and Kleinian psychoanlaysis drawn upon in this article imply the necessity of recognizing underlying imaginary dynamics as a starting point in the journey towards realistic policy-making. To do so we need firstly to accept the imaginary structuration of the desire to attain the unattainable. This recognition will lead to an acknowledgement and acceptance of the intrinsic instability and conflicting nature of the policy-making process, overcoming the splits between policy design and implementation. In addition to political and financial constraints, policies are simultaneously driven (and limited) by the ambiguity and non-unified subjectivity of those who design them and the users/beneficiaries who are themselves split, enigmatic and multi-dimensional subjects. Such a policy, which is reflective of its context and of itself, would not easily be drawn into seeking simplistic ‘solutions’ reflecting the fantasies of the ego. It would also not become the mirror showing our deepest socially sanctioned desires/fantasies, that we are then encouraged to enact mindlessly. As I have shown, the rhetorical pronouncements of ‘Choice for All’ for example, stand for an injunction to exercise and enjoy (choice) even if it involves the experience of being ill or cared for. The call for the recognition of the fantasmatic structuration of the policy process does not however suggest a blank slate authorization of policies designed without thought as to how they can (not) be implemented in a complex multi-organization such as the National Health Service. As I have argued, when policies are conceived at ‘a distance’ from organizational reality, they cannot relate to patient requirements and cannot be translated into organizational realities. This brings me to my second and more important point, about the necessity of re-considering policy-making processes, as an inclusive process involving those who are concerned with policy implementation: health professionals, and users of services. By engaging users and providers in decision-making and the co-production of services as self-aware subjects rather than as constituencies whose fantasies can be manipulated, there might be a possibility to break through the cycle of policy repetition and blame apportioning. More importantly, reconciling failure as an opportunity that keeps desire alive rather than an outcome to be avoided might create an opening for more realistic policy formation. This in itself is a depressing process as one must also give up the idealized objects, accepting the impossibility of ever attaining them. Yet only by accepting the necessity of Samuel Beckett’s injunction to: ‘Try again. Fail again. Fail better’ (Beckett, 1983: 7) may the process of un-encumbering oneself from the ideals that bind our ego begin. A participative policy making process that bridges fantasy and reality is a first step in such a direction. It would foster an engagement of self-aware subjects accepting the burden of their subjectivity and taking responsibility for their ontological predicament without surrendering to it, rather than a responsibilization of individual users of services or professionals. By re-considering the very idea of policy as grounded in an imaginary projection of a soon to be perfect world, we would have to learn to stop demanding such perfection of our politicians, and they would have to stop believing that they could deliver it. The comprehensive interpretation of policy-making at a societal level and through the lens of organizational defences suggested in this article might contribute to a better understanding of the possibilities and limitations of developing patients’ autonomy, beyond normalizing the ‘management of expectations’. It will also challenge a linear model of policy-making and policy analysis, which separates design from its implementation, showing it to be inadequate. But for this to happen, the unconscious motivations that create and undo policies will have to be appreciated. Taking into account the inevitability of fantasy in policy-making and the inevitability of its failure, may not free us once and for all from the tyranny of imaginary pursuits. It might, however, enable a journey towards the discovery of new ways of desiring, engaging and being in organizations and society.

They cannot rethink the system as they work within it---they appeal to a legalistic bureaucratic aesthetic

Schlag 1997

Pierre, University of Colorado Law School, Law and Phrenology, 110 Harv. L. Rev. 877

One sees it still in the recent interdisciplinary movements. The efforts of American legal thinkers to borrow from the most "rigorous" of the social sciences and the humanities can be understood as an attempt to repair and redeem the disintegrating disciplinary structure of American law. By borrowing from microeconomics and analytical philosophy, the most elite law schools attempt to "reconstruct" their disciplinary edifice, to "rethink" their disintegrating formalizations, and to "restate" their claim of authority to say what the law is. If these popular metaphors of "restatement," "rethinking," and "reconstruction" have any plausibility, it is because of a faith that something remains worth restating, rethinking, or reconstructing. But what remains there is the pseudo-scientific Langdellian ontology. So even as they "restate," "rethink," and "reconstruct," American legal thinkers do so with and within the terms of the pseudo-scientific Langdellian ontology. American legal thinkers still use the units of analysis known as doctrines, principles, policies, tests, and their aesthetic equivalents to explain and justify other doctrines, principles, policies, tests, and their aesthetic equivalents. And they continue, despite what they say they believe on this matter, to speak and write as if those are the precincts where law is to be found.

### Game theory

#### Engle 2010

http://www.pennstatelawreview.org/penn-statim/u-n-packing-the-state%E2%80%99s-reputation-a-response-to-professor-brewster%E2%80%99s-%E2%80%9Cunpacking-the-state%E2%80%99s-reputation%E2%80%9D/

Methodologically, Professor Brewster analyzes the problem of state compliance with international law using economic analysis (cost/benefit comparisons) and game theory. That is not legal analysis. It is game theory and economics and sometimes misses the mark. For example, Professor Brewster writes: “Reputation can pull states toward compliance when the realpolitik tool of retaliation is insufficient.”[25] Her invocation of Realpolitik implies that states do not have legal self-help remedies. In fact, states can legally undertake retorsions and reprisal as self-help remedies. Retorsions are unilateral measures of self-help undertaken by a state which would be valid regardless of the actions of other states.[26] Reprisals, in contrast, are self-help remedies which are only legal due to a justificatory wrongful act by another state.[27] Similarly, Professor Brewster discusses expropriations, apparently assuming such are illegal under international law.[28] There, a deeper legal analysis of treaty law and court cases on the specific issue of the legality of expropriation under international law – as opposed to economic theories of gamesmanship, which have been well analyzed already – would have been more fruitful. According to Banco Nacional de Cuba v. Sabbatino,[29] there was no recognized right to compensation for expropriation under international law in 1963. Subsequent U.S. court cases (e.g., Bigio v. Coca-Cola[30]) seem to confirm that view, as does the general principle that the state, as sovereign, has absolute and arbitrary power over the lives and property of its subjects – a principle which is increasingly derogated from in the contemporary post-Westphalian system. True, cases litigating the meaning of the European Convention of Human Rights seem to evidence the existence of a basic right to compensation for expropriation.[31] So, one could argue that there is now a right to compensation for expropriation under international law. But that is at best unsettled issue – and if settled, is likely settled against what seems to be Professor Brewster’s view. Inasmuch as international legal scholarship contributes to the formation of opinio juris, one has the right to demand rigorous legal analysis from international law scholars: a searching examination of cases, treaties, legislation, history, and actual state practices. Economic analysis can be a useful supplement to legal analysis but is no substitute for the necessary investigation and exposition of cases, treaties, laws, and usages to determine not just what international law ought to be but also what it is.

