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### 1

#### Targeted killing doesn’t include signature strikes – needs individual target

**Uebersax 12** - psychologist, writer and former RAND Corporation military analyst.  
(John, "The Four Kinds of Drone Strikes," <http://satyagraha.wordpress.com/2012/05/23/the-four-kinds-of-drone-strikes/)>

We must begin with clear terms, and that is the purpose of the present article. Drone strikes, that is, the launching of explosive missiles from a remotely operated aerial vehicle, come in four varieties: targeted killings, signature strikes, overt combat operations, and covert combat operations. We shall consider each in turn.

* **Targeted killing**. This occurs when a drone strike is used to kill a terrorist whose identity is known, and whose name has been placed on a hit list, due to being deemed a ‘direct and immediate threat’ to US security. The government would like people to think this means these strikes target a terrorist literally with his or her hand on a detonator. But, in actuality, the only real criterion is that the government believes the target is sufficiently closely affiliated with terrorist organizations (e.g., a propagandist or financier) to justify assassination. This is likely the rarest form of drone strike. However it receives the most publicity, because the government likes to crow when it kills a high-ranking terrorist.
* Signature strikes. In signature strikes, the target is a person whose name is not known, but whose actions fit the profile (or ‘signature’) of a high-ranking terrorist. There is some ambiguity concerning the meaning of this term. Some use it in the sense just stated — i.e., a strike against an anonymous terrorist leader. Others use it more broadly to include killing of any non-identified militants, whether high-ranking or not. However from the moral standpoint it makes a major difference whether an anonymous targeted victim is a high-level leader, or simply an anonymous combatant. For this reason it is advantageous to restrict the term “signature strike” to the targeting of anonymous high-level leaders, and to assign strikes against anonymous non-leaders to the two further categories below.
* **Overt combat operation**. This category includes drone strikes conducted as part of regular military operations. These strikes are presumably run by uniformed military personnel according to codes of military conduct, and are, logically and legally, not much different from ordinary air or artillery strikes. As a part of routine warfare, such strikes are subject to the provisions of the Geneva Conventions. Three items of the Geneva Conventions are of special interest here: (1) strikes should occur only in the context of a legally declared war; (2) they should be conducted by lawful combatants (which, many experts believe, excludes use of non-uniformed, civilian contractor operators); and (3) standard provisions concerning the need to report casualties, especially civilian casualties, are in effect.
* **Covert combat operation**. Finally, there are covert combat operations. These, like the former category, are launched against usual military targets – e.g., any hostile militant, not just high-ranking ones. But why should these strikes be covert? The obvious answer is: to mask something shady. Covert combat strikes can evade all those irritating constraints on military tactics imposed by the Geneva Conventions, International Law, public opinion, and basic human decency.

#### Vote neg

#### Limits – they include all drones, justifies everything

**Silva 3** (Sebastian Jose Silva, Faculte de Droit de l'Universite de Montreal, “Death For Life: A Study of Targeted Killing by States In International Law,” August 2003)

As defined by Steven R. David, targeted killing is the "**intentional slaying** of a specific individual or group of individuals undertaken with explicit **governmental approval**.,,25 Though concise, the problem with this definition is that it **fails to specify the intended targets** and **ignores the context** in which they are carried out. By failing to define targeted killings as measures of counter-terrorism, killings of all types may indiscriminately fall under its mantle with devastating consequences. As such, the killing of political leaders in peacetime, which amounts to assassination, can fall within its scope. The same can be said about the killing of specific enemy combatants in armed conflict, which amounts to targeted military strikes, and the intentional slaying of common criminals, dissidents, or opposition leaders. Actions carried-out by governments within their jurisdictions can also be interpreted as targeted killings. Although the killing of terrorists abroad may constitute lawful and proportionate self-defense in response to armed attacks, the use of such measures by states for an unspecified number of reasons renders shady their very suggestion. David's definition is essentially correct but over-inclusive.

#### Precision – conflate drones and tk

**Anderson 13** (Kenneth, Professor of Law, Visiting Fellow, The Hoover Institution on War, Revolution and Peace, Stanford University, "The Case for Drones", 5/24/13, [http://www.realclearpolitics.com/articles/2013/05/24/the\_case\_for\_drones\_118548.html)](http://www.realclearpolitics.com/articles/2013/05/24/the_case_for_drones_118548.html-http:/www.realclearpolitics.com/articles/2013/05/24/the_case_for_drones_118548.html))

This feature of Predators and Reapers—the two forms of drones really at issue today—enables the second aspect of drone warfare: targeted killing, a method of using force that takes advantage of drone technology. But drones and targeted killing are not the same thing: One is a technology and weapon platform, the other a way to use it. Targeted killing can be done not only with drones, but with human teams, too, as seen most dramatically in the Bin Laden raid by the Navy SEALs.

Similarly, drones are useful for more than targeted killing. They have broad, indeed rapidly expanding, military functions as a weapons platform—as evidenced in counterinsurgency strikes in Pakistan, Afghanistan, and Yemen against groups of fighters, not only individuals. This is conventional targeting of hostile forces in conventional conflict, just like one would see with a manned war plane. They have much in common. The pilot of a manned craft is often far away from the target, as would be a drone pilot—over the horizon or many miles away. Unlike the drone pilot, however, he might have minimal situational awareness of the actual events on the ground at the target—his knowledge may be nothing more than instrument data. A drone pilot may in fact have far greater visual and other sensor data than the pilot of a manned craft without handling the distractions caused by the work to keep a high-speed jet in the air.

The most offensively foolish (though endlessly repeated) objection raised against drones was the one made by Jane Mayer in her influential 2009 New Yorker article, “The Predator War”: that drone pilots are so distant from their targets that they encourage a “push-button,” video-game mentality toward killing. The professional military find the claim bizarre, and it fails to take into account the other kinds of weapons and platforms in use. Note, the pilot of a manned craft is often thousands of feet away and a mile above a target looking at a tiny coordinates screen. And what of the sailor, deep in the below-decks of a ship, or a submarine, firing a cruise missile with no awareness of any kind about the target hundreds of miles away?

For that matter, the common perception of drones as a sci-fi combination of total surveillance and complete discretion in where and when to strike is simply wrong. The drone pilot might sit in Nevada, but the drone itself has a limited range, requires an airstrip, fuel, repairs, and 200 or so personnel to keep it in the air. All this physical infrastructure must be close to the theater of operations. Stress rates among drone pilots are at least as high as those of manned aircraft pilots; they are far from having a desensitized attitude toward killing. This appears to be partially because these are not mere combat operations but fundamentally and primarily intelligence operations. Drone pilots engaged in targeted killing operations watch their targets from a very personal distance via sensor technology, through which they track intimate, daily patterns of life to gather information and, perhaps, to determine precisely the best moment to strike, when collateral damage might be least.

As one drone operator told me, it is not as if one sees the terrible things the target is engaged in doing that made him a target in the first place; instead, it feels, after a few weeks of observation, as though you are killing your neighbor.

In any case, the mentality of drone pilots in targeted-killing ops is irrelevant to firing decisions; they do not make decisions to fire weapons. The very existence of a remote platform, one with long loiter times and maximum tactical surveillance, enables decisions to fire by committee. And deliberately so, notes Gregory McNeal, a professor of law at Pepperdine University, who has put together the most complete study of the still largely secret decision-making process—the so-called disposition lists and kill matrix the New York Times has described in front page stories. It starts from the assessment of intelligence through meetings in which determinations, including layers of legal review, are made about whether a potential target has sufficient value and, finally, whether and when to fire the weapon in real time. The drone pilot is just a pilot.

Targeting is therefore a bureaucratized process that necessarily relies on judgment and estimations of many uncertainties. Its discretionary and bloodless nature alarms critics, as does its bureaucratic regularization. Yet it is essential to understand, as McNeal observes, that this is not fundamentally different from any other process of targeting that takes place in conventional war, save that it seeks to pinpoint the targets. Conventional war targeting, by contrast, seeks not individuals, but merely formations of hostile forces as groups. In either case, targeting is inherently intelligence-driven and a highly organized activity, whether in the military or across the broader national-security agencies.

Concerns about the nature of the warfare itself leads to a sharing and checking of that discretion among actors; in turn, this leads to committees’ making decisions; and by the time this process of bureaucratic rationalization is complete, it looks like military targeting processes in conventional war, with an extra dollop of intelligence assessments, not some mysterious Star Chamber assassination committee. After all, any group of generals deciding where to hit the enemy in war is, by definition, a “kill list” committee.

3. What Makes Drone Warfare Strategically Effective

Are drone technology and targeted killing really so strategically valuable? The answer depends in great part not on drone technology, but on the quality of the intelligence that leads to a particular target in the first place. The drone strike is the final kinetic act in a process of intelligence-gathering and analysis. The success—and it is remarkable success—of the CIA in disrupting al-Qaeda in Pakistan has come about not because of drones alone, but because the CIA managed to establish, over years of effort, its own ground-level, human-intelligence networks that have allowed it to identify targets independent of information fed to it by Pakistan’s intelligence services. The quality of drone-targeted killing depends fundamentally on that intelligence, for a drone is not much use unless pointed toward surveillance of a particular village, area, or person.

It can be used for a different kind of targeting altogether: against groups of fighters with their weapons on trucks headed toward the Afghan border. But these so-called signature strikes are not, as sometimes represented, a relaxed form of targeted killing in which groups are crudely blown up because nothing is known about individual members. Intelligence assessments are made, including behavioral signatures such as organized groups of men carrying weapons, suggesting strongly that they are “hostile forces” (in the legal meaning of that term in the U.S. military’s Standing Rules of Engagement). That is the norm in conventional war.

Targeted killing of high-value terrorist targets, by contrast, is the end result of a long, independent intelligence process. What the drone adds to that intelligence might be considerable, through its surveillance capabilities—but much of the drone’s contribution will be tactical, providing intelligence that assists in the planning and execution of the strike itself, in order to pick the moment when there might be the fewest civilian casualties.

### 2

#### COUNTERPLAN: The President of the United States should issue an Executive Order committing the executive branch to Solicitor General representation and advance consultation with the Office of Legal Counsel over decisions signature strikes. The United States Executive branch should invite quarterly Congressional review of compliance with this policy under existing mechanisms for Congressional oversight of United States targeted killing policy, beginning in the first quarter of 2014. The Department of Justice officials involved should counsel against using signature strikes. The Executive Order should also require written publication of Office of Legal Counsel opinions.

#### DOJ sovles through pre-committal

**Pillard 2005** – JD from Harvard, Faculty Director of Supreme Court Institute at Georgetown University Law Center, former Deputy Assistant Attorney General in the DOJ (February, Cornelia T., Michigan Law Review, 103.4, “The Unfulfilled Promise of the Constitution in Executive Hands”, 103 Mich. L. Rev. 676-758, http://scholarship.law.georgetown.edu/facpub/189/)

V. ENABLING EXECUTIVE CONSTITUTIONALISM

The courts indisputably do not and cannot fully assure our enjoyment of our constitutional rights, and it is equally clear that the federal executive has an independent constitutional duty to fulfill the Constitution's promise. Executive constitutionalism seems ripe with promise. Yet, it is striking how limited and court-centered the executive's normative and institutional approaches to constitutional questions remain.

One conceivable way to avoid the pitfalls of court-centric executive lawyering on one hand and constitutional decisions warped by political expedience on the other would be to make the Solicitor General and Office of Legal Counsel - or perhaps the entire Department of Justice - as structurally independent as an independent counsel or independent agency.207 Making the SG and OLC independent in order to insulate them from politics presumably would alleviate the "majoritarian difficulty" resulting from their service to elected clients. Promoting fuller independence in that sense does not, however, appear to be clearly normatively attractive, constitutionally permissible, nor particularly feasible. In all the criticism of our current constitutionalism, there is little call for an SG or OLC that would act, in effect, as a fully insulated and jurisprudentially autonomous constitutional court within the executive branch, operating with even less transparency and accountability than the Supreme Court. Moreover, as a practical matter it would be complex and problematic to increase the independence of the SG and OLC. The federal government faces Article II obstacles to formally insulating executive lawyers from politics and institutional pressures, and the president and his administration likely would be less amenable to guidance from such unaccountable lawyers.208

The challenge, rather, is to draw forth from the executive a constitutional consciousness and practice that helps the government actively to seek to fulfill the commitments of the Constitution and its Bill of Rights, interpreted by the executive as guiding principles for government. Adjustments to executive branch constitutional process and culture should be favored if they encourage the executive to use its experience and capacities to fulfill its distinctive role in effectuating constitutional guarantees. There is **transformative potential** in measures that break ingrained executive branch habits of looking to the Constitution only as it is mediated through the courts, and of reflexively seeking, where there is no clear doctrinal answer, to minimize constitutional constraint. It is difficult fully to imagine what kinds of changes would best prompt executive lawyers and officials to pick up constitutional analysis where the courts leave off, and to rely on the Constitution as an affirmative, guiding mandate for government action; what follows are not worked-out proposals, but are meant to be merely suggestive.

A. Correcting the Bias Against Constitutional Constraint

As we have seen, the SG's and OLC's default interpretive approach to individual rights and other forms of constitutional constraints on government is to follow what clear judicial precedents there are and, where precedents are not squarely to the contrary, to favor interpretations that minimize constitutional rights or other constitutional obligations on federal actors. Those court-centered and narrowly self-serving executive traditions produce a systematic skew against individual rights.

1. Encourage Express Presidential Articulation of Commitment to Constitutional Rights

To the extent that a president articulates his own rights-protective constitutional vision with any specificity, he ameliorates the tension his constitutional lawyers otherwise face between advancing individual rights and serving their boss's presumed interest in maximum governing flexibility. Case or controversy requirements and restrictions against courts issuing advisory opinions do not, of course, apply to the executive's internal constitutional decisionmaking, and presidents can better serve individual rights to the extent that they expressly stake out their constitutional commitments in general and in advance of any concrete controversy."° **When the president takes a stand** for advancing abortion rights, property rights, disability rights, "charitable choice," a right to bear arms, or full remediation of race and sex discrimination, he signals to his lawyers that they should, in those areas, set aside their default bias in favor of preserving executive prerogative, even if it requires extra executive effort or restraint to do so.

If presented in a concrete setting with a choice between interpreting and applying the Constitution in fully rights-protective ways or sparing themselves the effort where Supreme Court precedent can be read not to require it, government officials typically default to the latter course without considering whether they might thereby be giving short shrift to a constitutional duty. A president's stated commitment to protection of particular rights, however, flips the default position with respect to those rights, **acting as a spur** to executive-branch lawyers and other personnel to work to give effect to constitutional rights even where, for a range of institutional reasons, the courts would not. A president is thus uniquely situated to facilitate full executive-branch constitutional compliance by precommitting himself to a rights-protective constitutional vision, and thereby making clear that respect for constitutional rights is part of the executive's interest, not counter to it.

#### Disclosure checks credibility and impulse

**Marguiles 2012** – Professor of Law, Roger Williams University (5/15, Peter, Pepperdine Law Review, Volume 39, Issue 4, Article 1, “Reforming Lawyers into Irrelevance?: Reconciling Crisis and Constraint at the Office of Legal Counsel”, http://digitalcommons.pepperdine.edu/cgi/viewcontent.cgi?article=1370&context=plr)

\*NOTE: Marguiles not to be confused with Margolis, who worked in the DOJ after John Yoo

1. Disclosure

Disclosure is an important deliberative safeguard. From an ex ante perspective, disclosure protects against fringe views, since the author of an opinion knows that outside audiences will “kick the tires” and quickly discover and critique views that distort the relevant law.242 Disclosure also helps ex post, by allowing Congress, professional peers, and the public to see distortions as they emerge and campaign to correct them.243 Disclosure also works hand in hand with efforts by the President to secure ratification of an unorthodox view that responds to exigent circumstances; disclosure, at least to Congress, is a necessary incident of ratification.244 Certain opinions may contain sensitive information that makes immediate disclosure inappropriate.245 However, Congress could well require as part of its oversight that OLC engage in a deliberative process, including making express findings that become part of an opinion, when such circumstances prevail.

#### And, consultation solves while maintaining flex

Lederman, law professor at Georgetown, former Deputy Assistant Attorney General, 9/1/2013

(Marty, “Syria Insta-Symposium: Marty Lederman Part I–The Constitution, the Charter, and Their Intersection,” <http://opiniojuris.org/2013/09/01/syria-insta-symposium-marty-lederman-part-constitution-charter-intersection/>)

In the past two generations, there have been three principal schools of thought on the question of the President’s power to initiate the use of force unilaterally, i.e., without congressional authorization:

a. The traditional view, perhaps best articulated in Chapter One of John Hart Ely’s War and Responsibility, is that except in a small category of cases where the President does not have time to wait for Congress before acting to interdict an attack on the United States, the President must always obtain ex ante congressional authorization, for any use of military force abroad. That view has numerous adherents, and a rich historical pedigree. But whatever its merits, it has not carried the day for many decades in terms of U.S. practice.

b. At the other extreme is the view articulated at pages 7-9 of the October 2003 OLC opinion on war in Iraq, signed by Jay Bybee (which was based upon earlier memos written by his Deputy, John Yoo). The Bybee/Yoo position is that there are virtually no limits whatsoever: The President can take the Nation into full-fledged, extended war without congressional approval, as President Truman did in Korea, as long as he does so in order to advance the “national security interests of the United States.” With the possible exception of Korea itself, this theory has never reflected U.S. practice. (Indeed, even before that OLC opinion was issued, President Bush sought and obtained congressional authorization for the war in Iraq.) Notably, it was even rejected by William Rehnquist when he was head of OLC in 1970 (see the opinion beginning at page 321 here).

c. Between these two categorical views is what I like to call the Clinton/Obama “third way”—a theory that has in effect governed, or at least described, U.S. practice for the past several decades. It is best articulated in Walter Dellinger’s OLC opinions on Haiti and Bosnia, and in Caroline Krass’s 2011 OLC opinion on Libya. The gist of this middle-ground view (this is my characterization of it) is that the President can act unilaterally if two conditions are met: (i) the use of force must serve significant national interests that have historically supported such unilateral actions—of which self-defense and protection of U.S. nationals have been the most commonly invoked; and (ii) the operation cannot be anticipated to be “sufficiently extensive in ‘nature, scope, and duration’ to constitute a ‘war’ requiring prior specific congressional approval under the Declaration of War Clause,” a standard that generally will be satisfied “only by prolonged and substantial military engagements, typically involving exposure of U.S. military personnel to significant risk over a substantial period” (quoting from the Libya opinion).