### LOAC---link---2nc

#### Law is a vehicle through which war becomes embedded in American identity---the assumption that war would stop ‘if only we got the words right’ conflates law with politics

Dudizak 6 (Mary L. Dudziak is a professor of law and director of the Project on War and Security in Law, Culture and Society at Emory University, “Making Law, Making War, Making America,” http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=905938)

September 11, 2001, brought massive destruction to American soil, as hijackers piloted two airliners into the towers of the World Trade Center in New York City, a third into the Pentagon building outside of Washington, D.C., while a fourth crashed into a field in Pennsylvania after its passengers, upon hearing of the World Trade Center attacks, tried to overcome their assailants. For a moment, these events brought America and the world together, as peoples around the world made pilgrimages to American embassies with flowers and candles to express their grief. The strikes might have been characterized as a horrific crime. But President George W. Bush soon announced that the nation was in “a new kind of war” that called for a military response rather than criminal prosecution and punishment. This “new kind of war” was not against a nation, but against terrorism. As Marilyn Young has argued, the U.S. has engaged in wars against “isms” before, for example in Korea, when the nation portrayed itself as fighting not Koreans but Communists. Terrorists, like Communists, were not confined to a particular state, and so the nation could make war against this new enemy where ever it seemed to reside. The new threat was cast in apocalyptic terms reminiscent of Cold War-era conceptualization of the Soviet threat, so that survival of the nation and civilization itself seemed again at risk. The U.S. first set its sights on the Taliban in Afghanistan, and then Iraq, with U.S. officials variously arguing that there were ties between that nation and the Al Qaeda terrorist group, and that Iraqi President Saddam Hussein had Weapons of Mass Destruction that threatened American security, claims that it could never verify. Acting without United Nations authorization, the U.S. war on Iraq would seem to be a lawless act, flouting the idea of an international rule of law that had once been the promise of the international organization. From another perspective, however, American unilateralism contained a law-like logic. As Ruti Teitel has argued, the U.S. saw itself as the world’s superpower, the police power of the world, the enforcer of law that could not itself be subject to the police power. Acting in the face of disapproval of once close allies, the U.S. easily toppled Hussein. That very act, however, was to threaten the country’s own legitimacy in the world community. This new war had more dramatic effects domestically than had any military engagement since Vietnam. Congress passed the “USA Patriot Act” in September 2001, giving the government broad powers to detain and deport noncitizens, and expanded investigatory power for law enforcement. Most important, the President claimed sole authority to determine the scope of executive power, and his administration tried to render its exercise of power unreviewable. Administration officials justified their actions by asserting that September 11 had “changed everything,” and the nation was in a “new kind of war.” Critics of Administration policy were dismissed as engaging in “September 10” thinking. And so September 11 inaugurated yet another new time zone, a space of exception, a time when normal rules must be suspended. While legal scholars fiercely debated what constraints applied to such an emergency regime, the Administration acted as though law itself belonged to a bygone era. Yet rather than a break with the past, the September 11 era illustrates how embedded war had become in American law by the end of the twentieth century. War had a way of uniting the nation. As would become clear with the anemic national response to Hurricane Katrina, a national tragedy was not a metaphor that would rally the nation or appeal to the electorate. And war brought with it the most expansive vision of government power. The most important power of the president, however, was simply the power to frame the September 11 attacks as a “war” in the first place. Calling it a “war” unleashed the war powers, and the president’s continuing efforts to place the ensuing “war on terror” within a traditional American war narrative provided the Administration’s primary justification for maintaining those powers indefinitely. In the name of the “war on terror,” hundreds of prisoners taken in Afghanistan were not held as prisoners of war in that country, and were not transported to the United States, but instead were taken to the U.S. military base at Guantánamo Bay, Cuba. The U.S. government claimed that Guantánamo lay beyond the jurisdiction of U.S. courts because it was not located on U.S. territory. The Geneva Conventions protecting prisoners of war did not apply either, the Administration asserted, because the detainees were “unlawful combatants,” rather than conventional military forces. Guantánamo therefore seemed to be a law-free zone. In both the domestic and international context, the Administration claimed sole power to define the lawful scope of its own action. However, in Hamdi v. Rumsfeld (2004), the U.S. Supreme Court placed a limited restraint on the power of the executive to define the boundaries of its own power by holding that a U.S. citizen seized in Afghanistan could challenge his detention in U.S. courts. And in Hamdan v. Rumsfeld (2006), the Court rejected the government’s plan to try detainees before military tribunals with fewer safeguards than those under U.S. military law. Still, the Administration’s vision of law was of the sovereign ruler as the embodiment of law itself. The Administration justified such broad power as necessary to combat the threat of global terrorism. The difficulty with this vision was that the world was not inclined to follow along. The lessons of the Cold War, that American leadership rested in part on a sense that the nation hewed to its own moral principles, seemed long forgotten. The consequences of unreviewable power seemed evident not long after Hamdi was argued in the Supreme Court, as news broke of the torture of Iraqi prisoners by American soldiers. Images of naked, hooded prisoners flooded the international press, undermining American prestige throughout the world. It was clear that the U.S. had come far from the moment shortly after 9/11 when the world had grieved along with Americans. Now American power seemed tawdry and dangerous. Prosecutions of soldiers involved in Abu Ghraib, it was hoped, would help distance the prisoner abuse from America itself by illustrating that the perpetrators had violated their nation’s norms. But troublesome news from Iraq and Afghanistan continued to reverberate around the world. The image of America became linked, indissolubly, to its pursuit of the “war on terror.” The meaning of that engagement, like those that had preceded it, would be inscribed in history books written by those far beyond the command of any American president. When America makes war, war makes America in the hearts and minds of all who are touched, and in ways beyond American control. War has traditionally reconfigured sovereign power, with the ascendancy of the victor and the displacement of the defeated. At work in the twentieth century is anther kind of reconfiguration of sovereignty. War, through the century, has driven the expansion of the powers of American sovereignty. Where the ends of that power will lie is the question for the next age. The great constitutional debates in the post-September 11 era often turned on the nature of a sovereign’s war or emergency power, and the question of whether the power to define the state of emergency and suspend the usual rule of law lies solely in the hands of the president. But the more enduring question was what the nation had become before the twin towers fell, and the way war had seeped into its center. Early in the twentieth century, hopes flourished that global conflict might be avoided if only drafters of a convention could get the words right. Instead law became embroiled in the project of demarcating those wars that crossed the bounds of humanity from those that did not. Law and war acquired an intimate familiarity with each other. That familiarity welled up domestically too. Government powers did not ebb and flow with wartime. Government programs and regulations created during war did not go away but were drawn upon later to serve new purposes. The Supreme Court, like other branches of government, facilitated war-related statebuilding. While the beginnings of what is sometimes called the “New Deal revolution” on the Court happened before the U.S. entered the war, decisions during the conflict greatly extended federal power: what began in 1937 was consolidated and extended in a war-related context War’s impact on American legal history is not episodic, but central and continuing. Law is a vehicle through which war becomes embedded in American democracy over time. Similarly, the twentieth century story of individual rights has not been a simple one of a pendulum swinging between rights and security. Instead, security concerns often informed the Court’s jurisprudence, but security might be advanced by contracting, expanding or modifying rights, depending on the situation. Korematsu during World War II and Dennis v. United States during the Cold War are classic examples of decisions in which rights were restricted in the service of conceptions of national security. In Brown v. Board of Education, by contrast, racial discrimination was recognized as an international embarrassment that undermined U.S. prestige. This led to an extension of individual rights. Individual rights cases help us to see that conceptions of national identity are at stake in constitutional cases. Reflected across these cases is an image of the nation and its fears. American national identity, reflected in American law, was not simply a domestic matter, as the story of Brown helps us to see. Projecting an image of American justice was central to maintaining a conception of America

n democracy – a story of America for the world. In the context of the Cold War, this mattered immensely to U.S. prestige and U.S. national security. More recently, the world’s perceptions of American democracy have not weighed as heavily on American policy makers. Debates over the importance of the American image would again become a central issue after September 11, and especially after the exposure of abuses at the hands of Americans at Abu Ghraib. The U.S. seemed to retreat from legal regulation of its actions, as if law itself was a threat to American security. The new world many imagined had been created by September 11 required instead that the U.S. project power. But bad news continued to filter out from Iraq, Afghanistan and Guantánamo. As much as the United States tried to hold the reins of power, the story of the war, and conceptions of its lawfulness, informed the world’s understandings of American identity in ways beyond any president’s control.

#### Reformist measures aimed at the laws of war are grounded in the West’s attempts at define itself as civilized against the savage other---their impacts can’t be separated from the process of colonial identity formation---turns the case because it causes ineffective modeling that displaces effective local forms of regulating violence

Frédéric Mégret 6, Assistant-Professor, Faculty of Law, University of Toronto, From ‘savages’ to ‘unlawful combatants’: a postcolonial look at international law’s ‘other’, http://people.mcgill.ca/files/frederic.megret/Megret-SavagesandtheLawsofWar.pdf

Far from being merely a perversion, I have sought to show how exclusion and the creation of an ‘other’ may have been at the very foundation of international humanitarian law, a phenomenon bound to re-emerge in times of strain. I have tried to show how the laws of war have always stood for a particular vision of what legitimate warfare is which is almost entirely informed by the European experience. Although the laws of war have accomplished something of a Copernican anthropological revolution over the last fifty years, there is more to practices such as Guantánamo than the mere onslaught of power and violence against the Law: something like the discreet exclusionary work of law itself.

It is this model — putatively universal but profoundly exclusive — that has been expanded the world over, to the point of saturating legal and moral public discourse about war. It is this model that exercises a monopoly over our imaginations about state violence and what can be done about it. In the process of expansion of the laws of war, warfare the world over has become something very much like (if not much worse than) what nineteenth century humanitarians had sought to avert. In that respect, humanitarian lawyers rightly prophesized the danger, but that prophecy also ended up being a startlingly self-realizing one. In many ways, international humanitarian law was the solution to the problem it simultaneously crystallized (something that could be said of much of international law).

It may be that such is the price to pay if one is to ever achieve a modicum of regulation in warfare. It is also important, however, to assess what has been lost in embracing a regulatory model that is so tainted with the ideology that gave rise to it, and so committed to the entrenchment of state power. In the nineteenth Century, one of the already mentioned fathers of international humanitarian law, de Martens, felt it was axiomatic that ‘the mission of European nations is precisely to inculcate oriental tribes and peoples ideas about the law, and to initiate them to the eternal and benevolent principles that have placed Europe at the head of civilization and humanity’.174 The question international humanitarian lawyers should be asking themselves as a matter of some urgency is: how have the laws of war been instrumental in reinforcing the very categories from which they supposedly drew and, with the benefit of hindsight, what is the balance sheet of international humanitarian law’s mediation of the colonial encounter?