Largely for reasons explained by my colleague and Dean, Bill Treanor, I am partial to this “third way,” at least in contrast to the two more categorical views described above. (I do not subscribe to every detail of the Dellinger and Krass opinions—in particular, I’m wary of resort to the interest in “regional stability,” which has never been used as a stand-alone justification for unilateral executive action—but I concur in the broad outlines sketched out above.) Regardless of whether Dean Treanor and I—and Presidents Clinton and Obama—are right or wrong about that, however, what’s important for present purposes is that U.S. practice after World War II (with the possible exception of Korea and Kosovo) reflects, and is consistent with, this “third way” view: When a prolonged campaign has been anticipated, with great risk to U.S. blood and treasure, congressional authorization has been necessary—and has, in fact been secured (think Vietnam, both Gulf Wars, and the conflict with al Qaeda). Otherwise, the President has considered himself free to act unilaterally, in support of important interests that have historically justified such unilateral action—subject, however, to any statutory limitations, including the time limits imposed by the War Powers Resolution. See, e.g., Libya (twice, 1986 and 2011), Panama (1989), Somalia (1992), Haiti (twice, 1994 and 2004), and Bosnia (1995).

Assuming this “third way” view is correct—or, in any event, that it establishes the relevant historical baseline against which to measure the case of Syria—Peter Spiro makes a valid point about the second of the two criteria. As he puts it, “[a]t no point in the last half century . . . has a president requested advance congressional authorization for anything less than the full-scale use of force.”

But that does not mean that the President’s turn to Congress yesterday is a “watershed,” for Peter overlooks the important first condition. All of the examples of unilateral presidential use of force since 1986 that he implicitly invokes (with the possible exception of Kosovo, discussed below) have been in the service of significant national interests that have historically supported such unilateral actions—such as self-defense, protection of U.S. nationals, and/or support of U.N. peacekeeping or other Security Council-approved endeavors and mandates (e.g., Bosnia and Libya).

The Syria operation, however, would have had no significant precedent in unilateral executive practice; it would not have been been supported by one of those historically sufficient national interests. That’s not to say that that operation would not be in the service of a very important national interest. For almost a century the U.S. has worked assiduously, with many other nations, to eliminate the scourge of chemical weapons. If Syria’s use of such weapons were to remain unaddressed, that might seriously compromise the international community’s hard-won success in establishing the norm that such weapons are categorically forbidden, and should not even be contemplated as instruments of war. As Max Fisher has written, “it’s about every war that comes after, about what kind of warfare the world is willing to allow, about preserving the small but crucial gains we’ve made over the last century in constraining warfare in its most terrible forms.”

Preventing that degradation of the strong international norm against use of chemical weapons is, indeed, an important national (and international) interest of the first order. (To be clear: I am not remotely qualified to opine on whether and to what extent the contemplated action would advance that interest—my point is only that the interest is undoubtedly an important one.) And perhaps that should be enough to justify discrete, unilateral presidential action short of “war in the constitutional sense.” But if so, it would nevertheless be an unprecedented basis for unilateral executive action, and it would open up a whole new category of uses of force that Presidents might order without congressional approval, even where such actions could have profound, longstanding consequences: Most obviously, think, for example, of possible strikes on Iran in order to degrade its nuclear capabilities. Is Peter so sure that that’s the sort of thing that a President should be able to do without obtaining congressional approval? At a minimum, it’s a profound, and heretofore unresolved, question, one that any President should be wary of raising.

But there’s yet another reason why unilateral action in Syria would have been especially troubling—a reason that hasn’t received the attention it warrants in recent days. As I discuss in my next post, I agree with the majority of OJ commentators that the Syrian operation would violate Article 2(4) of the U.N. Charter. Indeed, it’s not really a close question. But this is not merely a point about international law. The Charter is a treaty of the United States. It is therefore the “supreme Law” of the land under Article VI of the Constitution, and the President has a constitutional obligation (under Article II) to take care that it is faithfully executed. Unless and until Congress passes a “later in time” statute, under what authority can the President deliberately put the U.S. in breach of the Charter? That is to say: Whatever one’s views might be on the scope of the President’s authority to unilaterally use force abroad—whether you subscribe to the traditional view, the Bybee/Yoo view, or the Clinton/Obama “third way” (or any variant in between)—what is the possible justification for a unilateral presidential decision to violate a treaty that is binding as a matter of domestic law?

This is, I think, the most troubling thing about the 1999 Kosovo precedent. The Clinton Administration virtually conceded that the operation was in breach of the Charter. Of course, as a matter of domestic law, Congress can pass a statute authorizing violation of the Nation’s treaty obligation. And OLC concluded that Congress effectively authorized the Kosovo operation eight weeks after it began. But why did President Clinton have the authority, without congressional authorization, to order the operation, and to breach Article 2(4), during those first eight weeks? The notion that the President may unilaterally cause the U.S. to breach a treaty raises deep and unresolved questions of constitutional law: Just as Presidents Obama and Clinton were correct to assume that their unilateral uses of force (in Kosovo and Libya, respectively) were subject to the constraints of the War Powers Resolution, so, too, should the President act within the constraints of binding treaty obligations. The Clinton Administration never did address this problem in connection with Kosovo. (I should note that in 1989, OLC reasoned that because Article 2(4) of the Charter is non-self-executing, in the sense that it does not establish a rule for court adjudication, it is “not legally binding on the political branches,” and thus “as a matter of domestic law, the Executive has the power to authorize actions inconsistent with Article 2(4) of the U.N. Charter.” 13 Op. O.L.C. 163, 179. In my view, this understanding of the effect of a “non-self-executing” treaty is importantly mistaken—but that’s a much broader topic, for another day. I am not aware of any indication that the Clinton Administration adopted this position.)

For these reasons, I think that President Obama’s decision to ask Congress for authorization for the use of force in Syria is to be commended, and welcomed. Moreover, I agree with Jack Goldsmith that this decision will not result in any “surrender” of existing executive authority: When in the future the two “third way” criteria for unilateral action articulated in the Haiti, Bosnia and Libya OLC opinions are satisfied, and where the use of force does not violate the Charter, Presidents will certainly continue to assert the power to act unilaterally, subject to statutory and international law constraints. But if and when a President wishes to act for a reason that has not previously been the basis for unilateral action (such as to degrade another nation’s ability to use certain weapons), and/or in a manner that violates a U.S. treaty obligation, past practice will support obtaining congressional authorization, even as the question of the President’s unilateral authority in such circumstances remains untested and unresolved.

### 3

#### Short-term restraints undermine speed and flexibility

**Posner and Vermeule, 7** – \*Kirkland and Ellis Professor of Law at the University of Chicago Law School AND \*\*professor at Harvard Law School (Eric and Adrian, Terror in the Balance: Security, Liberty, and the Courts p. 170)

A requirement of ex post statutory authorization thus seems more plausible than the ex ante statutory framework approach, but it does not seem better than the judicial deference approach. As we discussed in chapter 1, the involvement of Congress produces costs as well as benefits. On the cost side, congressional deliberation is slow and unsuited for emergencies. Congress has trouble keeping secrets and is always vulnerable to obstruction at the behest of members of Congress who place the interests of their constituents ahead of those of the nation as a whole. It is implicitly for these reasons that Ackerman gives the president the freedom to act unilaterally at the start of the emergency. But there is no reason to think that the problem of congressional obstruction and inefficiency will decline over time.

What are the benefits of congressional involvement? One possible benefit is that Congress has technical information about the advantages and disadvantages of various security measures and, relying on this information, will be able to block poorly considered security measures. But it is doubtful that Congress’s information is better than the executive branch’s, and in any event Congress can share this information with the executive branch if necessary. The modern national security system deprives Congress of useful information about threats to national security, and Congress by necessity must play a passive role.

The main possible benefit from congressional involvement is that Congress can prevent the executive from using the emergency as an opportunity to engage in self-aggrandizement, to obtain new powers, and to entrench them so that the executive will be more powerful even after the emergency ends. As we argued in chapter 1, however, it is not at all clear that executive aggrandizement during emergencies is a problem, and even if it is, congressional involvement might make things worse, not better. The value of congressional authorization is ambiguous as a theoretical matter. It slows down executive action, which is costly during emergencies, but may (or may not) block efforts by the executive to aggrandize its power. We also argued in chapter 1 that the historical evidence suggests that Congress is too weak an institution, during emergencies, to provide the asserted benefits. Congress defers to the executive during emergencies because it agrees that the executive alone has the information and the means necessary to respond to imminent threats. The added risk of executive abuse is a cost that Congress and voters have been willing to bear.

#### those are key to fourth gen warfare – bioweapon use

**Li, 9** - J.D. candidate, Georgetown University Law Center, 2009; B.A., political science and history, Yale University, 2006 (Zheyao, “War Powers for the Fourth Generation: Constitutional Interpretation in the Age of Asymmetric Warfare” 7 Geo. J.L. & Pub. Pol'y 373, Winter, lexis)

Even as the quantity of nation-states in the world has increased dramatically since the end of World War II, the institution of the nation-state has been in decline over the past few decades. Much of this decline is the direct result of the waning of major interstate war, which primarily resulted from the introduction of nuclear weapons. n122 The proliferation of nuclear weapons, and their immense capacity for absolute destruction, has ensured that conventional wars remain limited in scope and duration. Hence, "both the size of the armed forces and the quantity of weapons at their disposal has declined quite sharply" since 1945. n123 At the same time, concurrent with the decline of the nation-state in the second half of the twentieth century, non-state actors have increasingly been willing and able to use force to advance their causes. In contrast to nation-states, who adhere to the Clausewitzian distinction between the ends of policy and the means of war to achieve those ends, non-state actors do not necessarily fight as a mere means of advancing any coherent policy. Rather, they see their fight as a life-and-death struggle, wherein the ordinary terminology of war as an instrument of policy breaks down because of this blending of means and ends. n124

It is the existential nature of this struggle and the disappearance of the Clausewitzian distinction between war and policy that has given rise to a new generation of warfare. The concept of fourth-generational warfare was first articulated in an influential article in the Marine Corps Gazette in 1989, which has proven highly prescient. In describing what they saw as the modern trend toward a new phase of warfighting, the authors argued that:

[\*395] In broad terms, fourth generation warfare seems likely to be widely dispersed and largely undefined; the distinction between war and peace will be blurred to the vanishing point. It will be nonlinear, possibly to the point of having no definable battlefields or fronts. The distinction between "civilian" and "military" may disappear. Actions will occur concurrently throughout all participants' depth, including their society as a cultural, not just a physical, entity. Major military facilities, such as airfields, fixed communications sites, and large headquarters will become rarities because of their vulnerability; the same may be true of civilian equivalents, such as seats of government, power plants, and industrial sites (including knowledge as well as manufacturing industries). n125

It is precisely this blurring of peace and war and the demise of traditionally definable battlefields that provides the impetus for the formulation of a new theory of war powers. As evidenced by Part III, supra, the constitutional allocation of war powers, and the Framers' commitment of the war power to two co-equal branches, was not designed to cope with the current international system, one that is characterized by the persistent machinations of international terrorist organizations, the rise of multilateral alliances, the emergence of rogue states, and the potentially wide proliferation of easily deployable weapons of mass destruction, nuclear and otherwise.

B. The Framers' World vs. Today's World

The Framers crafted the Constitution, and the people ratified it, in a time when everyone understood that the state controlled both the raising of armies and their use. Today, however, the threat of terrorism is bringing an end to the era of the nation-state's legal monopoly on violence, and the kind of war that existed before--based on a clear division between government, armed forces, and the people--is on the decline. n126 As states are caught between their decreasing ability to fight each other due to the existence of nuclear weapons and the increasing threat from non-state actors, it is clear that the Westphalian system of nation-states that informed the Framers' allocation of war powers is no longer the order of the day. n127 As seen in Part III, supra, the rise of the modern nation-state occurred as a result of its military effectiveness and ability to defend its citizens. If nation-states such as the United States are unable to adapt [\*396] to the changing circumstances of fourth-generational warfare--that is, if they are unable to adequately defend against low-intensity conflict conducted by non-state actors--"then clearly [the modern state] does not have a future in front of it." n128

The challenge in formulating a new theory of war powers for fourth-generational warfare that remains legally justifiable lies in the difficulty of adapting to changed circumstances while remaining faithful to the constitutional text and the original meaning. n129 To that end, it is crucial to remember that the Framers crafted the Constitution in the context of the Westphalian system of nation-states. The three centuries following the Peace of Westphalia of 1648 witnessed an international system characterized by wars, which, "through the efforts of governments, assumed a more regular, interconnected character." n130 That period saw the rise of an independent military class and the stabilization of military institutions. Consequently, "warfare became more regular, better organized, and more attuned to the purpose of war--that is, to its political objective." n131 That era is now over. Today, the stability of the long-existing Westphalian international order has been greatly eroded in recent years with the advent of international terrorist organizations, which care nothing for the traditional norms of the laws of war.

[\*397] This new global environment exposes the limitations inherent in the interpretational methods of originalism and textualism and necessitates the adoption of a new method of constitutional interpretation. While one must always be aware of the text of the Constitution and the original understanding of that text, that very awareness identifies the extent to which fourth-generational warfare epitomizes a phenomenon unforeseen by the Framers, a problem the constitutional resolution of which must rely on the good judgment of the present generation. n132 Now, to adapt the constitutional warmarking scheme to the new international order characterized by fourth-generational warfare, one must understand the threat it is being adapted to confront.

C. The Jihadist Threat

The erosion of the Westphalian and Clausewitzian model of warfare and the blurring of the distinction between the means of warfare and the ends of policy, which is one characteristic of fourth-generational warfare, apply to al-Qaeda and other adherents of jihadist ideology who view the United States as an enemy. An excellent analysis of jihadist ideology and its implications for the rest of the world are presented by Professor Mary Habeck. n133 Professor Habeck identifies the centrality of the Qur'an, specifically a particular reading of the Qur'an and hadith (traditions about the life of Muhammad), to the jihadist terrorists. n134 The jihadis believe that the scope of the Qur'an is universal, and "that their interpretation of Islam is also intended for the entire world, which must be brought to recognize this fact peacefully if possible and through violence if not." n135 Along these lines, the jihadis view the United States and her allies as among the greatest enemies of Islam: they believe "that every element of modern Western liberalism is flawed, wrong, and evil" because the basis of liberalism is secularism. n136 The jihadis emphasize the superiority of Islam to all other religions, and they believe that "God does not want differing belief systems to coexist." n137 For this reason, jihadist groups such as al-Qaeda "recognize that the West will not submit without a fight and believe in fact that the Christians, Jews, and liberals have united against Islam in a war that will end in the complete destruction of the unbelievers." n138 Thus, the adherents of this jihadist ideology, be it al-Qaeda or other groups, will continue to target the United States until she is destroyed. Their ideology demands it. n139

[\*398] To effectively combat terrorist groups such as al-Qaeda, it is necessary to understand not only how they think, but also how they operate. Al-Qaeda is a transnational organization capable of simultaneously managing multiple operations all over the world. n140 It is both centralized and decentralized: al-Qaeda is centralized in the sense that Osama bin Laden is the unquestioned leader, but it is decentralized in that its operations are carried out locally, by distinct cells. n141 Al-Qaeda benefits immensely from this arrangement because it can exercise direct control over high-probability operations, while maintaining a distance from low-probability attacks, only taking the credit for those that succeed. The local terrorist cells benefit by gaining access to al-Qaeda's "worldwide network of assets, people, and expertise." n142 Post-September 11 events have highlighted al-Qaeda's resilience. Even as the United States and her allies fought back, inflicting heavy casualties on al-Qaeda in Afghanistan and destroying dozens of cells worldwide, "al-Qaeda's networked nature allowed it to absorb the damage and remain a threat." n143 This is a far cry from earlier generations of warfare, where the decimation of the enemy's military forces would generally bring an end to the conflict.

D. The Need for Rapid Reaction and Expanded Presidential War Power

By now it should be clear just how different this conflict against the extremist terrorists is from the type of warfare that occupied the minds of the Framers at the time of the Founding. Rather than maintaining the geographical and political isolation desired by the Framers for the new country, today's United States is an international power targeted by individuals and groups that will not rest until seeing her demise. The Global War on Terrorism is not truly a war within the Framers' eighteenth-century conception of the term, and the normal constitutional provisions regulating the division of war powers between Congress and the President do not apply. Instead, this "war" is a struggle for survival and dominance against forces that threaten to destroy the United States and her allies, and the fourth-generational nature of the conflict, highlighted by an indiscernible distinction between wartime and peacetime, necessitates an evolution of America's traditional constitutional warmaking scheme.

As first illustrated by the military strategist Colonel John Boyd, constitutional decision-making in the realm of war powers in the fourth generation should [\*399] consider the implications of the OODA Loop: Observe, Orient, Decide, and Act. n144 In the era of fourth-generational warfare, quick reactions, proceeding through the OODA Loop rapidly, and disrupting the enemy's OODA loop are the keys to victory. "In order to win," Colonel Boyd suggested, "we should operate at a faster tempo or rhythm than our adversaries." n145 In the words of Professor Creveld, "[b]oth organizationally and in terms of the equipment at their disposal, the armed forces of the world will have to adjust themselves to this situation by changing their doctrine, doing away with much of their heavy equipment and becoming more like police." n146 Unfortunately, the existing constitutional understanding, which diffuses war power between two branches of government, necessarily (by the Framers' design) slows down decision-making. [\*400] In circumstances where war is undesirable (which is, admittedly, most of the time, especially against other nation-states), the deliberativeness of the existing decision-making process is a positive attribute.

In America's current situation, however, in the midst of the conflict with al-Qaeda and other international terrorist organizations, the existing process of constitutional decision-making in warfare may prove a fatal hindrance to achieving the initiative necessary for victory. As a slow-acting, deliberative body, Congress does not have the ability to adequately deal with fast-emerging situations in fourth-generational warfare. Thus, in order to combat transnational threats such as al-Qaeda, the executive branch must have the ability to operate by taking offensive military action even without congressional authorization, because only the executive branch is capable of the swift decision-making and action necessary to prevail in fourth-generational conflicts against fourth-generational opponents.