Through colonization, did the non-Western world at least get the benefits of forms of regulation which were either unknown to them or in bad need of being updated for the purposes of international interaction? The laws of war beyond the West have been simultaneously enthusiastically embraced as part of the standard baggage of civilization, and routinely trampled. They have often proved far less effective than had been hoped at protecting the victims of armed conflict. The improbability of legal transplants is partly to blame. The laws of war presuppose a number of social ideal-types — the responsible commander, the chivalrous officer, the reliable NCO, the disciplined foot-soldier — that cannot be recreated at a moment’s notice once the laws of war have been cut off from their cultural base. Much of the sustainability of the laws of war relies on these shared assumptions about role-playing to make sense of otherwise enigmatic legal injunctions. By transferring only the thinnest of superstructure, the risk is that non-Western militaries will have inherited legal forms uninhabited by social purpose. The irony of course, is that by the time the non-Western world had committed to some of the archetypes implicit in the laws of war, international humanitarian law turned out to not be very good at restraining warfare at all and, in fact, particularly hopeless in regulating warfare among or within the recent converts.

But perhaps more attention should be paid to what the laws of war have excluded or obscured, instead of simply to what the laws of war have failed or succeeded in doing. Much international humanitarian scholarship over the past thirty years has been devoted to the worthy task of showing how traditions of restraint in warfare have existed in many non- Western cultures.175 This is undeniably a welcome (re)discovery that was long overdue. Maybe the laws of war were indeed merely giving a universal expression to what was otherwise an extremely widespread aspiration, in which case no culture could be said to have been specifically dispossessed of anything.

But typically this scholarship may well end up overemphasizing the similarities between such traditions, at the expense of what was specific about the development of the contemporary laws of war. That traditions of restraint in the use of violence by social entities against each other have existed almost universally is quite clear. The modern version of the laws of war, however, that which became globalized, is clearly, as I hope to have demonstrated, about more than a simple intuition that not all is permitted in times of war. The particular way that fundamental idea was expressed (through international law, through the language of statehood) for example will often have been as important as the message (the disincarnated idea that restraint in warfare is an obligation).

One fruitful and so far hardly pursued avenue of research, therefore, would try to assess the extent to which the contemporary laws of war ended up displacing existing, richly situated traditions for the benefit of a relatively decontextualised universalism. A history of how the laws of war have consequently impoverished cultural registers to deal with organized violence is still to be written, but it might shed light on the devastating consequences of conflicts in places like Africa for example.

In the meantime, it is tempting to think that the universalization of the laws of war has often left the non-Western world in the worst of places: one where existing traditions have been sufficiently destabilized to be discredited, but where the promise of ‘civilization’, hailed as the prize for massive societal transformation along Western lines, has failed to materialize.

The (missed) encounter between colonialism and the laws of war has also had implications for the ‘civilized world’ itself and our understanding of the emergence and development of international law. The exclusion of the non-civilized was obviously a consequence of international law’s prescriptions. But it was also a cause of the tonality of these prescriptions, part of a complex dialectical process of constitution (in the sense of ‘coming into being’) of international law, which conferred it its particular civilizational hue. The relation of public international law to the problem of war was never, needless to say, that of an already constituted set of norms to be applied to a novel and, to a degree, extraneous social problem.

Instead, international law became what it eventually became by upholding itself as a vision of ‘civilization’ against the simultaneously constituted ‘savagery’, fantasized or not, of the non-Western warrior, so that this contrast, recycled through the ages and the endless echo of repetition, would be received as the original matrix through which international law ‘saw the world’. As such, the emergence of the modern laws of war was as much about identity as it was about norms.176 The ‘law of humanity’, as Ruti Teitel put it, ‘did the work of drawing the line between the ‘civilized’ and the ‘barbarians’’ and ‘supplied the sense that there was such a thing as international law’.177 Indeed, because of the centrality of the problem of war to international relations, the laws of war became central to international law’s self-image and still retain a unique place in the framing of a distinct reformist sensitivity, not to mention the discipline’s relatively good conscience.

### Reps Matter

#### We should be analyzing the relationship between the plan and the advantages, not just the plan alone. Policy stories, like the 1ac institutionalize a particular understanding of both problems and solutions implicating implementation.

**Sending 4** (Ole, Norwegian Institute for International Affairs research fellow, Global Institutions & Development, pg 58-9)

Granted that the objectification and definition of a given phenomenon is open to a variety of normative and political considerations, it becomes interesting to explore how scientific knowledge constitutes a symbolic resource used by politically motivated actors. In order to justify and legitimize certain courses of action, and to render these possible and effective, scientific knowledge forms an important component both for efforts of persuading and mobilizing different groups, and for formulating and establishing policy practices. This can he grasped through the concept of poli1y stories. A policy story can be defined as follows: A set of factual, causal claims, normative principles and a desired objective, all of which are constructed as a more or less coherent argument a story which points to a problem to be addressed and the desirability and adequacy of adopting a specific policy approach to resolve it. This conceptualization incorporates how politically motivated actors integrate scientifically produced imowledge in the form of facts, concepts or theories in order to i) convince others that a certain phenomenon is a problem, (ii) demonstrate that this problem is best understood in a certain way as shown by the facts presented, and (iii) link these factual claims to normative principles giving moral force to the argument that it should be resolved. This perspective thus subjects the factual dimensions of political processes to the interests and normative commitments of actors, in the sense that knowledge is used to justify and legitimize calls for adopting certain policies to resolve what is seen to be a problem that 'ought' to be resolved. The formulation is partly inspired by Rein and Schuss (1991. 265), who refer to problem-setting stories that 'link causal accounts of policy problems to particular proposals for action and facilitate the normative leap from "is" to 'ought"'. We depart from Rein and Schon's conception somewhat by emphasizing more strongly the factual claims (the characteristics of a phenomenon and normative principles (the morally' grounded principles used to legitimize the policy formulation invoked by actors as they define a problem and argue for a specific policy approach. The concept of policy stories seeks to capture how actors integrate knowledge claims into their politically charged arguments so as to 'frame' the issue under discussion. Because of the interlocking of the factual and normative dimension of policy making, a policy story, can be seen to create space for political agency. That is: a policy story serves by creating an argument grounded in a body of scientifically produced knowledge, to persuade and mobilize different groups as it represents a complete package: an authoritative problem-definition and a concomitant policy solution that is legitimized in both factual and normative terms. A policy story- that wins acceptance at the discursive level can be seen to define the terms of the debate for the establishment of policy and to de- legitimize competing conceptualizations and policy approaches. Through the political agency performed through a policy story it may come to dominate the policy field as it forms the central cognitive-normative organising device for specific formulation and establishment of policy within different organizations. In this way, the policy story' may over time attain a 'taken for granted' char- acter as it comes to structure, and reflect, policy practice. This process of stabilization is best described as a process of institutionalization. Following Scott, we can define institutionalization as a 'process by which a given set of units and a pattern of activities come so be normatively' and cognitively held in place, and practically taken for granted as lawful' Scott at al. 1994: 10). This latter feature is critical to the argument presented here. In the change from an argument for a specific policy approach to the establishment of that policy in practice, the policy story comes to define the cognitive-normative outlook of a policy regime. This can he defined as an interlock between the knowledge which underwrites the policy story, and the establishment in practice of the policy advocated in a policy story: That is: the knowledge that once formed part of an argument for a policy is now an integral part of the very rationality and identity' of the organization involved with managing this policy in practice. As such it becomes pact of the bundle of routines, rules, priorities and rationality of the organizations in the policy field see Douglas 1986; March and Olsen 1989: Scott and Meyer. 1994).

### Mines

#### ---OPPOSITION TO LANDMINES CONTINUES THE ENLIGHTENMENT STORY OF EUROPEAN PROGRESS OVERCOMING SAVAGERY AND BARBARISM—THE PLAN ATTEMPTS TO TAME THE BEAST OF WAR BUT ONLY VALIDATES OTHER CRUEL AND HORRIFIC TECHNOLOGIES

**LATHAM 2000** (Andrew, Assistant Professor of Political Science at Macalester College, “Global Cultural Change and the Transnational Campaign to Ban Antipersonnel Landmines: A Research Agenda,” YCISS Occasional Paper 62, October)

The conventional account also – if only implicitly – represents the history of the laws of war as a story of the progressive taming and humanizing of war through the ongoing negotiation and application of a legal framework based on ‘reason’, ‘natural justice’, and universal standards of humanity. On this view, as civilization progressed through the Enlightenment, the laws of war balanced the traditional demands of military necessity with developing considerations of humanity. This process culminated in the codification of the modern laws of war in the nineteenth century, which supposedly achieved a decisive humanitarian advance from earlier custom and practice, bringing the horrors of war under the rule of law.30 In this sense, it can be said to be premissed on a kind of Whig historiography that sees the history of the laws of armed conflict as part of a broader historical dynamic involving the progressive triumph of an ever more enlightened and civilized humanity over the atavistic forces of militarism, barbarism and illiberalism. By extension, the landmine ban is viewed as the natural culmination of this historical process – i.e., as the latest stage in the long historical march from savagery to civilization marked by the progressive extension of the rule of law to the social institution of war. Despite these claims, however, and as even the most cursory review of the history of war indicates, the laws of armed conflict have not in fact tamed, humanized or otherwise meaningfully restrained the conduct of organized political violence.31 Indeed, quite the contrary appears to be true: ‘the development of a more elaborate legal regime has proceeded apace with the increasing savagery and destructiveness of modern war’.32 This is so for at least three reasons. First, efforts to negotiate weapons bans have typically sought restrictions on a very narrow range of enumerated weapons, leaving all sorts of other armaments unregulated and thus open abuse. Simply stated, while it is true that at different times certain weapons have been subject to legal proscription, at any given point in history these banned technologies have accounted for only a tiny percentage of the overall destructive potential available to combatants.33 The practical effect of this has been the creation of two distinct categories of weaponry. The first, ‘inhumane weapons’, comprises a few technologies that are stigmatized, de-legitimized and proscribed; the second, ‘conventional weapons’, includes the vast majority of armaments that are considered legitimate and unexceptional – despite the fact that their effects can be equally horrific, murderous and brutal. Ironically, then, the actual (as opposed to intended) effect of international humanitarian law has been to create a narrowly constructed conceptual category (‘inhumane weapons’) that applies to only a few technologies and that in effect suspends the application of moral judgement to other violently cruel weapons.

#### ---THE AFF CREATES A CLASS OF “LEGITIMATE” WEAPONS BY ASCRIBING AGENCY TO WEAPONS RATHER THAN THE PEOPLE WHO USE THEM— THIS MAINTAINS MILITARISM OVERALL AND THREATENS EXTINCTION

**DAUPHINÉE 2001** (Elizabeth, Researcher for CSIS and Doctoral Candidate in Political Science at York University, “Broadening the Ban,” YCISS Occasional Paper, October www.yorku.ca/yciss/publications/OP68-Dauphinee.pdf)

It is not the intent of this paper to belittle the achievements of the Ottawa Convention. There is little doubt but that the conclusion of the treaty will, as noted already, preserve the lives of those who would otherwise be killed by future landmine use. What I have tried to suggest throughout, however, is that the achievements of the ban on landmines should not be exaggerated or rendered as a transformative event in the progress of humanitarian thought and its ensuing practices. The Ottawa Convention differs little from previous weapons bans in that it does not actually advance an understanding of humanitarianism that is vested in the desire to prevent human suffering more generally as a result of state security practices. In this respect, it is clear that “[t]he general taboo [surrounding landmines] does not lend well to a prohibition on other state exercises of violence effecting civilian populations, so that one is left to wonder whence we would go from a total ban on landmines.”