#### causes extinction

**Mhyvold, 13 –** doctorate in theoretical and mathematical physics and a master's degree in mathematical economics from Princeton University; founded Intellectual Ventures after retiring from his position as chief strategist and chief technology officer of Microsoft (Nathan, “Strategic Terrorism: A Call to Action” <http://www.lawfareblog.com/wp-content/uploads/2013/07/Strategic-Terrorism-Myhrvold-7-3-2013.pdf>)

As horrible as this would be, such a pandemic is by no means the worst attack one can imagine, for several reasons. First, most of the classic bioweapons are based on 1960s and 1970s technology because the 1972 treaty halted bioweapons development efforts in the United States and most other Western countries. Second, the Russians, although solidly committed to biological weapons long after the treaty deadline, were never on the cutting edge of biological research. Third and most important, the science and technology of molecular biology have made enormous advances, utterly transforming the field in the last few decades. High school biology students routinely perform molecular-biology manipulations that would have been impossible even for the best superpower-funded program back in the heyday of biological-weapons research. The biowarfare methods of the 1960s and 1970s are now as antiquated as the lumbering mainframe computers of that era. Tomorrow’s terrorists will have vastly more deadly bugs to choose from.

Consider this sobering development: in 2001, Australian researchers working on Mousepox, a nonlethal virus that infects mice (as chickenpox does in humans), accidentally discovered that a simple genetic modification transformed the virus.10, 11 instead of producing mild symptoms, the new virus killed 60% of even those mice already immune to the naturally occurring strains of Mousepox. The new virus, moreover, was unaffected by any existing vaccine or antiviral drug. a team of researchers at saint Louis University led by mark Buller picked up on that work and, by late 2003, found a way to improve on it: Buller’s variation on Mousepox was 100% lethal, although his team of investigators also devised combination vaccine and antiviral therapies that were partially effective in protecting animals from the engineered strain.12, 13 Another saving grace is that the genetically altered virus is no longer contagious. Of course, it is quite possible that future tinkering with the virus will change that property, too.

Strong reasons exist to believe that the genetic modifications Buller made to Mousepox would work for other poxviruses and possibly for other classes of viruses as well. Might the same techniques allow chickenpox or another poxvirus that infects humans to be turned into a 100% lethal bioweapon, perhaps one that is resistant to any known antiviral therapy? I’ve asked this question of experts many times, and no one has yet replied that such a manipulation couldn’t be done.

This case is just one example. Many more are pouring out of scientific journals and conferences every year. Just last year, the journal Nature published a controversial study done at the University of Wisconsin–Madison in which virologists enumerated the changes one would need to make to a highly lethal strain of bird flu to make it easily transmitted from one mammal to another.14

Biotechnology is advancing so rapidly that it is hard to keep track of all the new potential threats. Nor is it clear that anyone is even trying. In addition to lethality and drug resistance, many other parameters can be played with, given that the infectious power of an epidemic depends on many properties, including the length of the latency period during which a person is contagious but asymptomatic. Delaying the onset of serious symptoms allows each new case to spread to more people and thus makes the virus harder to stop.

This dynamic is perhaps best illustrated by hiv, which is very difficult to transmit compared with smallpox and many other viruses. Intimate contact is needed, and even then, the infection rate is low. The balancing factor is that hiv can take years to progress to aids, which can then take many more years to kill the victim. What makes hiv so dangerous is that infected people have lots of opportunities to infect others. This property has allowed hiv to claim more than 30 million lives so far, and approximately 34 million people are now living with this virus and facing a highly uncertain future.15

A virus genetically engineered to infect its host quickly, to generate symptoms slowly—say, only after weeks or months—and to spread easily through the air or by casual contact would be vastly more devastating than hiv. It could silently penetrate the population to unleash its deadly effects suddenly. This type of epidemic would be almost impossible to combat because most of the infections would occur before the epidemic became obvious.

A technologically sophisticated terrorist group could develop such a virus and kill a large part of humanity with it. Indeed, terrorists may not have to develop it themselves: some scientist may do so first and publish the details.

Given the rate at which biologists are making discoveries about viruses and the immune system, at some point in the near future, someone may create artificial pathogens that could drive the human race to extinction. Indeed, a detailed species-elimination plan of this nature was openly proposed in a scientific journal.

The ostensible purpose of that particular research was to suggest a way to extirpate the malaria mosquito, but similar techniques could be directed toward humans.16 When I’ve talked to molecular biologists about this method, they are quick to point out that it is slow and easily detectable and could be fought with biotech remedies. If you challenge them to come up with improvements to the suggested attack plan, however, they have plenty of ideas.

Modern biotechnology will soon be capable, if it is not already, of bringing about the demise of the human race— or at least of killing a sufficient number of people to end high-tech civilization and set humanity back 1,000 years or more. That terrorist groups could achieve this level of technological sophistication may seem far-fetched, but keep in mind that it takes only a handful of individuals to accomplish these tasks. Never has lethal power of this potency been accessible to so few, so easily. Even more dramatically than nuclear proliferation, modern biological science has frighteningly undermined the correlation between the lethality of a weapon and its cost, a fundamentally stabilizing mechanism throughout history. Access to extremely lethal agents—lethal enough to exterminate Homo sapiens—will be available to anybody with a solid background in biology terrorists included.

### 4

#### Syria puts PC on the brink – passes debt ceiling

**Garrett, 9/19/13 -** National Journal Correspondent-at-Large and Chief White House Correspondent for CBS News(Major, National Journal, “A September to Surrender: Syria and Summers Spell Second-Term Slump” <http://www.nationaljournal.com/all-powers/a-september-to-surrender-syria-and-summers-spell-second-term-slump-20130917>)

There are no “obstructionist” Republican fingerprints on the conspicuous and power-depleting defeats for Obama. He never sought a vote on Syria and therefore was not humiliated. The same is true for Summers. But Obama lost ground on both fronts and ultimately surrendered to political realities that, for the first time in his presidency, were determined by his own obdurate party.

This does not mean Obama will lose coming fights over the sequester, shutdown, or debt ceiling. But he is visibly weaker, and even his sense of victory in Syria is so unidimensional, it has no lasting sway in either Democratic cloakroom. More important, Democrats are no longer afraid to defy him or to disregard the will of their constituents—broadly defined in the case of Syria; activist and money-driving in the case of Summers. This, of course, indirectly announces the beginning of the 2016 presidential campaign and an intra-party struggle over the post-Obama Democratic matrix.

This shift—a tectonic one—will give Republicans new opportunities on the fiscal issues and in coming debates over immigration and implementation of Obamacare. Republicans have never known a world where Democratic defections were so unyielding and damaging.

This does not mean Republicans will find a way to exploit these fissures. The GOP’s current agony over delaying or defunding Obamacare and the related shambling incoherence around the sequester/shutdown/debt ceiling suggest not.

#### Restrictions on authority are a loss that spills over to the debt ceiling

**Parsons, 9/12/13** (Christi, Los Angeles Times, “Obama's team calls a timeout”

<http://www.latimes.com/nation/la-na-obama-congress-20130913,0,2959396.story>)

After a week in which President Obama narrowly averted a bruising defeat on Capitol Hill over a military strike on Syria, the decision had the feeling of a much-needed timeout.

The messy debate over a resolution to authorize military force put a harsh light on the president's already rocky relationship with Congress.

Despite a charm offensive earlier this year, complete with intimate dinners and phone calls, Obama faced contrary lawmakers in both parties, a climate that is certain to persist through the next round of legislative fights, if not to the end of his second term.

In deciding to seek approval for military action, Obama banked on the long-standing deference to the commander in chief on matters of national defense. But by the time he pressed "pause" on the intense White House lobbying effort, he was finding as much defiance as deference.

Although the White House cast the issue as a matter of national security and a crucial test of U.S. power, dozens of lawmakers from both parties were set to deliver a rare rebuke to a president on foreign policy. Even Democratic loyalists seemed unswayed by appeals to preserve the prestige of the presidency — and this president. Hawkish Republicans offering to reach across the aisle to support the president said they found the White House distant and uninterested.

The canceled picnic punctuated a week of aggravated feelings.

"We obviously have divided government. We have sometimes contentious, sometimes very effective relations with Congress. But we keep at it," said White House spokesman Jay Carney, who denied the picnic cancellation had anything to do with the state of relations between the two branches of government.

On Capitol Hill, the week's episode strained Obama's traditional alliance with his fellow Democrats, many of whom were wary of another military involvement, unclear about the president's plans for a missile strike and surprised by his decision to ask them to vote on it.

"Not only was it a hard ask, but it was not a well-prepared ask," said Sen. Sheldon Whitehouse (D-R.I.). "His willingness to back away from the ultimatum and pursue the disarmament proposal was extremely welcome, and I think that helped all of us in our relationship with him."

Obama's relationship with his Republican critics was not helped. As lawmakers look ahead to the rest of the fall agenda, including the coming budget battles, the administration's performance this week will not be easy to forget, some said.

"It's just more lack of confidence that they know what they're doing," said Sen. Tom Coburn (R-Okla.).

"There's only so much political capital," said Sen. Rob Portman (R-Ohio).

Democrats defended the president, blaming Republicans for a "knee-jerk" opposition to any initiative tied to this White House, a phenomenon that Obama aides regularly cite but that the president appears to have disregarded in his decision to put a use-of-force resolution before Congress.

"Historically, when it comes to military force, Republicans and conservatives have led that. Now they're opposed to it," said Sen. Richard J. Durbin (D-Ill.). In a private meeting this week, Durbin said, Obama himself joked that "a lot of Republicans on Capitol Hill are discovering their inner doves on Syria."

The next set of negotiations will be far more predictable and on familiar territory. By the end of the month, the president and Congress must agree on a plan to continue funding the government, or it will shut down. And by mid-October, they will have to agree to raise the debt limit, or risk a default.

The White House has said it won't negotiate on the debt limit, as it did twice before, counting on the public and business groups to pressure Republicans.

Democrats were hopeful the budget issues would put the White House back on more solid political footing.

"I think the public has a heck of a lot more confidence in the president on economics and budget than [in] the House Republicans," said Sen. Carl Levin (D-Mich.).

That may be wishful thinking, said Ross Baker, a political science professor at Rutgers University, who studies the Senate.

"These things carry over. There's no firewall between issues," he said. "Failure in one area leads to problems in other areas."

The debate over the war in Syria may be on an extended pause, although prospects of Obama returning to Congress to ask for a use-of-force authorization seem slim.

A bipartisan group of senators is drafting an amended authorization, but the group is not expected to fully air its proposal until diplomatic talks conclude.

There were some signs that the debate may have won the president some empathy, if not support. At a private lunch with Republican senators this week, Obama asked them not to undermine him on the world stage. Sen. Ron Johnson of Wisconsin, who is part of a group of GOP senators working with the White House on fiscal issues, said the appeal resonated.

#### Capital is finite, spending it prevents a debt ceiling deal

**Moore, 9/10/13 -** Guardian's US finance and economics editor.(Heidi, “Syria: the great distraction” The Guardian, <http://www.theguardian.com/commentisfree/2013/sep/10/obama-syria-what-about-sequester>)

The country will crash into the debt ceiling in mid-October, which would be an economic disaster, especially with a government shutdown looming at the same time. These are deadlines that Congress already learned two years ago not to toy with, but memories appear to be preciously short.

The Federal Reserve needs a new chief in three months, someone who will help the country confront its raging unemployment crisis that has left 12 million people without jobs. The president has promised to choose a warm body within the next three weeks, despite the fact that his top pick, Larry Summers, would likely spark an ugly confirmation battle – the "fight of the century," according to some – with a Congress already unwilling to do the President's bidding.

Congress was supposed to pass a farm bill this summer, but declined to do so even though the task is already two years late. As a result, the country has no farm bill, leaving agricultural subsidies up in the air, farmers uncertain about what their financial picture looks like, and a potential food crisis on the horizon.

The two main housing agencies, Fannie Mae and Freddie Mac, have been in limbo for four years and are desperately in need of reform that should start this fall, but there is scant attention to the problem.

These are the problems going unattended by the Obama administration while his aides and cabinet members have been wasting the nation's time making the rounds on television and Capitol Hill stumping for a profoundly unpopular war. The fact that all this chest-beating was for naught, and an easy solution seems on the horizon, belies the single-minded intensity that the Obama White House brought to its insistence on bombing Syria.

More than one wag has suggested, with the utmost reason, that if Obama had brought this kind of passion to domestic initiatives, the country would be in better condition right now. As it is, public policy is embarrassingly in shambles at home while the administration throws all of its resources and political capital behind a widely hated plan to get involved in a civil war overseas.

The upshot for the president may be that it's easier to wage war with a foreign power than go head-to-head with the US Congress, even as America suffers from neglect.

This is the paradox that President Obama is facing this fall, as he appears to turn his back on a number of crucial and urgent domestic initiatives in order to spend all of his meager political capital on striking Syria.

Syria does present a significant humanitarian crisis, which has been true for the past two years that the Obama administration has completely ignored the atrocities of Bashar al-Assad.

Two years is also roughly the same amount of time that key domestic initiatives have also gone ignored as Obama and Congress engage in petty battles for dominance and leave the country to run itself on a starvation diet imposed by sequestration cuts. Leon Panetta tells the story of how he tried to lobby against sequestration only to be told:

Leon, you don't understand. The Congress is resigned to failure.

Similarly, those on Wall Street, the Federal Reserve, those working at government agencies, and voters themselves have become all too practiced at ignoring the determined incompetence of those in Washington.

Political capital – the ability to horse-trade and win political favors from a receptive audience – is a finite resource in Washington. Pursuing misguided policies takes up time, but it also eats up credibility in asking for the next favor. It's fair to say that congressional Republicans, particularly in the House, have no love for Obama and are likely to oppose anything he supports. That's exactly the reason the White House should stop proposing policies as if it is scattering buckshot and focus with intensity on the domestic tasks it wants to accomplish, one at a time.

#### Default kills the econ

**Davidson, 9/10/13** – co-founder of NPR’s Planet Money (Adam, “Our Debt to Society” New York Times, <http://www.nytimes.com/2013/09/15/magazine/our-debt-to-society.html?pagewanted=all>)

If the debt ceiling isn’t lifted again this fall, some serious financial decisions will have to be made. Perhaps the government can skimp on its foreign aid or furlough all of NASA, but eventually the big-ticket items, like Social Security and Medicare, will have to be cut. At some point, the government won’t be able to pay interest on its bonds and will enter what’s known as sovereign default, the ultimate national financial disaster achieved by countries like Zimbabwe, Ecuador and Argentina (and now Greece). In the case of the United States, though, it won’t be an isolated national crisis. If the American government can’t stand behind the dollar, the world’s benchmark currency, then the global financial system will very likely enter a new era in which there is much less trade and much less economic growth. It would be, by most accounts, the largest self-imposed financial disaster in history.

Nearly everyone involved predicts that someone will blink before this disaster occurs. Yet a small number of House Republicans (one political analyst told me it’s no more than 20) appear willing to see what happens if the debt ceiling isn’t raised — at least for a bit. This could be used as leverage to force Democrats to drastically cut government spending and eliminate President Obama’s signature health-care-reform plan. In fact, Representative Tom Price, a Georgia Republican, told me that the whole problem could be avoided if the president agreed to drastically cut spending and lower taxes. Still, it is hard to put this act of game theory into historic context. Plenty of countries — and some cities, like Detroit — have defaulted on their financial obligations, but only because their governments ran out of money to pay their bills. No wealthy country has ever voluntarily decided — in the middle of an economic recovery, no less — to default. And there’s certainly no record of that happening to the country that controls the global reserve currency.

Like many, I assumed a self-imposed U.S. debt crisis might unfold like most involuntary ones. If the debt ceiling isn’t raised by X-Day, I figured, the world’s investors would begin to see America as an unstable investment and rush to sell their Treasury bonds. The U.S. government, desperate to hold on to investment, would then raise interest rates far higher, hurtling up rates on credit cards, student loans, mortgages and corporate borrowing — which would effectively put a clamp on all trade and spending. The U.S. economy would collapse far worse than anything we’ve seen in the past several years.

#### Nuclear war

**Friedberg and Schoenfeld 8**

[Aaron, Prof. Politics. And IR @ Princeton’s Woodrow Wilson School and Visiting Scholar @ Witherspoon Institute, and Gabriel, Senior Editor of Commentary and Wall Street Journal, “The Dangers of a Diminished America”, 10-28, <http://online.wsj.com/article/SB122455074012352571.html>]

Then there are the dolorous consequences of a potential collapse of the world's financial architecture. For decades now, Americans have enjoyed the advantages of being at the center of that system. The worldwide use of the dollar, and the stability of our economy, among other things, made it easier for us to run huge budget deficits, as we counted on foreigners to pick up the tab by buying dollar-denominated assets as a safe haven. Will this be possible in the future? Meanwhile, traditional foreign-policy challenges are multiplying. The threat from al Qaeda and Islamic terrorist affiliates has not been extinguished. Iran and North Korea are continuing on their bellicose paths, while Pakistan and Afghanistan are progressing smartly down the road to chaos. Russia's new militancy and China's seemingly relentless rise also give cause for concern. If America now tries to pull back from the world stage, it will leave a dangerous power vacuum. The stabilizing effects of our presence in Asia, our continuing commitment to Europe, and our position as defender of last resort for Middle East energy sources and supply lines could all be placed at risk. In such a scenario there are shades of the 1930s, when global trade and finance ground nearly to a halt, the peaceful democracies failed to cooperate, and aggressive powers led by the remorseless fanatics who rose up on the crest of economic disaster exploited their divisions. Today we run the risk that rogue states may choose to become ever more reckless with their nuclear toys, just at our moment of maximum vulnerability. The aftershocks of the financial crisis will almost certainly rock our principal strategic competitors even harder than they will rock us. The dramatic free fall of the Russian stock market has demonstrated the fragility of a state whose economic performance hinges on high oil prices, now driven down by the global slowdown. China is perhaps even more fragile, its economic growth depending heavily on foreign investment and access to foreign markets. Both will now be constricted, inflicting economic pain and perhaps even sparking unrest in a country where political legitimacy rests on progress in the long march to prosperity. None of this is good news if the authoritarian leaders of these countries seek to divert attention from internal travails with external adventures.

### 5

#### Framing targeted killing as a juridical problem misunderstands agency and conflates the law and politics—the correct response cannot be to respond to legal discourse, but to disrupt it

Krasmann 12. Susanne Krasmann, prof. Dr, Institute for Criminological Research, University of Hamburg, “Targeted Killing and Its Law: On a Mutually Constitutive Relationship,” Leiden Journal of International Law (2012), 25, pg. 678

The legal debate on targeted killing, particularly that referring to the US practice, has increased immensely during the last decade and even more so very recently, obviously due to a ‘compulsion of legality’.87 Once this state practice of resorting to the use of lethal force has been recognized as systematically taking place, it needs to be dealt with in legal terms. Whether this is done in supportive or critical terms, the assertion of targeted killing as a legal practice commences at this point. This is due to the fact that the law, once invoked, launches its own claims.