Most western militaries are undeniably capable of fielding any number of technologically advanced weapons systems, such that the Ottawa Convention is unlikely to seriously undermine their ability to wage terrorising military campaigns. Disassociating themselves from the use of AP landmines does not affect advanced states from engaging in decisive, devastating warfare which imperils human life. The Convention has also failed, through its rendering of the landmine-as-agent, to identify loci of accountability and responsibility outside of the weapon itself. By advancing de facto the argument that landmines are problematic because of their indiscriminacy and inhumanity, the Convention has actually helped to discursively codify other weapons (i.e., those that are not included in the ban) as not indiscriminate and not inhumane. Such an articulation has inadvertently contributed to the legitimation of (non-AP) weapons which result in similar devastating consequences. By reifying an understanding of the landmine-as-agent, the Convention has also lent itself to the suggestion that intentionality is of crucial importance in determining what/which weapons and practices are acceptable in warfare. To that end, the Convention has not advanced any claim that killing, maiming, or wounding people is inherently problematic. The (unintended) results of this have been: 1) to effect a closure on the possibility of adding other, equally devastating weapons to the list of proscribed agents under the rubric of the Ottawa Convention and, 2) to leave unproblematised and unscrutinised those militarised state security practices that imperil human life more generally.

## 1NR

### Distinct

#### authority is the JUSTIFICATION for action, not the ACTION itself

**Zimmerman, Center for the Study of the Presidency and Congress fellow, 2009**

(Adam, “The Politics Economics Make”, <http://www.thepresidency.org/storage/documents/Fellows2009/Colgate_Zimmerman.pdf>, ldg)

Skowronek distinguishes between presidential power and authority. Power is the formal and informal resources of the presidency. Authority is the warrant to exercise the powers of the presidency. Skowronek asserts that presidential authority is a function of a recurrent pattern that he refers to as political time. Political time is the “historical medium through which authority structures have recurred,” whereas secular time is “the medium through which power structures have evolved.”1 Political time describes the ability of the president to exercise authority over the formal powers of the office, whereas secular time is the emergent pattern that describes how those formal powers have developed and evolved. Skowronek employs these conceptions of secular and political time to understand how “contingent structures of authority have affected the reorganization of presidential power, and how changes in the organization of the presidential power have affected the political range of different claims to authority.”2 In short, Skowronek attempts to employ these two patterns – secular and political – to describe the president’s ability to exercise authority over the formal powers of the office changed. Skowronek concludes that as the formal powers of the presidency expands; the ability of the president to exercise those powers has narrowed.

#### Commander in chief powers are narrow and don’t involve war powers

Jeremy Telman 07, Assistant Professor, Valparaiso University Law School, “Review Essay: The Foreign Affairs Power: Does the Constitution Matter?: A Review of Peter Irons, War Powers: How the Imperial Presidency Hijacked the Constitution,” 80 Temp. L. Rev. 245

The traditional view that the commander-in-chief power is narrowly circumscribed is buttressed by the constitutional text, which specifies that the President "shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States." n54 The Framers saw standing armies under the control of a powerful executive as a threat to democracy and thus anticipated that there would be no significant federal army. n55 Alexander Hamilton, no enemy of executive power, acknowledged that the President would exercise his commander-in-chief power only in "the direction of war when authorized or begun." n56 Moreover, as Irons indicates in the one area of seventeenth-and eighteenth-century history where he is more thorough than Yoo, the point of the commander-in-chief power traditionally was not to create executive war powers but to subordinate the military to civil authority. n57

### Treaty Interp

#### War powers authority is derived from congressional statute - restrictions are increased via statutory or judicial prohibitions on the source

**Bradley, 10** - \* Richard A. Horvitz Professor of Law and Professor of Public Policy Studies, Duke Law School (Curtis, “CLEAR STATEMENT RULES AND EXECUTIVE WAR POWERS” <http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2730&context=faculty_scholarship>)

The scope of the President’s independent war powers is notoriously unclear, and courts are understandably reluctant to issue constitutional rulings that might deprive the federal government as a whole of the flexibility needed to respond to crises. As a result, courts often look for signs that Congress has either supported or opposed the President’s actions and rest their decisions on statutory grounds. This is essentially the approach outlined by Justice Jackson in his concurrence in Youngstown.1

For the most part, the Supreme Court has also followed this approach in deciding executive power issues relating to the war on terror. In Hamdi v. Rumsfeld, for example, Justice O’Connor based her plurality decision, which allowed for military detention of a U.S. citizen captured in Afghanistan, on Congress’s September 18, 2001, Authorization for Use of Military Force (AUMF).2 Similarly, in Hamdan v. Rumsfeld, the Court grounded its disallowance of the Bush Administration’s military commission system on what it found to be congressionally imposed restrictions.3

The Court’s decision in Boumediene v. Bush4 might seem an aberration in this regard, but it is not. Although the Court in Boumediene did rely on the Constitution in holding that the detainees at Guantanamo have a right to seek habeas corpus re‐ view in U.S. courts, it did not impose any specific restrictions on the executive’s detention, treatment, or trial of the detainees.5 In other words, Boumediene was more about preserving a role for the courts than about prohibiting the executive from exercising statutorily conferred authority.

#### Proves that they can’t meet – their authority derives from the land mines treaty which is distinct from congressionally delegated authority

### 2NC Limits

#### Limits outweigh

#### Wrecks limits and shifts away from core controversy

Stephen Heidt 13, A Memorandum on the Topic Area, Georgia State University, http://www.cedadebate.org/forum/index.php?topic=4846.0

This evidence hints at the core controversy, the very thing that animated Schlesinger to coin the Imperial Presidency thesis and the hundreds of books and articles that have been written since: When and where does the president have the power to deploy and use military force without Congressional authorization. Schlesinger’s very real concern was that Congress had willfully abdicated its role in providing a check on presidential use of force. As he wrote, “Historically, Congress had preserved the rough balance of the Constitution because it retained three vital powers: the war-making power, the power of the purse, and the power of oversight and investigation” (The Imperial Presidency, New York: First Mariner Books Edition, 2004, 11). “The Founding Fathers made a deliberate effort to divide control of the war powers. They vested in Congress the authority to commence and authorize war, whether that war be declared or undeclared. At the same time, they vested in the Presidency the conduct both of ongoing foreign relations and ongoing war as well as the right to respond to sudden attack when Congress was not in session” (Schlesinger, 54).

As Gerald Astor declared, “the once fine line between the power to declare war and the authority to conduct that war has been smudged, if not erased” (Presidents at War, Hoboken, NJ: Wiley, 2006, 16). The debate community should treat this as the core controversy because it is a controversy that matters. Since World War II, presidents have used military force without Congressional authorization in: Korea, Cuba, Vietnam, Iran, Lebanon, Syria, Grenada, Kuwait, Iraq, Panama, Somalia, Bosnia, the Sudan, Libya, and likely many more (El Salvador, Nicaragua, etc). The president now possesses the unfettered ability to use military force wherever he chooses for an almost indefinite period of time because Congress has abdicated any role in restricting presidential action.

Voting for restrict presidential war power establishes a very narrow topic – commander in chief blows the lid off that restriction. Those of us with gray in our hair may recall the restricting commander in chief power means anything from Congressional control over the president’s medical staff (Kansas) to Congressional control over media pools in wartime (a Bill Newnam Special) and everything in between. Modern versions of the parameters of that type of topic are elaborated in the topic paper when, for example, the authors isolate drones as a core controversy invoking the “president’s legal authority to conduct the war on terror.” This is nonsense for two reasons. First, the AUMF granted the president all the legal authority necessary and, second, the CONDUCT of the war is power reserved for the commander in chief and does not fall under the purview of Congressional war declaration power. There are no constitutional questions related to drone use aside from use on American citizens (without due process). This gross error in the topic paper reflects one of the downsides of using sources like the Idaho Statesman to comment on constitutional issues. The topic paper is correct, however, that Affs could restrict presidential actions to target U.S. citizens, but even that might not be topical if the topic is written as restrict/reduce presidential war power since this goes to a “use” issue and not a “power” issue (and, at best, reflects a violation of the Constitutional order and not an expansion of the Constitutional order – one could argue that ending violations is not a restriction in presidential war power since the president never had the power to act in the first place).

Detainees could also be excluded: “Bush, in claiming the right to detain captives from Afghanistan and Iraq without their access to standard legal procedures, invoked his power as commander in chief” (Astor, 18).

The bottom line: The topic should either be restrict presidential war power (as was voted for) OR restrict commander in chief power – not both. Blurring that distinction risks creating a gigantic mess under which either there is no effective limit to the topic or the community is forced into voting for a list topic.

#### The President can cite a large number of places from which to draw authority which proves why the specific authority and not action is what should be restricted

#### Vesting Clause authority

**DOJ 6 – US Department of Justice**

(LEGAL AUTHORITIES SUPPORTING THE ACTIVITIES OF THE NATIONAL SECURITY AGENCY DESCRIBED BY THE PRESIDENT, http://www.justice.gov/opa/whitepaperonnsalegalauthorities.pdf)

Even outside the context of wartime surveillance of the enemy, the source and scope of Congress’s power to restrict the President’s inherent authority to conduct foreign intelligence surveillance is unclear. As explained above, the President’s role as sole organ for the Nation in foreign affairs has long been recognized as carrying with it preeminent authority in the field of national security and foreign intelligence. The source of this authority traces to the Vesting Clause of Article II, which states that “[t]he executive Power shall be vested in a President of the United States of America.” U.S. Const. art. II, § 1. The Vesting Clause “has long been held to confer on the President plenary authority to represent the United States and to pursue its interests outside the borders of the country, subject only to limits specifically set forth in the Constitution itself and to such statutory limitations as the Constitution permits Congress to impose by exercising one of its enumerated powers.” The President’s Compliance with the “Timely Notification” Requirement of Section 501(b) of the National Security Act, 10 Op. O.L.C. 159, 160-61 (1986) (“Timely Notification Requirement Op.”). Moreover, it is clear that some presidential authorities in this context are beyond Congress’s ability to regulate. For example, as the Supreme Court explained in Curtiss-Wright, the President “makes treaties with the advice and consent of the Senate; but he alone negotiates. Into the field of negotiation the Senate cannot intrude; and Congress itself is powerless to invade it.” 299 U.S. at 319. Similarly, President Washington established early in the history of the Republic the Executive’s absolute authority to maintain the secrecy of negotiations with foreign powers, even against congressional efforts to secure information. See id. at 320-21. Recognizing presidential authority in this field, the Executive Branch has taken the position that “congressional legislation authorizing extraterritorial diplomatic and intelligence activities is superfluous, and . . . statutes infringing the President’s inherent Article II authority would be unconstitutional.” Timely Notification Requirement Op., 10 Op. O.L.C. at 164.

#### Foreign affairs powers

**DOJ 1 – Department of Justice**

(THE PRESIDENT’S CONSTITUTIONAL AUTHORITY TO CONDUCT MILITARY OPERATIONS AGAINST TERRORISTS AND NATIONS SUPPORTING THEM, http://www.justice.gov/olc/warpowers925.htm)