To insist on disclosing ‘the full legal basis for targeted killings’; on criteria, legal procedures, and ‘access to reliable information’ in order to render governmental action controllable; or on legal principles to be applied in order to estimate the necessity and proportionality of a concrete intervention at stake,88 not only involves accepting targeted killing as a legitimate subject of debate in the first place. It requires distinctions to be made between, for example, a legitimate and an illegitimate target. It invokes the production of knowledge and the establishment of pertinent rules. Indeterminate categories are to be determined and thus established as a new reading of positive law. The introduction of international human rights standards into the debate, for example, clearly allows limits to be set in employing the pre-emptive tactic. As Wouter Werner has shown with regard to the Israeli High Court of Justice’s decision on the legality of targeted killing operations,89 this may well lead, for example, to recognizing the enemy as being not ‘outlaws’ but, instead, combatants who are to be granted basic human rights. Subsequently, procedural rules may be established that restrict the practice and provide criteria for assessing the legality of concrete operations.90 At the same time, however, targeted killing is recognized as a legitimate tactic in the fight against terrorism and is being determined and implemented legally.91

When framed within the ‘theatre of war’, targeted killing categorically seems to be justifiable under the legal principles of necessity, proportionality, discrimination, and the avoidance of unnecessary suffering. This is true as long as one presupposes in general terms, as the juridical discourse usually does, both a well-considered pro- ceeding along those principles92 and, accordingly, that targeted killing, by its very nature, is a ‘calculated, precise use of lethal force’.93 Procedural rules, like the ‘pro- portionality test’, that are essentially concerned with determination, namely with specifying criteria of intervention for the concrete case or constellation, certainly provide reliability by systematically inciting and provoking justifications. Their application therefore, we may say, contributes to clarifying a controversial norm- ative interpretation, but it will never predict or determine how deliberation and justification translate into operational action. The application of procedural rules does not only notoriously remain ‘indeterminate’,94 but also produces its own truth effects. The question of proportionality, for example, is intrinsically a relational one. The damage that targeting causes is to be related to the anticipated military ad- vantage and to the expected casualties of non-targeted operations. Even if there are ‘substantial grounds to believe’ that such an operation will ‘encounter significant armed resistance’,95 this is a presumption that, above all, entails a virtual dimension: the alternate option will never be realized. According to a Foucauldian perspective, decisions always articulate within an epistemic regime and thus ‘eventualize’ on the political stage.96 There is, in this sense, no mere decision and no mere meaning; and, conversely, there is no content of a norm, and no norm, independent of its enforcement.97 To relate this observation to our problem at hand means that, rather than the legal principles’ guiding a decision, it is the decision on how to proceed that constitutes the meaning of the legal principle in question. The legal reasoning, in turn, produces a normative reality of its own, as we are now able to imagine, comprehend, and assess a procedure and couch it in legal terms.

This is also noticeable in the case of the Osama bin Laden killing. As regards the initial strategy of justification, the question of resistance typically is difficult to establish ex post in legal terms. Such situations are fraught with so many possible instances of ambiguous behaviour and risk, and the identification of actual behav- iour as probably dangerous and suspicious may change the whole outcome of the event.98 But, once the public found itself with little alternative but to assume that the prospect of capturing the subject formed part of the initial order, it also had to assume that the intention was to use lethal force as a last resort. And, once the public accepts the general presumption that the United States is at war with the terrorist organization, legal reasoning about the operation itself follows and constitutes a rationale shaping the perception of similar future actions and the exercise of governmental force in general.99 Part of this rationale is the assumption, as the president immediately pointed out in his speech, that the threat of al Qaeda has not been extinguished with bin Laden. The identification of a threat that emanates from a network may give rise to the question of whether the killing of one particular target, forming part of a Hydra, makes any sense at all.100 Yet, it equally nourishes the idea that the fight against terrorism, precisely because of its elusiveness, is an enduring one, which is exactly the position the United States takes while considering itself in an armed conflict with the terrorist organization. Targeting and destroying parts of a network, then, do not destroy the entire network, but rather verify that it exists and is at work. The target, in this sense, is constituted by being targeted.101 Within the rationale of the security dispositif, there continue to be threats and new targets. Hence, at work is a transformation of laws through practice, rather than their amendment.

Giorgio Agamben maintains that a legal norm, because abstract, does not stipulate its application.102 ‘Just as between language and world . . . there is no internal nexus’ between them. The norm, in this sense, exists independent of ‘reality’. This, according to Agamben, allows for the norm in the ‘state of exception’ both to be applied with the effect of ‘ceasing to apply’103 – ‘the rule, suspending itself, gives rise to the exception’104 – and to be suspended without being abolished. Although forming part of and, in fact, being the effect of applying the law, the state of exception, in Agamben’s view, disconnects from the norm. Within a perspective on law as practice, by contrast, there is no such difference between norm and reality. Even to ignore a pertinent norm constitutes an act that has a meaning, namely that the norm is not being enforced. It affects the norm. Targeted killing operations, in this sense, can never be extra-legal.105 On the contrary, provided that illegal practices come up systematically, they eventually will effectuate the transformation of the law. Equally, the exception from the norm not only suspends the norm, transforming it, momentarily or permanently, into a mere symbol without meaning and force, but at the same time also impinges upon the validity of that norm. Moreover, focus on the exception within the present context falls short of capturing a rather gradual transitional process that both resists a binary deciphering of either legal or illegal and is not a matter of suspending a norm. As practices deploying particular forms of knowledge, targeted killing and its law mutually constitute each other, thus re-enforcing a new security dispositif. The appropriate research question therefore is how positive law changes its framework of reference. Targeted killing, once perceived as illegal, now appears to be a legal practice on the grounds of a new understanding of international law’s own elementary concepts. The crux of the ‘compulsion of legality’ is that legality itself is a shifting reference.

Seen this way, the United States does not establish targeted killing as a legal practice on the grounds of its internationally ‘possessing’ exceptional power. Rather the reverse; it is able to employ targeted killing as a military tactic, precisely because this is accepted by the legal discourse. As a practice, targeted killing, in turn, reshapes our understanding of basic concepts of international law. Any dissenting voice will now be heard with more difficulty, since targeted killing is a no longer an isolated practice but, within the now establishing security dispositif, appears to be appropriate and rational. To counter the legal discourse, then, would require to interrupt it, rather than to respond to it, and to move on to its political implications that are rather tacitly involved in the talk about threats and security, and in the dispute about targeted killing operations’ legality.

#### The juridical matrix is a racist project to force the entire earth under the aegis of liberal control or else—wars are waged not in the name of a sovereign’s juridical power, but on behalf of the global liberal body itself

Evans 10. Brad Evans, Lecturer in the School of Politics and International Studies at the University of Leeds and Programme Director for International Relations, “Foucault’s Legacy: Security, War, and Violence in the 21st Century,” Security Dialogue vol.41, no. 4, August 2010, pg. 422-424, sage

Imposing liberalism has often come at a price. That price has tended to be a continuous recourse to war. While the militarism associated with liberal internationalization has already received scholarly attention (Howard, 2008), Foucault was concerned more with the continuation of war once peace has been declared.4 Denouncing the illusion that ‘we are living in a world in which order and peace have been restored’ (Foucault, 2003: 53), he set out to disrupt the neat distinctions between times of war/military exceptionalism and times of peace/civic normality. War accordingly now appears to condition the type of peace that follows. None have been more ambitious in map-­ ping out this war–peace continuum than Michael Dillon & Julian Reid (2009). Their ‘liberal war’ thesis provides a provocative insight into the lethality of making live. Liberalism today, they argue, is underwritten by the unreserved righteousness of its mission. Hence, while there may still be populations that exist beyond the liberal pale, it is now taken that they should be included. With ‘liberal peace’ therefore predicated on the pacification/elimination of all forms of political difference in order that liberalism might meet its own moral and political objectives, the more peace is commanded, the more war is declared in order to achieve it: ‘In proclaiming peace . . . liberals are nonethe-­ less committed also to making war.’ This is the ‘martial face of liberal power’ that, contrary to the familiar narrative, is ‘directly fuelled by the universal and pacific ambitions for which liberalism is to be admired’ (Dillon & Reid, 2009: 2). Liberalism thus stands accused here of universalizing war in its pursuit of peace: However much liberalism abjures war, indeed finds the instrumental use of war, espe-­ cially, a scandal, war has always been as instrumental to liberal as to geopolitical thinkers. In that very attempt to instrumentalize, indeed universalize, war in the pursuit of its own global project of emancipation, the practice of liberal rule itself becomes profoundly shaped by war. However much it may proclaim liberal peace and freedom, its own allied commitment to war subverts the very peace and freedoms it proclaims (Dillon & Reid, 2009: 7). While Dillon & Reid’s thesis only makes veiled reference to the onto-­ theological dimension, they are fully aware that its rule depends upon a certain religiosity in the sense that war has now been turned into a veritable human crusade with only two possible outcomes: ‘endless war or the transformation of other societies and cultures into liberal societies and cul-­ tures’ (Dillon & Reid, 2009: 5). Endless war is underwritten here by a new set of problems. Unlike Clausewitzean confrontations, which at least pro-­ vided the strategic comforts of clear demarcations (them/us, war/peace, citizen/soldier, and so on), these wars no longer benefit from the possibility of scoring outright victory, retreating, or achieving a lasting negotiated peace by means of political compromise. Indeed, deprived of the prospect of defin-­ ing enmity in advance, war itself becomes just as complex, dynamic, adaptive and radically interconnected as the world of which it is part. That is why ‘any such war to end war becomes a war without end. . . . The project of removing war from the life of the species becomes a lethal and, in principle, continuous and unending process’ (Dillon & Reid, 2009: 32). Duffield, building on from these concerns, takes this unending scenario a stage further to suggest that since wars for humanity are inextricably bound to the global life-­chance divide, it is now possible to write of a ‘Global Civil War’ into which all life is openly recruited: Each crisis of global circulation . . . marks out a terrain of global civil war, or rather a tableau of wars, which is fought on and between the modalities of life itself. . . . What is at stake in this war is the West’s ability to contain and manage international poverty while maintaining the ability of mass society to live and consume beyond its means (Duffield, 2008: 162). Setting out civil war in these terms inevitably marks an important depar-­ ture. Not only does it illustrate how liberalism gains its mastery by posing fundamental questions of life and death – that is, who is to live and who can be killed – disrupting the narrative that ordinarily takes sovereignty to be the point of theoretical departure, civil war now appears to be driven by a globally ambitious biopolitical imperative (see below). Liberals have continuously made reference to humanity in order to justify their use of military force (Ignatieff, 2003). War, if there is to be one, must be for the unification of the species. This humanitarian caveat is by no means out of favour. More recently it underwrites the strategic rethink in contemporary zones of occupation, which has become biopolitical (‘hearts and minds’) in everything but name (Kilcullen, 2009; Smith, 2006). While criticisms of these strategies have tended to focus on the naive dangers associated with liberal idealism (see Gray, 2008), insufficient attention has been paid to the contested nature of all the tactics deployed in the will to govern illiberal populations. Foucault returns here with renewed vigour. He understood that forms of war have always been aligned with forms of life. Liberal wars are no exception. Fought in the name of endangered humanity, humanity itself finds its most meaningful expression through the battles waged in its name: At this point we can invert Clausewitz’s proposition and say that politics is the continuation of war by other means. . . . While it is true that political power puts an end to war and establishes or attempts to establish the reign of peace in civil society, it certainly does not do so in order to suspend the effects of power or to neutralize the disequilibrium revealed in the last battle of war (Foucault, 2003: 15). What in other words occurs beneath the semblance of peace is far from politically settled: political struggles, these clashes over and with power, these modifications of relations of force – the shifting balances, the reversals – in a political system, all these things must be interpreted as a continuation of war. And they are interpreted as so many episodes, fragmentations, and displacements of the war itself. We are always writing the history of the same war, even when we are writing the history of peace and its institutions (Foucault, 2003: 15). David Miliband (2009), without perhaps knowing the full political and philo-­ sophical implications, appears to subscribe to the value of this approach, albeit for an altogether more committed deployment: NATO was born in the shadow of the Cold War, but we have all had to change our thinking as our troops confront insurgents rather than military machines like our own. The mental models of 20th century mass warfare are not fit for 21st century counter-­ insurgency. That is why my argument today has been about the centrality of politics. People like quoting Clausewitz that warfare is the continuation of politics by other means. . . . We need politics to become the continuation of warfare by other means. Miliband’s ‘Foucauldian moment’ should not escape us. Inverting Clausewitz on a planetary scale – hence promoting the collapse of all meaningful distinctions that once held together the fixed terms of Newtonian space (i.e. inside/outside, friend/enemy, citizen/soldier, war/peace, and so forth), he firmly locates the conflict among the world of peoples. With global war there-­ fore appearing to be an internal state of affairs, vanquishing enemies can no longer be sanctioned for the mere defence of things. A new moment has arrived, in which the destiny of humanity as a whole is being wagered on the success of humanity’s own political strategies. No coincidence, then, that authors like David Kilcullen – a key architect in the formulation of counter-­ insurgency strategies in Iraq and Afghanistan, argue for a global insurgency paradigm without too much controversy. Viewed from the perspective of power, global insurgency is after all nothing more than the advent of a global civil war fought for the biopolitical spoils of life. Giving primacy to counter-­ insurgency, it foregrounds the problem of populations so that questions of security governance (i.e. population regulation) become central to the war effort (RAND, 2008). Placing the managed recovery of maladjusted life into the heart of military strategies, it insists upon a joined-­up response in which sovereign/militaristic forms of ordering are matched by biopolitical/devel-­ opmental forms of progress (Bell & Evans, forthcoming). Demanding in other words a planetary outlook, it collapses the local into the global so that life’s radical interconnectivity implies that absolutely nothing can be left to chance. While liberals have therefore been at pains to offer a more humane recovery to the overt failures of military excess in current theatres of operation, warfare has not in any way been removed from the species. Instead, humanized in the name of local sensitivities, doing what is necessary out of global spe-­ cies necessity now implies that war effectively takes place by every means. Our understanding of civil war is invariably recast. Sovereignty has been the traditional starting point for any discussion of civil war. While this is a well-established Eurocentric narrative, colonized peoples have never fully accepted the inevitability of the transfixed utopian prolificacy upon which sovereign power increasingly became dependent. Neither have they been completely passive when confronted by colonialism’s own brand of warfare by other means. Foucault was well aware of this his-­ tory. While Foucauldian scholars can therefore rightly argue that alternative histories of the subjugated alone permit us to challenge the monopolization of political terms – not least ‘civil war’ – for Foucault in particular there was something altogether more important at stake: there is no obligation whatsoever to ensure that reality matches some canonical theory. Despite what some scholars may insist, politically speaking there is nothing that is necessarily proper to the sovereign method. It holds no distinct privilege. Our task is to use theory to help make sense of reality, not vice versa. While there is not the space here to engage fully with the implications of our global civil war paradigm, it should be pointed out that since its biopolitical imperative removes the inevitability of epiphenomenal tensions, nothing and nobody is necessarily dangerous simply because location dictates. With enmity instead depending upon the complex, adaptive, dynamic account of life itself, what becomes dangerous emerges from within the liberal imaginary of threat. Violence accordingly can only be sanctioned against those newly appointed enemies of humanity – a phrase that, immeasurably greater than any juridical category, necessarily affords enmity an internal quality inherent to the species complete, for the sake of planetary survival. Vital in other words to all human existence, doing what is necessary out of global species necessity requires a new moral assay of life that, pitting the universal against the particular, willingly commits vio-­ lence against any ontological commitment to political difference, even though universality itself is a shallow disguise for the practice of destroying political adversaries through the contingency of particular encounters. Necessary Violence Having established that the principal task set for biopolitical practitioners is to sort and adjudicate between the species, modern societies reveal a distinct biopolitical aporia (an irresolvable political dilemma) in the sense that making life live – selecting out those ways of life that are fittest by design – inevitably writes into that very script those lives that are retarded, backward, degener-­ ate, wasteful and ultimately dangerous to the social order (Bauman, 1991). Racism thus appears here to be a thoroughly modern phenomenon (Deleuze & Guattari, 2002). This takes us to the heart of our concern with biopoliti-­ cal rationalities. When ‘life itself’ becomes the principal referent for political struggles, **power necessarily concerns itself with those biological threats to human existence** (Palladino, 2008). That is to say, since life becomes the author of its own (un)making, the biopolitical assay of life necessarily portrays a commitment to the supremacy of certain species types: ‘a race that is portrayed as the one true race, the race that holds power and is entitled to define the norm, and against those who deviate from that norm, against those who pose a threat to the biological heritage’ (Foucault, 2003: 61). Evidently, what is at stake here is no mere sovereign affair. Epiphenomenal tensions aside, racial problems occupy a ‘permanent presence’ within the political order (Foucault, 2003: 62). Biopolitically speaking, then, since it is precisely through the internalization of threat – the constitution of the threat that is now from the dangerous ‘Others’ that exist within – that societies reproduce at the level of life the ontological commitment to secure the subject, since everybody is now possibly dangerous and nobody can be exempt, for politi-­ cal modernity to function one always has to be capable of killing in order to go on living: Wars are no longer waged in the name of a sovereign who must be defended; they are waged on behalf of the existence of everyone; entire populations are mobilized for the purpose of wholesale slaughter in the name of life necessity; massacres have become vital. . . . The principle underlying the tactics of battle – that one has to become capable of killing in order to go on living – has become the principle that defines the strategy of states (Foucault, 1990: 137). When Foucault refers to ‘killing’, he is not simply referring to the vicious act of taking another life: ‘When I say “killing”, I obviously do not mean simply murder as such, but also every form of indirect murder: the fact of exposing someone to death, increasing the risk of death for some people, or, quite simply, political death, expulsion, rejection and so on’ (Foucault, 2003: 256). Racism makes this process of elimination possible**,** for it is only through the discourse and practice of racial (dis)qualification that one is capable of introducing ‘a break in the domain of life that is under power’s control: the break between what must live and what must die’ (Foucault, 2003: 255). While kill- ing does not need to be physically murderous, that is not to suggest that we should lose sight of the very real forms of political violence that do take place in the name of species improvement. As Deleuze (1999: 76) duly noted, when notions of security are invoked in order to preserve the destiny of a species, when the defence of society gives sanction to very real acts of violence that are justified in terms of species necessity, that is when the capacity to legitimate murderous political actions in all our names and for all our sakes becomes altogether more rational, calculated, utilitarian, hence altogether more frightening: When a diagram of power abandons the model of sovereignty in favour of a disciplinary model, when it becomes the ‘bio-­power’ or ‘bio-­politics’ of populations, controlling and administering life, it is indeed life that emerges as the new object of power. At that point law increasingly renounces that symbol of sovereign privilege, the right to put someone to death, but allows itself to produce all the more hecatombs and genocides: not by returning to the old law of killing, but on the contrary in the name of race, precious space, conditions of life and the survival of a population that believes itself to be better than its enemy, which it now treats not as the juridical enemy of the old sovereign but as a toxic or infectious agent, a sort of ‘biological danger’.Auschwitz arguably represents the most grotesque, shameful and hence meaningful example of necessary killing – the violence that is sanctioned in the name of species necessity (see Agamben, 1995, 2005). Indeed, for Agamben, since one of the most ‘essential characteristics’ of modern biopolitics is to con-­ stantly ‘redefine the threshold in life that distinguishes and separates what is inside from what is outside’, it is within those sites that ‘eliminate radically the people that are excluded’ that the biopolitical racial imperative is exposed in its most brutal form (Agamben, 1995: 171). The camp can therefore be seen to be the defining paradigm of the modern insomuch as it is a ‘space in which power confronts nothing other than pure biological life without any media-­ tion’ (Agamben, 1995: 179). While lacking Agamben’s intellectual sophistry, such a Schmittean-­inspired approach to violence – that is, sovereignty as the ability to declare a state of juridical exception – has certainly gained wide-­ spread academic currency in recent times. The field of international rela-­ tions, for instance, has been awash with works that have tried to theorize the ‘exceptional times’ in which we live (see, in particular, Devetak, 2007; Kaldor, 2007). While some of the tactics deployed in the ‘Global War on Terror’ have undoubtedly lent credibility to these approaches, in terms of understanding violence they are limited. Violence is only rendered problematic here when it is associated with some act of unmitigated geopolitical excess (e.g. the inva-­ sion of Iraq, Guantánamo Bay, use of torture, and so forth). This is unfortunate. Precluding any critical evaluation of the contemporary forms of violence that take place within the remit of humanitarian discourses and practices, there is a categorical failure to address how necessary violence continues to be an essential feature of the liberal encounter. Hence, with post-interventionary forms of violence no longer appearing to be any cause for concern, the nature of the racial imperative that underwrites the violence of contemporary liberal occupations is removed from the analytical arena.

#### As a specific intellectual, reject the affirmative to disrupt the powe relations latent in the 1ac.

Weiskopf and Willmott 13. Richard Wesikopf, professor of organization and learning at the University of Innsbruck, and Hugh Willmott, professor of organization studies at Cardiff University, Ethics as Critical Practice: The “Pentagon Papers”, Deciding Responsibly, Truth-telling, and the Unsettling of Organizational Morality 34(4) pg. 486

When conceiving of ethics as a critical practice, there is no concern to judge organization(s), or ¶ organizational members, from the high ground of moral theory. Nor is there any interest in developing (universal) criteria for determining whether organizational phenomena, such as (Ellsberg’s) ¶ whistleblowing, are morally correct or ethically defensible. In considering morality as contingent ¶ and power-infused practice, our “ethics as critical practice” approach does not deny the possibility, ¶ and indeed necessity, of morality and the associated exercise of (moral) judgements. What it does¶ deny is the transcendental grounding or guarantee of such judgements. Accordingly, the approach ¶ commended here eschews the assumption of centred, “autonomous” individuals as a condition of ¶ ethics in organizations (Alford, 2001; see Knights and Willmott, 2002, for a critique). It also ¶ departs from virtue-based studies that attribute ethical acts to character strengths of particularly ¶ “virtuous” individuals, and so heroize them as “saints of a secular culture” (Grant, 2002) “who ¶ stand out from the rest of us” (2002: 398). Our approach acknowledges how disciplinary practices ¶ establish and sustain “moralities-in-use” and the modes of being that conform with their demands. ¶ But it insists that normative demands, such as the demands for loyalty and secrecy that permeated ¶ the morality of the Pentagon, can never fully determine human action and so occupy the “undecided space of ethics” (Iedema and Rhodes, 2010).¶ Daniel Ellsberg’s leaking of the Pentagon Papers, a case of whistleblowing that “interrupted” ¶ widely shared understandings of the operation of US democratic government, has been deployed ¶ to illustrate how the grip of institutionalized normative demands upon subjectivity may be weakened through participation in countervailing practices. To question established practices – and the ¶ norms that they articulate and reproduce – is, we have argued, to engage in ethics as a critical ¶ practice. Such questioning does not rely upon, or appeal to, some alternative standard or yardstick ¶ but, instead, manifests an “ethical sensibility” (Connolly, 1993) that is responsive to the other, and has the courage to speak out when practices are perceived as “intolerable” (Foucault, 2001b). To engage in ethics as critical practice involves acting – as Ellsberg did – as a “specific intellectual”, in Foucauldian terms. This possibility is by no means restricted to an elite cadre of “intellectuals”, as it may include the actualization of the critical attitude in various practices and professional con- texts. As Foucault observes,

[w]ithin these different forms of activity, I believe it is quite possible ... to do one’s job as a psychiatrist, lawyer, engineer, or technician, and to carry out in that specific area work that may properly be called intellectual, an essentially critical work. [...] a work of examination that consists of suspending as far as possible the system of values to which one refers when ... assessing it. In other words: What am I doing at the moment I’m doing it? (Foucault, 1988: 107; quoted in Chan, 2000: 1071, emphasis added)

Conceiving of ethics as a critical practice invites a rethinking of established, morality-centric conceptions of ethics, including much thinking about “business ethics” and “professional ethics” (e.g. of executives) (Cooper, 2012). Instead of associating ethics with compliant enactment of a particular, privileged morality, the challenge is to engage in critical work within such mundane settings. When conceived as critical practice, ethics is an ongoing agonistic 21 struggle played out in relation to established moralities embedded within relations of power and domination.

### allied backlash

**Hegemony fails at resolving conflicts.**

**Maher 11—PhD candidate in Political Science @ Brown**

Richard, Ph.D. candidate in the Political Science department at Brown University, The Paradox of American Unipolarity: Why the United States Will Be Better Off in a Post-Unipolar World, 11/12/2010 Orbis, ScienceDirect

And yet, despite this material preeminence, the United States sees its political and strategic influence diminishing around the world. It is involved in two costly and destructive wars, in Iraq and Afghanistan, where success has been elusive and the end remains out of sight. China has adopted a new assertiveness recently, on everything from U.S. arms sales to Taiwan, currency convertibility, and America's growing debt (which China largely finances). Pakistan, one of America's closest strategic allies, is facing the threat of social and political collapse. Russia is using its vast energy resources to reassert its dominance in what it views as its historical sphere of influence. Negotiations with North Korea and Iran have gone nowhere in dismantling their nuclear programs. Brazil's growing economic and political influence offer another option for partnership and investment for countries in the Western Hemisphere. And relations with Japan, following the election that brought the opposition Democratic Party into power, are at their frostiest in decades. To many observers, it seems that America's vast power is **not translating into** America's preferred **outcomes**. As the United States has come to learn, raw power does not automatically translate into the realization of one's preferences, nor is it necessarily easy to maintain one's predominant position in world politics. There are many costs that come with predominance – material, political, and reputational. Vast imbalances of power create apprehension and **anxiety in others**, in one's friends just as much as in one's rivals. In this view, it is not necessarily *American* predominance that produces unease but rather American *predominance*. Predominance also makes one a tempting target, and a scapegoat for other countries’ own problems and unrealized ambitions. Many a Third World autocrat has blamed his country's economic and social woes on an ostensible U.S. conspiracy to keep the country fractured, underdeveloped, and subservient to America's own interests. Predominant power likewise breeds envy, resentment, and alienation. How is it possible for one country to be so rich and powerful when so many others are weak, divided, and poor? Legitimacy—the perception that one's role and purpose is acceptable and one's power is used justly—is indispensable for maintaining power and influence in world politics. As we witness the emergence (or re-emergence) of great powers in other parts of the world, we realize that American predominance **cannot last forever**. It is inevitable that the distribution of power and influence will become more balanced in the future, and that the United States will necessarily see its relative power decline. While the United States naturally should avoid hastening the end of this current period of American predominance, it should not look upon the next period of global politics and international history with dread or foreboding. It certainly should not seek to maintain its predominance at any cost, devoting unlimited ambition, resources, and prestige to the cause. In fact, contrary to what many have argued about the importance of maintaining its predominance, America's position in the world—both at home and internationally—could very well be strengthened once its era of preeminence is over. It is, therefore, necessary for the United States to start thinking about how best to position itself in the “post-unipolar” world.

#### HEG – No transition wars and heg isn’t key

Fordham 12—professor of political science at Binghamton University (Ben, International Economic Institutions and Great Power Peace, 8/12/12, http://gt2030.com/2012/08/15/international-economic-institutions-and-great-power-peace/)

I enjoyed Jack Levy’s comments on how the world would have looked to people writing in 1912. As part of my current research, I’ve been spending a lot of time thinking about the three decades before World War I. As Levy pointed out, this last period of great power peace has some interesting parallels with the present one. Like today, the international economy had become increasingly integrated. For good reason, some even refer to this period as the “first age of globalization.” The period also saw the emergence of several new great powers, including Japan, Germany, and the United States. Like emerging powers today, each of these states sought to carve out its own world role and to find, as the German Foreign Secretary put it, a “place in the sun.” Like Levy, I don’t think these parallels we are doomed to repeat the catastrophe of 1914. I want to highlight the different institutional rules governing the international economic system today. The dangers discussed in the NIC report are real, but there is reason for hope when it comes to avoiding great power war. The rules of the game governing the “first age of globalization” encouraged great powers to pursue foreign policies that made political and military conflict more likely. Declining transportation costs, not more liberal trade policies, drove economic integration. There was no web of international agreements discouraging states from pursuing protectionist trade policies. As Patrick McDonald‘s recent book, The Invisible Hand of Peace, explains nicely, protectionism went hand-in-hand with aggressive foreign policies. Many of the great powers, including the emerging United States, sought to shut foreign competitors out of their home markets even as they sought to expand their own overseas trade and investment. Even though markets and investment opportunities in less developed areas of the world were small, great power policy makers found these areas attractive because they would not export manufactured products. As one American policy maker put it in 1899, they preferred “trade with people who can send you things you ant and cannot produce, and take from you in return things they want and cannot produce; in other words, a trade largely between different zones, and largely with less advanced peoples….” Great powers scrambled to obtain privileged access to these areas through formal or informal imperial control. This zero-sum competition added a political and military component to economic rivalry. Increasing globalization made this dangerous situation worse, not better, in spite of the fact that it also increased the likely cost of a great power war. In large part because of the international economic institutions constructed after World War II, present day great powers do not face a world in which protectionism and political efforts to secure exclusive market access are the norm. Emerging as well as longstanding powers can now obtain greater benefits from peaceful participation

in the international economic system than they could through the predatory foreign policies that were common in the late 19th and early 20th centuries. They do not need a large military force to secure their place in the sun. Economic competition among the great powers continues, but it is not tied to imperialism and military rivalry in the way it was in 1914. These international institutional differences are probably more important for continuing great power peace than is the military dominance of the United States. American military supremacy reduces uncertainty about the cost and outcome of a hegemonic war, making such a war less likely. However, as in the 19th Century, higher growth rates in emerging powers strongly suggest that the current American military edge will not last forever. Efforts to sustain it will be self-defeating if they threaten these emerging powers and set off a spiral of military competition. Similarly, major uses of American military power without the support (or at least the consent) of other great powers also risk leading these states to build up their military capabilities in order to limit American freedom of action. The United States will be better served by policies that enhance the benefits that emerging powers like China receive from upholding the status quo.

#### AQAP – losing now – drones are key – the impact is global terror

Zimmerman 9-18 (Katherine, Senior Analyst – American Enterprise Institute, “Understanding the Threat to the Homeland from AQAP (Al-Qaeda in the Arabian Peninsula),” House Homeland Security Subcommittee on Counterterrorism and Intelligence Hearing, Lexis)

A major inflection point for the al Qaeda network occurred with the establishment of AQAP. The Yemen-based affiliate created a new model for the role of groups in the al Qaeda network by the end of 2009. The previous model held that groups in the network were subordinated to a "core" group. That core group, which was the al Qaeda leadership in Pakistan, maintained command and control over its regional affiliates and directed external operations. AQAP is the first known example of an affiliate or an associate directing an attack against the U.S. homeland, an effort the group has continued to prioritize. It also provided training and shared resources with al Qaeda associates in a manner characteristic of bin Laden's group in the 1990s and early 2000s. The new model indicates that the network is no longer centrally organized or directed, but continued relations between the "core" and AQAP indicate a continued advisory role for the central group.

The December 2009 attack on Detroit-bound Northwest Airlines Flight 253 was the first attack from the al Qaeda network on the U.S. homeland directed by an affiliate, as previously mentioned. U.S. court documents related to the case against the underwear bomber, Umar Farouk Abdulmutallab, provide the details of the plot. n6 Abdulmutallab sought out Yemeni-American cleric and AQAP senior operative Anwar al Awlaki in Yemen, and, after getting in touch through an intermediary and submitting a letter to Awlaki, spent three days with the cleric. Awlaki connected him to the bombmaker, Ibrahim al Asiri, who explained the plan. Abdulmutallab received specialized training on the explosive device and basic military training at one of AQAP's training camps. He then received orders from Awlaki to detonate the bomb over U.S. airspace and Asiri provided him with the bomb itself. Osama bin Laden mentioned the AQAP-directed attack in a message directed at President Barack Obama, but did not claim credit for it. n7 AQAP's deputy leader, Said al Shihri, claimed credit for the attack in February 2010.

The Yemen-based affiliate has attempted to attack the U.S. homeland at least two more times since December 2009. It shipped two explosive devices disguised as printer cartridges in October 2010. The bombs were only discovered with the assistance of Saudi intelligence. AQAP tried again in May 2012 when it innovated on the underwear-bomb design. That plot was uncovered and thwarted by American and foreign intelligence agencies. It is likely that AQAP leadership still seeks to attack the U.S. homeland.

AQAP has fostered relations with other groups in the al Qaeda network. (See figure 1.) It has an established relationship with al Shabaab, al Qaeda's affiliate in Somalia. It provided explosives and basic military training to at least one al Shabaab operative in 2010 and 2011. n8 AQAP also facilitated al Shabaab's communications with al Qaeda "core," though al Shabaab also appeared to have a line of communications that ran outside of Yemen as well. n9 Multiple sources document the movement of fighters across the Gulf of Aden. n10 The Arab Spring presented AQAP with the opportunity to develop additional relationships. It purportedly supported the establishment of an al Qaeda-linked cell in Egypt under the leadership of Mohamed Jamal Abu Ahmed by sending him fighters and funding. n11 Mohamed Jamal, a former member of the Egyptian Islamic Jihad, knew AQAP leaders Nasser al Wahayshi, Adil al Abab, and Qasim al Raymi. The Wall Street Journal reported that Jamal's group was connected to the September 11, 2012 attack on the U.S. consulate in Benghazi, Libya. n12

Nasser al Wahayshi, AQAP's emir, was also in direct contact with Abdelmalek Droukdel, AQIM's emir, and the al Qaeda core leadership in Pakistan, in addition to al Shabaab's leadership. Two separate letters recovered in a document cache in Timbuktu, Mali, reveal Wahayshi's counsel to Droukdel. n13 In his first letter, dated May 21, 2012, Wahayshi congratulated Droukdel on his progress in Mali and compared AQIM's relationship with Ansar al Din (an ethnically Tuareg militant Islamist group) with AQAP's Ansar al Sharia. He advised Droukdel that AQIM could generate support by providing basic services and fulfilling daily needs, like food and water. In his second letter, dated August 6, 2012, Wahayshi explained AQAP's loss in south Yemen against the Yemeni security forces and cautioned Droukdel against declaring an emirate when he would not be able to fulfill the role of a state. Wahayshi also mentioned he held communications from the core group for Droukdel.

Today, AQAP continues to seek to attack the United States and to nurture lateral connections with other groups in the al Qaeda network. It is believed that a credible threat stream from the Arabian Peninsula, where AQAP operates, instigated the closure of diplomatic posts across North Africa and the Middle East. Like other groups in the al Qaeda network, AQAP preferenced its local fight against the Yemeni government during the Arab Spring, but it was also able to sustain a second operational line devoted to attacking the United States. Other al Qaeda groups follow the model established by AQAP today, though many have yet to develop the capabilities to conduct an attack against the U.S. and to support such efforts.

The implications for this new model for al Qaeda groups are far-reaching when studying the al Qaeda network. First, there is no group at the heart of the network. The core group in Pakistan maintains a mediatory or advisory role, but it no longer issues directives. Therefore, operations specifically targeting a single group, including AQAP, would have a limited overall effect on the network. Second, the lateral connections--relationships between al Qaeda groups--create a latticed structure that adds to the resiliency of the network. This latticed structure is what gives the network its strength. And finally, the entire al Qaeda network, including groups operating solely at the local level, must be considered when devising any strategy to counter the network because of the existence of the latticed structure.

Countering the al Qaeda Network

The strategy in place to counter al Qaeda today remains largely consistent with that adopted by the Bush administration in 2001. That strategy emphasizes the killing of senior leadership in the core group as the means by which to disrupt the network. Under this strategy, the U.S. also pursues localized train-and-assist programs to enable local militaries to counter the growth of al Qaeda-linked groups. The network model around which this strategy was designed is one that holds there is a central group at the heart of the network. In 2001, this group was the one Osama bin Laden led directly, and it is often referred to as al Qaeda core. The Obama administration grouped AQAP in with this central group after the December 2009 attack and began targeting both AQAP and al Qaeda core senior leadership. The same occurred after the Tehrik-e-Taliban Pakistan's (TTP) May 2010 Times Square bombing. The recent appointment of AQAP's emir Wahayshi to ma'sul al 'amm (general manager or al Qaeda's no. 2 position), has even led to assertions that AQAP has replaced the core group.