Fourth, depriving the President of the power to decide when to use military force would disrupt the basic constitutional framework of foreign relations. From the very beginnings of the Republic, the vesting of the executive, Commander-in-Chief, and treaty powers in the executive branch has been understood to grant the President plenary control over the conduct of foreign relations. As Secretary of State Thomas Jefferson observed during the first Washington Administration: "the constitution has divided the powers of government into three branches [and] has declared that the executive powers shall be vested in the president, submitting only special articles of it to a negative by the senate." Due to this structure, Jefferson continued, "the transaction of business with foreign nations is executive altogether; it belongs, then, to the head of that department, except as to such portions of it as are specially submitted to the senate. Exceptions are to be construed strictly." Thomas Jefferson, Opinion on the Powers of the Senate (1790), reprinted in 5 The Writings of Thomas Jefferson, at 161 (Paul L. Ford ed., 1895). In defending President Washington's authority to issue the Neutrality Proclamation, Alexander Hamilton came to the same interpretation of the President's foreign affairs powers. According to Hamilton, Article II "ought . . . to be considered as intended . . . to specify and regulate the principal articles implied in the definition of Executive Power; leaving the rest to flow from the general grant of that power." Alexander Hamilton, Pacificus No. 1 (1793), reprinted in 15 The Papers of Alexander Hamilton, at 33, 39 (Harold C. Syrett et al. eds., 1969). As future Chief Justice John Marshall famously declared a few years later, "The President is the sole organ of the nation in its external relations, and its sole representative with foreign nations. . . . The [executive] department . . . is entrusted with the whole foreign intercourse of the nation . . . ." 10 Annals of Cong. 613-14 (1800). Given the agreement of Jefferson, Hamilton, and Marshall, it has not been difficult for the executive branch consistently to assert the President's plenary authority in foreign affairs ever since. In the relatively few occasions where it has addressed foreign affairs, the Supreme Court has agreed with the executive branch's consistent interpretation. Conducting foreign affairs and protecting the national security are, as the Supreme Court has observed, "'central' Presidential domains." Harlow v. Fitzgerald, 457 U.S. 800, 812 n.19 (1982). The President's constitutional primacy flows from both his unique position in the constitutional structure, and from the specific grants of authority in Article II that make the President both the Chief Executive of the Nation and the Commander in Chief. See Nixon v. Fitzgerald, 457 U.S. 731, 749-50 (1982). Due to the President's constitutionally superior position, the Supreme Court has consistently "recognized 'the generally accepted view that foreign policy [is] the province and responsibility of the Executive.'" Department of the Navy v. Egan, 484 U.S. 518, 529 (1988) (quoting Haig v. Agee, 453 U.S. at 293-94). "The Founders in their wisdom made [the President] not only the Commander-in-Chief but also the guiding organ in the conduct of our foreign affairs," possessing "vast powers in relation to the outside world." Ludecke v. Watkins, 335 U.S. 160, 173 (1948). This foreign affairs power is exclusive: it is "the very delicate, plenary and exclusive power of the President as sole organ of the federal government in the field of international relations - a power which does not require as a basis for its exercise an act of Congress." United States v. Curtiss-Wright Export Corp., 299 U.S. 304, 320 (1936).

#### Covert action authority

**Ross 8-1-13**

(Alice, "Is Congressional oversight tough enough on drones?", 8/1/13, http://www.thebureauinvestigates.com/2013/08/01/is-congressional-oversight-tough-enough-on-drones/)

Even where members can access information, Feinstein has said the committee can be blocked from acting on it. Following Brennan’s hearing, Feinstein told political blog The Hill: ‘Right now it is very hard [to oversee the drone programme] because it is regarded as a covert activity, so when you see something that is wrong and you ask to be able to address it, you are told no.’

### Circumvention

#### The Court separates war powers that can be restricted by Congress and inherent Presidential authority---proves circumvention or no solvency

David J. Barron 8, S. William Green Professor of Public Law at Harvard Law School , & Martin S. Lederman, THE COMMANDER IN CHIEF AT THE LOWEST EBB — FRAMING THE PROBLEM, DOCTRINE, AND ORIGINAL UNDERSTANDING, HLR 121;3

4. Judicial Enforcement of Implied Statutory Restrictions. — The way the Supreme Court approaches war powers generally, when com- bined with the increased mass of potentially relevant legislative restric- tions on the conduct of this military conflict, further increases the like- lihood that the “lowest ebb” issue will be joined in the future. Principles of deference to executive authority tend to dominate aca- demic discussion of statutory interpretation and war powers. As we have indicated, however, Hamdan, Youngstown, and other modern war powers cases demonstrate that the Court cannot be counted on to give the President the benefit of the doubt. And in many war powers cases, the Court has been perfectly willing to construe ambiguous statutory language against certain background rules that it presumes Congress intended to honor,84 including a presumption that the Executive must comply with the laws of war.85

This general and longstanding judicial willingness to find implied limitations in ambiguous texts concerning the use of military force and national security powers is sometimes controversial. But whether jus- tified or not, such an interpretive approach is of particular import now, given the sheer mass of preexisting statutes potentially applicable to the conflict with al Qaeda and the likelihood that this body of law will grow. Executive branch lawyers may be hard-pressed to advise their client agencies that creative construction can overcome the apparent statutory restrictions, at least if there is a reasonable prospect of judi- cial review (as there often will be in the war on terrorism due to its pe- culiar domestic connections). Instead, the prospect of judicial review will impel these lawyers to advise that the courts could well construe the potentially restrictive language to impose hard constraints on the Executive’s preferred course of conduct — and that only the assertion of a superseding constitutional power of the President could, possibly, overcome such limits. Thus, the relatively weak deference the Court has long shown the President in many war powers cases, when combined with the relatively high likelihood in the war on terrorism of the applicability of restrictive but ambiguous statutory language and a jus- ticiable case to hear, make constitutional assertions of preclusive executive powers a more likely occurrence than war powers scholarship typically assumes.

### Reasonability

#### Pleas for reasonability just warrant precision – only check on bi-directionality and Commander-in-Chief affs

Colby P. Horowitz 2013 “CREATING A MORE MEANINGFUL DETENTION STATUTE: LESSONS LEARNED FROM HEDGES V. OBAMA,” FORDHAM L.R. Vol. 81, http://fordhamlawreview.org/assets/pdfs/Vol\_81/Horowitz\_April.pdf

Thus, there at least two ways to interpret section 1021 under Justice Jackson’s framework. The government believes that section 1021 places the executive firmly in Zone 1. It has argued on appeal in Hedges that section 1021 is “an essentially verbatim affirmation by Congress of the Executive Branch’s interpretation of the AUMF.”335 This is supported by the government’s 2009 brief to the D.C. District Court, which is almost identical to the description of detention authority in section 1021.336 If section 1021 places the President in Zone 1, he has clear statutory authorization and does not need to rely on his general Commander-in-Chief powers (which courts view more narrowly).337 Additionally, in Zone 1, any ambiguities or vague terms in the statute might actually expand the President’s authority.338 338. See Chesney, supra note 33, at 792–93 (explaining that some observers view ambiguities in detention statutes as constituting “an implied delegation of authority to the executive to provide whatever further criteria may be required”).