The U.S. has been extremely successful at killing al Qaeda, AQAP, and TTP senior leadership. The U.S. has killed four of the top five al Qaeda leaders in Pakistan in the past three years, including Osama bin Laden, Sheikh Said al Masri, Atiyah Abd al Rahman, and Abu Yahya al Libi. n14 In Yemen, it has killed senior leader Anwar al Awlaki, USS Cole bombers Abdul Munim al Fathani and Fahd al Quso, AQAP senior operative Mohamed Said al Umdah, spiritual leader Adil al Abab, and deputy leader Said al Shihri. The same is true for the TTP. AQAP and the TTP have both been able to regenerate leadership, limiting the long-term impact of U.S. operations. Al Qaeda core is decimated, but such an effect required the dedication of significant U.S. military and intelligence assets and resources, and still, there are al Qaeda senior operatives active today that are capable of leading the group. Partners' successes against al Qaeda groups have been mixed, but overall, the network has expanded since the outbreak of the Arab Spring.

The strategy to counter AQAP relies on American direct action operations targeting AQAP leadership and on Yemeni counterterrorism operations to combat the group on the ground. As noted, U.S. targeted strikes have killed a number of AQAP's leaders. America's partner in Yemen has had limited success. Yemeni troops, partnered with local militias, re-captured territory under AQAP's control in the beginning of 2012. Yemen's security forces have not, however, been able fully clear the territory of AQAP's local network. They are also riven with low-level instances of insubordination, which may limit their overall effectiveness. Many of the conditions that created a permissive environment in Yemen remain in place, including grievances against the central government and local conflict over access to resources such as water. It is not clear that this strategy will be effective against AQAP.

#### CRED/LEGIT – no impact

**MacDonald and Parent 2011** - \*Assistant Professor of Political Science at Williams College, \*\*Assistant Professor of Political Science at the University of Miami (Paul and Joseph, International Security, 35.4, "Graceful decline? The surprising success of great power retrenchment", http://belfercenter.ksg.harvard.edu/files/ISEC\_a\_00034-MacDonald\_proof2.pdf, WEA)

These arguments have a number of limitations. First, opponents of retrenchment exaggerate the importance of credibility in the defense of commitments. Just because a state has signaled a willingness to retreat from one commitment does not mean it will retreat from others. Studies of reputation, for example, have demonstrated a tenuous link between past behavior and current reputation.22 The capacity to defend a commitment is as important as credibility in determining the strength of a commitment. Quantitative studies have likewise found a mixed link between previous concessions and deterrence failure.23 The balance of power between the challenger and the defender, in contrast, is often decisive. For instance, after a series of crises over Berlin and Cuba, British Prime Minister Harold Macmillan observed to his cabinet, “The fact that the Soviet Government had agreed to withdraw their missiles and their aircraft from Cuba was not evidence of weakness but of realism. . . . But Berlin was an entirely different question; not only was it of vital importance to the Soviet Government but the Russians had overwhelming conventional superiority in the area.”24 This finding supports the basic insight of retrenchment: by con- centrating scarce resources, a policy of retrenchment exchanges a diffuse repu- tation for toughness for a concentrated capability at key points of challenge. Second, pessimists overstate the extent to which a policy of retrenchment can damage a great power’s capabilities or prestige. Gilpin, in particular, assumes that a great power’s commitments are on equal footing and interde- pendent. In practice, however, great powers make commitments of varying de- grees that are functionally independent of one another. Concession in one area need not be seen as influencing a commitment in another area.25 Far from being perceived as interdependent, great power commitments are often seen as being rivalries, so that abandoning commitments in one area may actually bolster the strength of a commitment in another area. During the Korean War, for instance, President Harry Truman’s administration explicitly backed away from total victory on the peninsula to strengthen deterrence in Europe.26 Re- treat in an area of lesser importance freed up resources and signaled a strong commitment to an area of greater significance. Third, critics do not just oversell the hazards of retrenchment; they down- play the dangers of preventive war.27 Both Gilpin and Copeland praise the ability of preventive war to arrest great power decline by defusing the threat posed to a hegemonic power by an isolated challenger. Such reasoning disre- gards the warning of Otto von Bismarck and others that preventive war is “suicide from fear of death.”28 In practice, great powers operate in a much more constrained and complex security environment in which they face multi- ple threats on several fronts. Powers pursuing preventive war are shouldering grave risks: preventive war may require resources that are unavailable or allies that are difficult to recruit, and defeat in preventive war opens floodgates to exploitation on multiple fronts. Even a successful war, if sufficiently costly, can weaken a great power to the point of vulnerability.29 For most great powers, the potential loss of security in the future as a result of relative decline rarely justifies inviting the hazards of war in the present.

### pakistan

#### PAK – no impact, no spillover

**Bandow 9** – Senior Fellow @ Cato, former special assistant to Reagan (11/31/09, Doug, “Recognizing the Limits of American Power in Afghanistan,” Huffington Post, http://www.cato.org/pub\_display.php?pub\_id=10924)

From Pakistan's perspective, limiting the war on almost any terms would be better than prosecuting it for years, even to "victory," whatever that would mean. In fact, the **least likely outcome** is a takeover by widely unpopular Pakistani militants. The Pakistan military is the nation's strongest institution; while the army might not be able to rule alone, it can prevent any other force from ruling.

Indeed, Bennett Ramberg made the important point: "Pakistan, Iran and the former Soviet republics to the north have demonstrated a brutal capacity to suppress political violence to ensure survival. This suggests that even were Afghanistan to become a terrorist haven, the **neighborhood can adapt and resist**." The results might not be pretty, but the region would not descend into chaos. In contrast, warned Bacevich: "To risk the stability of that nuclear-armed state in the vain hope of salvaging Afghanistan would be a terrible mistake."

#### LOOSE NUKES - nope

**Koring 2009** [PAUL, Globe and Mail, Pakistan's nuclear arsenal safe, security experts say,

http://www.theglobeandmail.com/news/world/pakistans-nuclear-arsenal-safe-security-experts-say/article1325820/]

Pakistan's nuclear-weapons security is modeled on long-standing safeguards developed by the major powers and includes **separately storing** the physical components needed for a nuclear warhead and keeping them **apart and heavily guarded**. "Even if insurgents managed to get a fully assembled weapon, they would lack the 'secret decoder ring' [the special security codes] needed to arm it," Mr. Pike said. Thought to possess a relatively modest nuclear arsenal of between 70 and 100 warheads, Pakistan is even more secretive about its security measures than most nuclear-weapons states. But even if those measures were somehow breached, Mr. Pike said, even a complete nuclear weapon would be a limited threat in the hands of terrorists. "If they did try to hot-wire it to explode in the absence of knowing the approved firing sequences, it would probably only trigger the high-explosives, making a jim-dandy of a dirty bomb," he said, referring to an explosion that spreads radioactive material over a small area, but is **not a nuclear blast.**

#### INDO-PAK – no war

**Mutti 9** – over a decade of expertise covering on South Asia geopolitics, Contributing Editor to Demockracy journal (James, 1/5, Mumbai Misperceptions: War is Not Imminent, http://demockracy.com/four-reasons-why-the-mumbai-attacks-wont-result-in-a-nuclear-war/)

Writer Amitav Ghosh divined a crucial connection between the two messages. “When commentators repeat the metaphor of 9/11, they are in effect pushing the Indian government to mount a comparable response.” Indeed, India’s opposition Hindu nationalist BJP has blustered, “Our response must be close to what the American response was.” Fearful of imminent war, the media has indulged in **frantic hand wringing** about Indian and Pakistani nuclear arsenals and renewed fears about the Indian subcontinent being “the most dangerous place on earth.”

As an observer of the subcontinent for over a decade, I am optimistic that war will not be the end result of this event. As horrifying as the Mumbai attacks were, they are not likely to drive India and Pakistan into an armed international conflict. The media frenzy over an imminent nuclear war seems the result of the media being superficially knowledgeable about the history of Indian-Pakistani relations, of feeling compelled to follow the most sensationalistic story, and being recently brainwashed into thinking that the only way to respond to a major terrorist attack was the American way – a war.

Here are four reasons why the Mumbai attacks will not result in a war:

1. For both countries, a war would be a disaster. India has been successfully building stronger relations with the rest of the world over the last decade. It has occasionally engaged in military muscle-flexing (abetted by a Bush administration eager to promote India as a counterweight to China and Pakistan), but it has much more aggressively promoted itself as an emerging economic powerhouse and a moral, democratic alternative to less savory authoritarian regimes. Attacking a fledgling democratic Pakistan would not improve India’s reputation in anybody’s eyes.

The restraint Manmohan Singh’s government has exercised following the attacks indicates a desire to avoid rash and potentially regrettable actions. It is also perhaps a recognition that military attacks will never end terrorism. Pakistan, on the other hand, couldn’t possibly win a war against India, and Pakistan’s military defeat would surely lead to the downfall of the new democratic government. The military would regain control, and Islamic militants would surely make a grab for power – an outcome neither India nor Pakistan want. Pakistani president Asif Ali Zardari has shown that this is not the path he wants his country to go down. He has forcefully spoken out against terrorist groups operating in Pakistan and has ordered military attacks against LeT camps. Key members of LeT and other terrorist groups have been arrested. One can hope that this is only the beginning, despite the unenviable military and political difficulties in doing so.

2. Since the last major India-Pakistan clash in 1999, both countries have made concrete efforts to create people-to-people connections and to improve economic relations. Bus and train services between the countries have resumed for the first time in decades along with an easing of the issuing of visas to cross the border. India-Pakistan cricket matches have resumed, and India has granted Pakistan “most favored nation” trading status. The Mumbai attacks will undoubtedly strain relations, yet it is hard to believe that both sides would throw away this recent progress. With the removal of Pervez Musharraf and the election of a democratic government (though a shaky, relatively weak one), both the Indian government and the Pakistani government have political motivations to ease tensions and to proceed with efforts to improve relations. There are also growing efforts to recognize and build upon the many cultural ties between the populations of India and Pakistan and a decreasing sense of animosity between the countries.

3. Both countries also face difficult internal problems that present more of a threat to their stability and security than does the opposite country. If they are wise, the governments of both countries will work more towards addressing these internal threats than the less dangerous external ones. The most significant problems facing Pakistan today do not revolve around the unresolved situation in Kashmir or a military threat posed by India. The more significant threat to Pakistan comes from within. While LeT has focused its firepower on India instead of the Pakistani state, other militant Islamic outfits have not.

Groups based in the tribal regions bordering Afghanistan have orchestrated frequent deadly suicide bombings and clashes with the Pakistani military, including the attack that killed ex-Prime Minister Benazir Bhutto in 2007. The battle that the Pakistani government faces now is not against its traditional enemy India, but against militants bent on destroying the Pakistani state and creating a Taliban-style regime in Pakistan. In order to deal with this threat, it must strengthen the structures of a democratic, inclusive political system that can also address domestic problems and inequalities. On the other hand, the threat of Pakistani based terrorists to India is significant. However, suicide bombings and attacks are also carried out by Indian Islamic militants, and vast swaths of rural India are under the de facto control of the Maoist guerrillas known as the Naxalites. Hindu fundamentalists pose a serious threat to the safety of many Muslim and Christian Indians and to the idea of India as a diverse, secular, democratic society. Separatist insurgencies in Kashmir and in parts of the northeast have dragged on for years. And like Pakistan, India faces significant challenges in addressing sharp social and economic inequalities. Additionally, Indian political parties, especially the ruling Congress Party and others that rely on the support of India’s massive Muslim population to win elections, are certainly wary about inflaming public opinion against Pakistan (and Muslims). This fear could lead the investigation into the Mumbai attacks to fizzle out with no resolution, as many other such inquiries have.

4. The international attention to this attack – somewhat difficult to explain in my opinion given the general complacency and utter apathy in much of the western world about previous terrorist attacks in places like India, Pakistan, and Indonesia – is a final obstacle to an armed conflict. Not only does it put both countries under a microscope in terms of how they respond to the terrible events, it also means that they will feel international pressure to resolve the situation without resorting to war. India and Pakistan have been warned by the US, Russia, and others not to let the situation end in war. India has been actively recruiting Pakistan’s closest allies – China and Saudi Arabia – to pressure Pakistan to act against militants, and the US has been in the forefront of pressing Pakistan for action. Iran too has expressed solidarity with India in the face of the attacks and is using its regional influence to bring more diplomatic pressure on Pakistan.

#### no escalation

**Enders 2** (Jan 30, David, Michigan Daily, “Experts say nuclear war still unlikely,” http://www.michigandaily.com/content/experts-say-nuclear-war-still-unlikely, mrs)

\* Ashutosh Varshney – Professor of Political Science and South Asia expert at the University of Michigan

\* Paul Huth – Professor of International Conflict and Security Affairs at the University of Maryland

\* Kenneth Lieberthal – Professor of Political Science at the University of Michigan. Former special assistant to President Clinton at the National Security Council

University political science Prof. Ashutosh Varshney becomes animated when asked about the likelihood of nuclear war between India and Pakistan.

"Odds are **close to zero**," Varshney said forcefully, standing up to pace a little bit in his office. "The assumption that India and Pakistan cannot manage their nuclear arsenals as well as the U.S.S.R. and U.S. or Russia and China concedes less to the intellect of leaders in both India and Pakistan than would be warranted."

The worlds two youngest nuclear powers first tested weapons in 1998, sparking fear of subcontinental nuclear war a fear Varshney finds ridiculous.

"The decision makers are aware of what nuclear weapons are, even if the masses are not," he said.

"Watching the evening news, CNN, I think they have **vastly overstated the threat of nuclear war,"** political science Prof. Paul Huth said.

Varshney added that there are numerous factors working against the possibility of nuclear war.

"India is committed to a no-first-strike policy," Varshney said. "It is virtually impossible for Pakistan to go for a first strike, because the retaliation would be gravely dangerous."

Political science Prof. Kenneth Lieberthal, a former special assistant to President Clinton at the National Security Council, agreed. "Usually a country that is in the position that Pakistan is in would not shift to a level that would ensure their total destruction," Lieberthal said, making note of India"s considerably larger nuclear arsenal.

"American intervention is another reason not to expect nuclear war," Varshney said. "If anything has happened since September 11, it is that the command control system has strengthened. The trigger is in very safe hands."

#### DRONES – irrelevant to Pakistan stability- multiple alternatives cause.

Javaid 11 [Umbreen, Director Center of Asian Studies & Chairperson Department of political science University of Punjab, “Thriving Fundamentalism and Militancy in Pakistan An Analytical Overview of their Impact on the Society,” South Asian Studies, Vol. 26 No. 1. Pg. 16-17]

‘The recent increase of violence by jihadi groups, including suicide bombing of ¶ innocent bystanders as well attacks on the police and military, has perhaps brought ¶ more Pakistanis to consider how to strike a new balance between Islam and ¶ politics’ (Oldenburg, 2010: 158). ‘The Pakistani people also need to change their ¶ attitude, especially their outlook on religion. Suffered with anti-Americanism and ¶ religious fervor, Pakistanis are filtering their worldview through the prism of ¶ religion and the tensions between Islam and the West, making them to the radical ¶ propaganda and paralyzing their will to act against forces of extremism’ (Hussain, ¶ 2009: 11). mbreen Javaid Thriving Fundamentalism and ¶ 17¶ It is not only the task of the government to control this growing ¶ fundamentalism but the whole society needs to completely shun off these ¶ extremists. The political parties, intellectuals, sectarian and religious parties and ¶ the masses all have to openly condemn the extremists, so that they do not find any ¶ space to flourish. ‘Much still needs to be done on the home front curb religious ¶ zealotry and sectarianism, policies towards minorities, revision of school curricula, ¶ reconstructing ‘official’ history, promotion of universal education, and ¶ overhauling of the madrassah system’ (Niaz, 2011: 181). The best way to curtail the thriving fundamentalism in Pakistan is to look ¶ deeply into its causes. The whole society and especially the government needs to ¶ put in serious efforts in controlling on checking the causes if not diminishing ¶ them. It should also be understand that the issue of fundamentalism is very ¶ complex which entails number of factors which are playing their part. These ¶ include economic disparity, lack of education, religious ignorance, unemployment, ¶ extremism, judicial system, poor governance, ethnicity and sectarianism, ¶ corruption and alignment with United States, each of these have played their role ¶ separately and also a combined mix of all in flourishing militant fundamentalism ¶ in Pakistan. To control fundamentalism is not an easy task especially when it is ¶ now combined with militancy. Another major challenge for the government is that ¶ earlier the various militant extremist groups were operating separately and had ¶ divergent aims and objectives from each other but lately various local groups, AlQaeda and Taliban have all joined hands and helping each other irrespective of ¶ their particular objectives. These alignments have made these militant groups more ¶ lethal, thus making things more difficult for the government. ¶ Militant fundamentalism not only has the ability to destabilize Pakistan but it ¶ can, if not controlled, bring about serious security concerns for the region and also ¶ towards the global security and peace.

#### Overall levels of violence may increase, but the effectiveness and impact of those attacks goes way down. Prefer our comparative evidence here—violence has to be evaluated in terms of frequency and magnitude.

Wilner 10 [Alex S. Wilner, Center for Security Studies, ETH Zurich, Swiss Federal Institute of Technology, Targeted Killings in Afghanistan: Measuring Coercion and Deterrence in Counterterrorism and Counterinsurgency, Studies in Conflict & Terrorism, Vol. 33 No. 4, 09 Mar 2010, http://dx.doi.org/10.1080/10576100903582543]

Generally, overall violence increased following the targeted eliminations (Figure 2). This was especially so with the Dadullah case. On the surface, these are unanticipated developments.74 The literature on targeted killings suggests that eliminations should result in a general diminishment of violence. In their quantitative analysis of Israel’s campaign of targeted killings between 2000 and 2004, Mohammed Hafez and Joseph Hatfield provide similar findings. They conclude that “targeted assassinations have no significant impact on rates of Palestinian violence.”75 That both this and the Hafez/Hatfield study find trends that contradict theoretical expectations would suggest that certain components of the literature on targeted killings need to be substantially revised. However, a closer examination of the Afghan data does corroborate the literature’s most basic theoretical principle: targeted killings influence the type of violence terrorists are capable of planning effectively and forces them to conduct less-preferred forms of activity.¶ Violent, non-state organizations have coercive preferences. The Taliban is no exception. The type of violence they engage in rests as much on the impact they are trying to have as it does on their capacity and capability to muster efforts toward particular goals. To that end, suicide attacks are the Taliban’s preferred tactic—they are the most effective form of violence, provide the greatest consequence (both in kill ratios and psychological effect), can be directed against hard targets, are difficult to detect, stop, and mitigate, and have a proven track record of killing Coalition and Afghan soldiers. Suicide bombings are also the most sophisticated type of violence to plan, the most difficult to organize effectively, and take a considerable amount of time, energy, and expertise to mount successfully. Improvised Explosive Devices (IED) are the Taliban’s second most preferred tactic—they have proven deadly against Afghan National Police (ANP) and other lightly armored ISAF/NATO and Afghan National Army (ANA) personnel carriers, they are cheaply constructed, and provide a deadly concentrated explosive blast. IEDs are also less sophisticated than suicide bombs and are easier to organize effectively. They offer less control, however, cannot be consistently directed against particular targets, can be detected and diffused more easily than suicide bombs, their detonation can be mitigated with proper armor, and they are all too often triggered by civilians. Small arms and rocket fire (SA/R) is the Taliban’s least preferred tactic—it is most effective against soft targets, Afghan and international officials, lightly armed ANP forces, and when used in complex ambushes. However, SA/R attacks against security forces can be easily mitigated and usually result in a disproportionately high rate of Taliban casualties. Likewise, Taliban SA/R attacks are usually successfully repelled and the heavy concentration of gunmen in one location can be easily attacked with aerial support. Furthermore, Taliban rocket fire is crude, uncontrolled, and ineffective. In sum, SA/R attacks are the least sophisticated type of violence and the easiest to organize yet provide the worst results.¶ With these Taliban preferences in mind, the aggregate data on overall levels of violence reveal a number of expected findings. After the targeted killings, for instance, suicide bombings dropped by over 30 percent, from a total of 43 before, to 29 after, the targeted eliminations. This is in keeping with the degree of difficulty, amount of time and expertise, and level of leadership that is required to coordinate effective suicide bombings. It is also plausible that the decrease in suicide attacks spurred a rise in less-sophisticated forms of violence, with IEDs increasing by 6 percent and SA/R attacks by roughly 15 percent following the four targeted attacks.76 As leaders and facilitators were eliminated, the Taliban began using less-sophisticated forms of violence that required less energy, expertise, and time to organize effectively. This shift resonates with elements outlined in the literature on targeted killings: as organizations succumb to the effects of a protracted campaign of elimination, their overall ability to operate at a high level of sophistication decreases and the selection and use of less formidable forms of violence increases.¶ Overall levels of violence, however, are only a minor part of the analysis. The data also reveal changes in Taliban professionalism following the targeted killings. For the two most sophisticated forms of violence (IEDs and suicide attacks), the aggregate data suggest a decrease in professionalism and an increase in failure rates. After the eliminations, IED failure rates rose precipitously from 20 to roughly 35 percent. This is a considerable change in proficiency. Suicide bombing success rates also dropped (by a less impressive though no less important five percentage points) following the strikes. Both are theoretically expected findings (Figure 3). Finally, the data also suggest that the targeted killings influenced the selection of targets. For instance, in terms of known target selection for suicide bombers, the aggregate data reveal that following the eliminations, soft targets were more often selected (as a percentage of all target selection) after the leadership strikes (Figure 4). As leaders where killed, remaining forces selected less formidable targets to attack, like Afghan government officials, civil-society actors, and off-duty police commanders, rather than hardened, military actors.

### Solvency

#### You can’t restrain drones. Ever.

**Fatovic 9**—Director of Graduate Studies for Political Science at Florida International University [added the word “is” for correct sentence structure—denoted by brackets]

(Clement, *Outside the Law: Emergency and Executive Power* pg 1-5, dml)

But the problem for any legal order is that law aims at fixity in a world beset by flux. The greatest challenge to legally established order comes not from the resistance of particular groups or individuals who object to any of its substantive aims but from the unruliness of the world itself. The stability, predictability, and regularity sought by law eventually runs up against **the unavoidable instability, unpredictability, and irregularity of the world**. Events constantly threaten to disrupt and destabilize the artificial order established by law. Emergencies-sudden and extreme occurrences such as the devastating terrorist attacks of September 11, an overwhelming natural disaster like Hurricane Katrina, a pandemic outbreak of avian flu, a catastrophic economic collapse, or a severe food shortage, to name just a few-dramatize **the limitations of the law** in dealing with unexpected and incalculable contingencies. Designed for the ordinary and the normal, law cannot always provide for such extraordinary occurrences in spite of its aspiration to comprehensiveness. When such events arise, the responsibility for formulating a response usually falls to the executive.

The executive has a unique relationship to the law and the order that it seeks, especially in a liberal constitutional system committed to the rule of law. Not only is the executive the authority most directly responsible for enforcing the law and maintaining order in ordinary circumstances, it is also the authority most immediately responsible for restoring order in extraordinary circumstances. But while the executive is expected to uphold and follow the law in normal times, **emergencies** sometimes **compel the executive to** exceed the strict letter of the law. Given the unique and irrepressible nature of emergencies, the law often provides **little effective guidance**, leaving executives to their own devices. Executives possess special resources and characteristics that enable them to **formulate responses more** rapidly**,** flexibly**, and** decisively **than can legislatures, courts, and bureaucracies**. Even where the law seeks to anticipate **and** provide **for emergencies by** specifying the kinds of actions **that** public **officials are permitted or required to take**, **emergencies create** unique opportunities **for the executive to** exercise an extraordinary degree of discretion. And when the law seems to be inadequate to the situation at hand, executives often claim that it [is] necessary to **go beyond its dictates** by consolidating those powers ordinarily exercised by other branches of government or **even by expanding the range of powers ordinarily permitted**. But in seeking to bring order to the chaos that emergencies instigate, executives who take such action also **bring attention to** the deficiencies of the law **in maintaining order**, often with serious consequences for the rule of law.

The kind of extralegal action that executives are frequently called upon to take in response to emergencies **is** deeply problematic **for liberal constitutionalism**, which gives pride of place to the rule of law, both in its self-definition and in its standard mode of operation. If emergencies test the limits of those general and prospective rules that are designed to make governmental action limited and predictable, that is because **emergencies are** largely unpredictable **and** potentially limitless.1 Yet the rule of law, which has enjoyed a distinguished position in constitutional thought going back to Aristotle, has always sought to place limits on what government may do by substituting the arbitrariness and unpredictability of extemporary decrees with the impartiality and regularity of impersonal rules promulgated in advance. The protection of individual freedom within liberal constitutionalism has come to be unimaginable where government does not operate according to general and determinate rules.2 The rule of law has achieved primacy within liberal constitutionalism because it is considered vital to the protection of individual freedom. As Max Weber famously explained of the modern bureaucratic state, legitimacy in the liberal state is not based on habitual obedience to traditions or customs sanctified by time or on personal devotion to a charismatic individual endowed with superhuman gifts but on belief in the legality of a state that is functionally competent in administering highly impersonal but "rational rules." 3 In fact, its entire history and aim can be summed up as an attempt to curtail the kind of discretionary action associated with the arbitrary "rule of men"-by making government itself subject to the law.

The apparent primacy of law in liberal constitutionalism has led some critics to **question its capacity to deal with emergencies**. Foremost among these critics is German political and constitutional theorist Carl Schmitt, who concluded that liberalism is incapable of dealing with the "exception" or "a case of extreme peril" that poses "a danger to the existence of the state" without resorting to measures that contradict and undermine its commitments to the rule of law, the separation of powers, the preservation of civil liberties, and other core values.4 In Schmitt's view, liberalism is wedded to a "normativistic" approach that seeks to regulate life according to strictly codified legal and moral rules that not only **obscure the "decisionistic" basis of all law** but also **deny the role of** personal decision-making **in the** interpretation**,** enforcement**, and** application **of law**. 5 Because legitimacy in a liberal constitutional order is based largely on adherence to formal legal procedures that restrict the kinds of actions governments are permitted to take, actions that have not been specified or authorized in advance **are simply ruled out**. According to Schmitt, the liberal demand that governmental action always be controllable **is** **based on the naive belief that the world is thoroughly calculable**. 6 If it expects regularity and predictability in government, it is because it understands the world in those terms, **making it** oblivious **to the problems of contingency**. Not only does this belief that the world is subject to a rational and predictable order make it difficult for liberalism to justify actions that stand outside that order, it also **makes it difficult for liberalism** even to acknowledge emergencies when they do arise.

But Schmitt's critique goes even further than this. When liberal constitutionalism does acknowledge the exception, its commitment to the rule of law forces it to choose between potential suicide if it adheres strictly to its legalistic ideals and undeniable hypocrisy if ignores those ideals? Either way, the argument goes, **emergencies expose the inherent shortcomings and weaknesses of liberalism**.

It is undeniable that the rule of law occupies a privileged position within liberal constitutionalism, but it is a mistake to identify liberal constitutionalism with an excessively legalistic orientation that renders it incapable of dealing effectively with emergencies. Schmitt is correct in pointing out that liberal normativism seeks to render government action as impersonal and predictable as possible in normal circumstances, but the history of liberal 'I· constitutional thought leading up to the American Founding reveals that its main proponents recognized the need to supplement the rule of law with a personal element in cases of emergency. The political writings of John Locke, David Hume, William Blackstone, and those Founders who advocated a strong presidency indicate that many early liberal constitutionalists were **highly attuned** to the limitations of law in dealing with events that disrupt the regular order. They were well aware that rigid adherence to the formalities of law, both in responding to emergencies and in constraining the official who formulates the response, **could undermine important substantive aims and values**, thereby sacrificing the ends for the means.

Their reflections on the chronic instability and irregularity of politics reveal an appreciation for the **inescapable**-albeit temporary-**need** for the sort of discretionary action that the law ordinarily seeks to circumscribe. As Locke explained in his classic formulation, that "it is impossible to foresee, and so by laws to provide for, all Accidents and Necessities, that may concern the publick means that the formal powers of the executive specified in law must be supplemented with "prerogative," the "Power to act according to discretion, for the publick good, without the prescription of the Law, and sometimes even against it." 8 Unlike the powers of the Hobbesian sovereign, which are effectively absolute and unlimited, the exercise of prerogative is, in principle, limited in scope and duration to cases of emergency. The power to act outside and even against the law **does not mean that the executive is "above the law”**—morally or politically unaccountable—**but it does mean that** executive power isultimately irreducible to law**.**

#### Congressional insularity means even if the authority legally exists post-plan, it won’t be exercised

**Ross 13** [Alice, “Is Congressional Oversight Tough Enough On Drones?”, Aug 29, http://www.mintpressnews.com/is-congressional-oversight-tough-enough-on-drones/168069/]

While elected members might struggle to find the time to delve into complex matters of national security, the close links between committee staffers and the intelligence community can further hamper scrutiny, the source added. ‘You can’t get a job on one of these committees if you don’t have high-level security clearance – so you can’t get a job without being part of the system. This automatically puts you inside a circle of people who all can talk to each other, but in the knowledge that if they step out of line when the job’s finished, they will be finished. ‘There’s a huge risk for any staff member who crosses people inside the system,’ they said. ‘This is the problem of the netherworld and its interaction with democratic institutions… It really is a very difficult problem and the solution that Frank Church came up with wasn’t enough,’ said the source.

#### Restrictions fail – Obama will withhold information, violate laws, and continue drone strikes despite restrictions

**Ross 13** [Alice, “Is Congressional Oversight Tough Enough On Drones?”, Aug 29, http://www.mintpressnews.com/is-congressional-oversight-tough-enough-on-drones/168069/]

In the Bureau’s latest investigation into the tactic of ‘double-tap’ strikes on rescuers, our field researcher’s findings appear to directly contradict an account of a strike attributed to staffers of the Congressional bodies charged with overseeing CIA drone strikes. The House and Senate intelligence committees are responsible for scrutinising the highly classified CIA drone programme. Details of CIA drone strikes are withheld from all other members of Congress. Dianne Feinstein, chair of the Senate Select Committee on Intelligence (SSCI) has said her committee devotes ‘significant time and attention to the drone programme’ and since 2010 has met each month to ‘review strike records and question every aspect of the program including legality, effectiveness, precision, foreign policy implications and the care taken to minimise noncombatant casualties.’ But committee members have complained about being denied information – and a source with knowledge of the committees’ functioning told the Bureau: ‘It’s a serious question as to how much any elected official could possibly understand about what’s going on inside’ the intelligence agencies. If the report of what was shown to the oversight committees is accurate – and if the Bureau and other news agencies are correct – then it appears that committee members were only shown video covering the final part of the incident, giving a misleading impression that concealed over a dozen deaths. The SSCI’s website states: ‘By law, the President is required to ensure that the committee is kept “fully and currently informed” of intelligence activities.’ CIA spokesman Edward Price told the Bureau: ‘The CIA takes its commitment to Congressional oversight with the utmost seriousness. The Agency provides accurate and timely information consistent with our obligation to the oversight Committees. Any accusation alleging otherwise is baseless.’ Neither the House nor the Senate committee would comment, despite repeated requests from the Bureau. But Feinstein’s office did point the Bureau towards a five-month-old statement by the senator on oversight of the drone campaign, made shortly after the public nomination hearings for CIA director John Brennan, of which drones were a major focus. The statement briefly outlined the review process for drone strikes. But it added the Obama administration had refused to provide the committee with memos outlining the legal justifications for drone strikes, despite repeated requests from senior committee members. ‘I have sent three letters [between 2010 and 2013]… requesting these opinions,’ Feinstein said. ‘Last week, senators on the committee were finally allowed to review two OLC [Office of Legal Counsel] opinions on the legal authority to strike US citizens. We have reiterated our request for all nine OLC opinions – and any other relevant documents – in order to fully evaluate the executive branch’s legal reasoning, and to broaden access to the opinions to appropriate members of the committee staff.’

#### Loopholes inevitable

**Thompson 13** [Aug 26, Mark, “Obama Can Strike Syria Unilaterally,” <http://swampland.time.com/2013/08/26/obama-can-strike-syria-unilaterally/>]

For better or worse, there’s also very little doubt that President Obama—should he choose to do so—can retaliate against Syrian targets for their use without approval from the American people, or their elected representatives in Congress. Just like he did in Libya two years ago. For Americans brought up to believe only Congress can declare—and pay for—war, it’s worth noting that such legal niceties have loopholes big enough to fly cruise missiles through. And that is apparently what the U.S. military has in mind, as it beefs up its fleet of Tomahawk-cruise-missile-carrying warships in the eastern Mediterranean Sea, a chip shot from dozens of military and government targets scattered across Syria. Four destroyers are loitering in the region, awaiting orders. At a news conference on Sunday in Malaysia, Defense Secretary Chuck Hagel said he’d prepared “options for all contingencies” at the President’s request. “We are prepared to exercise whatever option if he decides to employ one of those options.”

## 2NC

### 2nc wpr

#### Congress won’t enforce the WPR and the presidency won’t accept its constituionality– fiat doesn’t change that

**Crook 12** [Fall, 2012, Case Western Reserve Journal of International Law, 45 Case W. Res. J. Int'l L., “Presidential Powers and Foreign Affairs: The War Powers Resolution at 40: Still Controversial: The War Powers Resolution--A Dim and Fading Legacy,” John R. Crook\*, arbitrator in NAFTA and other investment disputes and served on the Eritrea-Ethiopia Claims Commission, Vice-President of the American Society of International Law and former General Counsel of the Multinational Force and Observers, the peacekeeping force in the Sinai, teaches international arbitration at George Washington University Law School]

The War Powers Resolution is the product of a time when Congress was riding particularly high and the presidency was particularly weak. n6 That unusual array of circumstances has not been repeated. In the ensuing years, no administration has accepted the constitutionality of the Resolution's key provisions. n7 At the other end of Pennsylvania Avenue, Congress has not mustered the collective will to insist on full and timely compliance with the Resolution in a wide range of cases. n8 From time to time, the Resolution has offered both Republican and Democratic presidents' political opponents an avenue to attack their compliance with particular policies or actions. Nevertheless, Congress has not shown itself willing or able to perform the role it set out for itself in Section 5 of the Resolution. n9 [\*160]

#### Congress fails

**Druck 12** [November, 2012, Cornell Law Review, 98 Cornell L. Rev. 209, Judah A. Druck, Brandeis University, 2010; J.D. Candidate, Cornell Law School, 2013, “DRONING ON: THE WAR POWERS RESOLUTION AND THE NUMBING EFFECT OF TECHNOLOGY-DRIVEN WARFARE”]

C. Congress Under the WPR Of course, despite these various suits, Congress has received much of the blame for the WPR's treatment and failures. For example, Congress has been criticized for doing little to enforce the WPR in using other Article I tools, such as the "power of the purse," n76 or by closing the loopholes frequently used by presidents to avoid the WPR [\*221] in the first place. n77 Furthermore, in those situations where Congress has decided to act, it has done so in such a disjointed manner as to render any possible check on the President useless. For example, during President Reagan's invasion of Grenada, Congress failed to reach an agreement to declare the WPR's sixty-day clock operative, n78 and later faced similar "deadlock" in deciding how best to respond to President Reagan's actions in the Persian Gulf, eventually settling for a bill that reflected congressional "ambivalence." n79 Thus, between the lack of a "backbone" to check rogue presidential action and general ineptitude when it actually decides to act, n80 Congress has demonstrated its inability to remedy WPR violations. Worse yet, much of Congress's interest in the WPR is politically motivated, leading to inconsistent review of presidential military decisions filled with post-hoc rationalizations. Given the political risk associated with wartime decisions, n81 Congress lacks any incentive to act unless and until it can gauge public reaction - a process that often occurs after the fact. n82 As a result, missions deemed successful by the public will rarely provoke "serious congressional concern" about presidential compliance with the WPR, while failures will draw scrutiny. n83 For example, in the case of the Mayaguez, "liberals in the Congress generally praised [President Gerald Ford's] performance" despite the constitutional questions surrounding the conflict, simply because the [\*222] public deemed it a success. n84 Thus, even if Congress was effective at checking potentially unconstitutional presidential action, it would only act when politically safe to do so. This result should be unsurprising: making a wartime decision provides little advantage for politicians, especially if the resulting action succeeds. n85 Consequently, Congress itself has taken a role in the continued disregard for WPR enforcement.

### 2nc congress fails

#### Congress can’t successfully rein in presidential war power – empirically proven

**Pearlstein 13** [“Congress Shouldn’t Give the President New Power to Fight Terrorists,” Deborah Pearlstein, Slate, March 26, 2013, http://www.slate.com/articles/news\_and\_politics/jurisprudence/2013/03/congress\_shouldn\_t\_give\_president\_obama\_new\_power\_to\_fight\_terrorists.html]

Despite this, Leiter and others seem convinced that Congress should pass a new law authorizing force. Strangely, these calls for Congress to delegate new power to the executive branch seem animated less by an articulated security strategy or identified target than by a sense that this will actually help constrain the use of presidential power. As the argument goes, the president—any president—will want the option at some point of using force against some terrorist group. If Congress legislates, it can establish limits on the scope of the president’s authority by setting the rules for him to exercise it.¶ The search for meaningful constraints on power is indeed the central challenge of our constitutional system. But Congress has an abysmal track record of successfully reining in presidential uses of force overseas. And there is little cause for hope it will succeed here. Consider the recent history. Congress decided in the days after 9/11 to authorize the use of force against a limited set of targets responsible for the attacks of 9/11, and two presidents have now used that authority to its fullest. But such broad congressional authority has not stopped President Obama, just like his predecessors, from asserting that he retains inherent authority to use force in self-defense under Article II of the Constitution, above and beyond what Congress authorizes. Congress can authorize whatever new wars it wishes; the president can still use force against imminent threats without it.

### 2nc obama cheats

#### Obama will act independently of Congress – he can’t stop – and he won’t stop

**Koenig 12** [“Obama Uses Executive Orders to Bypass Congress,” Yahoo, Brian Koenig, April 23, 2012, http://news.yahoo.com/obama-uses-executive-orders-bypass-congress-192700126.html]

President Barack Obama's agenda, particularly involving legislative proposals like his ambitious "Buffett Rule" tax plan, has been stunted by a polarized Congress now toiling in gridlock. Consequently, the White House is resorting to its purported "executive authority" -- specifically, by issuing a flurry of new executive orders. To put it lightly, the president's view of Congress has been unpalatable, at least, since the Republicans captured the House of Representatives in the 2010 election. And Obama's solution? Bypass Congress altogether. "We had been attempting to highlight the inability of Congress to do anything," asserted former White House chief of staff William M. Daley, referring to a strategy meeting carried out last fall. "The president expressed frustration, saying we have got to scour everything and push the envelope in finding things we can do on our own." Indeed, the Obama administration is now launching its "We Can't Wait" campaign, a seemingly despotic ploy to work around Obama's congressional foes and enact a catalog of new executive-ordained policies. On Monday, for example, Obama issued an executive order that would grant U.S. officials the authority to decree sanctions on foreign nationals who have used internet tracking and cellphone monitoring -- among other technologies -- to perform human-rights abuses. Furthermore, the White House released another executive order earlier this month that would establish an oversight group consisting of 12 federal agencies charged with supporting "safe and responsible unconventional domestic natural gas development." One more executive order -- entitled, "National Defense Resources Preparedness" -- quietly issued on March 16, granted unprecedented power to the president to control "critical resource and production sources," including energy production. In effect, this insatiable product of Obama's "We Can't Wait" campaign granted the president unbounded authority to seize control of all U.S. resources as long as his intention is "to promote the national defense" -- an obscure maxim that bolsters countless meanings. All in all, the White House's agenda is clear. "I refuse to take 'no' for an answer," Obama professed in a speech carried out earlier this year. "When Congress refuses to act and -- as a result -- hurts our economy and puts people at risk, I have an obligation as president to do what I can without them."

### at: power of the purse

#### Fails to constrain the President

**Thompson 13** [Aug 26, Mark, “Obama Can Strike Syria Unilaterally,” <http://swampland.time.com/2013/08/26/obama-can-strike-syria-unilaterally/>]

What about paying for the war? Doesn’t Congress have the so-called power of the purse? By snapping it shut, can’t lawmakers snuff out a war just as denying oxygen to a fire extinguishes it? Theoretically, yes, especially in the case of a lengthy conflict. But the U.S. military spearheaded the war against Libya by tapping into funds already in the Pentagon’s wallet. The Obama Administration didn’t have to appeal to Congress for extra money for the conflict.

### 2nc framework substance

#### Instead of being a policy maker, weigh the aff against the alternative without ignoring your situatedness—as a specific intellectual, you should weigh the power relations latent in each advocacy against each other

Owen 97. David Owen, professor of social sciences at Southampton University, 1997, “Maturity and Modernity: Nietszche, Weber, Foucault and the ambivalence of reason,” Routledge publishers, published July 22, 1997

In our reflections on Foucault’s methodology, it was noted that, like Nietszche and Weber, he commits himself to a stance of value-freedom as an engaged refusal to legislate for others. Foucault’s critical activity is oriented to human autonomy yet his formal account of the idea of autonomy as the activity of self-transformation entails that the content of this activity is specific to the struggles of particular groups and individuals. Thus, while the struggle against humanist forms of power/knowledge relations denotes the formal archiectonic interest of genealogy as critique, the determination of the ‘main danger’ which denotes the ‘filling in’ of this interest is contingent upon the dominant systems of constraint confronted by specific groups and individuals. For example, the constitution of women as ‘hysterical,’ of blacks as ‘criminal,’ of homosexuals as ‘perverted’ all operate through humanist forms of power/knowledge relations, yet the specificity of the social practices and discourses engaged in producing these ‘identities’ entails that while these struggles share a general formal interest in resisting the biopolitics of humanism, their substantive interests are distinct. It is against this context that Foucault’s stance of value-freedom can be read as embodying a respect for alterity. The implications of this stance for intellectual practice became apparent in Foucault’s distinction between the figures of the ‘universal’ and ‘specific’ intellectual. Consider the following comments: In a general way, I think that intellectuals-if this category exists, which is not certain or perhaps even desirable- are abandoning their old prophetic function. And by that I don’t mean only their claim to predict what will happen, but also the legislative function that they so long aspired for: ‘See what must be done, see what is good, follow me. In the turmoil that engulfs you all, here is the pivotal point, here is where I am.’ The greek wise man, the jewish prophet, the roman legislators are still models that haunt those who, today, practice the profession of speaking and writing. The universal intellectual, on Foucault’s account, is that figure who maintains a commitment to critique as a legislative activity in which the pivotal positing of universal norms (or universal procedures for generating norms) grounds politics in the ‘truth; of our being (e.g. our ‘real’ interests). The problematic form of this type of intellectual practice is a central concern of Foucault’s critique of humanist politics in so far as humanism simultaneously asserts and undermines autonomy. *If*, however, this is the case, what alternative conceptions of the role of the intellectual and the activity of critique can Foucault present to us? Foucault’s elaboration of the figure of the ‘specific’ inellectual provides the beginnings of an answer to this question: I dream of the intellectual who destroys evidence and generalities, the one who, in the inertias and constraints of the present time, locates and marks the weak points, the openings, the lines of force, who is incessantly on the move, doesn’t know exactly where he is heading nor what he will think tomorrow for he is too attentive to the present. The historicity of thought, the impossibility of locating an Archimedean point outside of time, **leads Foucault to locate intellectual activity as an ongoing** attentiveness to the present **in terms of what is singular** and arbitrary **in what we take to be universal** and necessary. Following from this, **the intellectual does not seek to offer** grand theories **but** specific analyses**,** not global but local criticism. We should be clear on the latter point for it is necessary to acknowledge that Foucault’s position does not entail the impossibility of ‘acceding to a point of view that could give us access to any complete and definitive knowledge of what may constitute our historical limits’ and, consequently, ‘ we are always in the position of beginning again’ (FR p. 47). The upshot of this recognition of the partial character of criticism is not, however, to produce an ethos of fatal resignation but, in far as it involves a recognition that everything is dangerous, ‘a hyper-and pessimistic activism’ (FR p. 343). In other words, it is the very historicity and partiality of criticism which bestows on the activity of critique its dignity and urgency. What of this activity then? We can sketch the Foucault account of the activity of critique by coming to grips with the opposition he draws between ‘ideal’ critique and ‘real’ transformation. Foucault suggests that the activity of critique ‘is not a matter of saying that things are not right as they are’ but rather ‘of pointing out what kinds of assumptions, what kinds of familiar, unchallenged, uncontested modes of thought and practices we accept rest’ (PPC p. 154). This distinction is perhaps slightly disingenuous, yet Foucault’s point is unintelligible if we recognize his concern to disclose the epistemological grammar which informs our social practices as the starting point of critique. This emerges in his recognition that ‘criticism (and radical criticism) is absolutely indispensable for any transformation’: A transformation that remains within the same mode of thought, a transformation that is only a way of adjusting the same thought more closely to the reality of things can merely be a superficial transformation. (PPC p. 155) The genealogical thrust of this critical activity is ‘to show that things are not as self-evident as one believed, to see that what is accepted as self-evident is no longer accepted as such’ for ‘as soon as one can no longer think things as one formerly thought them, transformation becomes both very urgent, very difficult, and quite possible’ (PPC p. 155). The urgency of transformation derives from the contestation of thought (and the social practices in which it is embedded) as the form of our autonomy, although this urgency is given its specific character for modern culture by the recognition that the humanist grammar of this thought ties us into the technical matrix of biopolitics. The ‘specificity’ of intellectual practice and this account of the activity of critique come together in the refusal to legislate a universal determination of ‘what is right’ in favour of the perpetual problematisation of the present. It is not a question, for Foucault, of invoking a determination of who we are as a basis for critique but of locating what we are now as the basis for a reposing of the question, “who are we?” the role of the intellectual is thus not to speak on behalf of others (the dispossessed, the downtrodden) **but to** create the space **within which** their struggles become visible **such that these others** can speak for themselves. The question remains, however, as to the capacity of Foucault’s work to perform this critical activity through an entrenchment of the ethics of creativity as the structures of recognition through which we recognize our autonomy in the contestation of determinations of who we are.

#### Specific intellectual is uniquely key to war powers—without that specific intellectual capacity to reveal that the emperor in fact has no cloths, irruptions against the executive branch are ineffective and cannot but capitulate to the status quo—our evidence uses the example of Daniel Ellsberg—this is the only way to make the ballot matter ethically

Weiskopf and Willmott 13. Richard Wesikopf, professor of organization and learning at the University of Innsbruck, and Hugh Willmott, professor of organization studies at Cardiff University, Ethics as Critical Practice: The “Pentagon Papers”, Deciding Responsibly, Truth-telling, and the Unsettling of Organizational Morality 34(4) pg. 486

When conceiving of ethics as a critical practice, there is no concern to judge organization(s), or ¶ organizational members, from the high ground of moral theory. Nor is there any interest in developing (universal) criteria for determining whether organizational phenomena, such as (Ellsberg’s) ¶ whistleblowing, are morally correct or ethically defensible. In considering morality as contingent ¶ and power-infused practice, our “ethics as critical practice” approach does not deny the possibility, ¶ and indeed necessity, of morality and the associated exercise of (moral) judgements. What it does¶ deny is the transcendental grounding or guarantee of such judgements. Accordingly, the approach ¶ commended here eschews the assumption of centred, “autonomous” individuals as a condition of ¶ ethics in organizations (Alford, 2001; see Knights and Willmott, 2002, for a critique). It also ¶ departs from virtue-based studies that attribute ethical acts to character strengths of particularly ¶ “virtuous” individuals, and so heroize them as “saints of a secular culture” (Grant, 2002) “who ¶ stand out from the rest of us” (2002: 398). Our approach acknowledges how disciplinary practices ¶ establish and sustain “moralities-in-use” and the modes of being that conform with their demands. ¶ But it insists that normative demands, such as the demands for loyalty and secrecy that permeated ¶ the morality of the Pentagon, can never fully determine human action and so occupy the “undecided space of ethics” (Iedema and Rhodes, 2010).¶ Daniel Ellsberg’s leaking of the Pentagon Papers, a case of whistleblowing that “interrupted” ¶ widely shared understandings of the operation of US democratic government, has been deployed ¶ to illustrate how the grip of institutionalized normative demands upon subjectivity may be weakened through participation in countervailing practices. To question established practices – and the ¶ norms that they articulate and reproduce – is, we have argued, to engage in ethics as a critical ¶ practice. Such questioning does not rely upon, or appeal to, some alternative standard or yardstick ¶ but, instead, manifests an “ethical sensibility” (Connolly, 1993) that is responsive to the other, and has the courage to speak out when practices are perceived as “intolerable” (Foucault, 2001b). To engage in ethics as critical practice involves acting – as Ellsberg did – as a “specific intellectual”, in Foucauldian terms. This possibility is by no means restricted to an elite cadre of “intellectuals”, as it may include the actualization of the critical attitude in various practices and professional con- texts. As Foucault observes,

[w]ithin these different forms of activity, I believe it is quite possible ... to do one’s job as a psychiatrist, lawyer, engineer, or technician, and to carry out in that specific area work that may properly be called intellectual, an essentially critical work. [...] a work of examination that consists of suspending as far as possible the system of values to which one refers when ... assessing it. In other words: What am I doing at the moment I’m doing it? (Foucault, 1988: 107; quoted in Chan, 2000: 1071, emphasis added)

Conceiving of ethics as a critical practice invites a rethinking of established, morality-centric conceptions of ethics, including much thinking about “business ethics” and “professional ethics” (e.g. of executives) (Cooper, 2012). Instead of associating ethics with compliant enactment of a particular, privileged morality, the challenge is to engage in critical work within such mundane settings. When conceived as critical practice, ethics is an ongoing agonistic 21 struggle played out in relation to established moralities embedded within relations of power and domination.

#### Their framework makes them extratopical—resolved means to think about things—fiat is extratopical and allows them to claim absurd solvency arguments that we can’t predict, which is a reason to reject the team.

AHD 06. American Heritage Dictionary

resolved v. To cause (a person) to reach a decision.

### 2nc legal education

#### 1.) Agency: all legal relationships are predetermined by power, re-entrenching WHO may speak about targeted killing, HOW they must do it—the fascist teacher’s IMPOSITION OF FORM onto student’s CONTENT, this destroys agential potential which is a prior question

White 92. Lucie White, professor of law at Harvard, 1992, 77 Cornell Law Review, 1499

Thus, as Angela Harris has demonstrated in her critique of Catharine MacKinnon's work, a conventional understanding of power locks women, and indeed every subordinated group, in a discursive "prison-house" from which there is no escape. Just as the dominators can do nothing except wield their power, the subordinated can speak nothing except their masters' will. No change is possible in this universe; indeed, even the most creative tactics of resistance or gestures of solidarity reinforce the bonds of domination. This understanding of domination, designed to reveal injustice, leads to two perverse results. First, it excuses those in the dominant class from attempting to reflect on or change their own conduct, or to ally themselves with subordinate groups. Second, it reinforces in relatively disempowered groups the very doubts about their feelings, capacities, and indeed human worth that subordination itself engenders. **Foucault's picture of power disrupts this closed circle of domination.** By **showing that the dominators do not "possess" power, his picture makes possible a politics of resistance**. It opens up space for a self-directed, democratic politics among subordinated groups, a politics that is neither vanguard-driven nor co-opted, as the politics of the colonized subject inevitably is. At the same time, and of more immediate relevance to lawyers, this new picture of power makes possible **a self-reflective politics of alliance and collaboration between professionals and subordinated groups**. Given the new theaters of political action that Foucault's theory of power has opened up, it is not surprising that it has stolen the stage in historical, cultural, and finally legal studies from those who speak of power in more conventional terms. The Foucaultian picture of power makes insurgent politics interesting again; it brings possibility back into focus, even in apparently quiescent times when resistance is visible only in the microdynamics of everyday life.

#### 2.) Prefigures how you read the 2ac answers: the legal narrative of the possession of power is insufficient—you cannot validate the 1ac because it is dedicated to effacing their own subject positions within the system of power/knowledge—vote neg on presumption

Salter 85. M.G. Salter, lecturer in criminal law at the University of Birmingham, “The Rule of Power in the Language of Law,” The Liverpool Law Review Vol.VII(1) [1985] pg. 36

Through such codes of discipline language itself lays down the forms of discourse which are judged appropriate and inappropriate. For their continued vigour, these codes actually depend upon the multiplicity of points of resistance by those - including the staff - who are subject to them. Resistances actively serve as footholds, targets, supports and adversaries for power. Power relations here are not then attributable to, or owned by a single group or class, but arise in an apparently anonymous manner from interactions within the local situations in which they first appear.

Now if this is true, it has real consequences for the common sense of legal culture. It suggests that its truth- claims concerning the power/truth relation are themselves possible and comprehensible only because power operates within their own discourse, productively excluding some interpretations, attitudes and actions as "inappropriate" and therefore creating a possible common ground for their intelligibility as such. (4) This productivity of power appears in the mutual implication of positive and negative determinations of all legal meaning over time and through productive disowning. For example, during a contract law tutorial the tedious determination of what an "offer" is for Contract law, involves the progressive unfolding of all that it does not mean, i.e. invitation to treat, continuing negotiations etc. Thus the limiting process of disowning - the self-exercise of the power of exclusion in meaning- determination - presents itself to be ultimately productive of truth.

Further we can see that all claims to a truthful critique - including those of this text - are "positive" and productive of truth only through their power of disowning the overall position that is successfully criticised. The experience of a continually disowned/re-owned world of law is then the pre-condition for the production of insight and truth-claims about its workings - including common sense views about the unproductivity of power. Thus at both the level of particular explication of meanings and that of the overall development within the "discipline" of law, the juxta-position of truth and power now appears no longer to be sustainable. Our discursive knowledge of the power/truth connection is, by virtue of its discursive character, implicated in that which it examines. This appears when we consider the derivation of much of the "knowledge" imparted by "criminology" courses from languages of punishment. Here not only does such "academic knowledge" emanate from the exercise of this form of state power, but by largely treating crime as about the explanation of criminal behaviour, this "knowledge" returns to support and legitimate the institutional exercise of criminalising powe**r**. It does this partly by reducing intellectual and theoretical problems to social policy ones. This leaves the whole exercise quite untroubled by critical thought. Therefore the implication of power, knowledge and legal discourse goes far deeper than simple encouragement or application. Instead legal discourse and power relations mutually imply one another to the extent that they cannot be conceived of without each other. For example, the power relations at work in the court room between the judge, jury, public, media, court officers, advocates, witnesses and accused give rise to a distinctive "knowledge" available for "Legal Methods" courses. It becomes available through a hierarchy of relations between and among law- reporters, publishers, lecturers, students, college traditions and government administrators. Here power demarcates what is sayable, to whom, in what manner, about what and when; yet the consequences of this demarcation is to open up and temporalise a common historical world of law and "legal education". We shall examine later how it produces a domain of legal subjects, objects and rituals for determining their truth through an ever-proliferating discourse on law.

### 2nc reform good

#### Their reform good arguments don’t respond—this process of refusing to accept powers terms can produce legal reforms, under completely different auspices than the plan that function entirely differently—the alternative is still a prerequisite

Simpson 12. Zachary Simpson, professor of philosophy at the University of Arts and Sciences of Oklahoma, Foucault Studies, No. 13, May 2012, pg. 102

When the preceding analysis of resistance is taken alongside Foucault’s constructivist conception of truth, it clearly leads to the notion, pursued by Foucault in the late 1970s, that the production of truth, and therefore the instantiation of resistance, can be a creative and intentional process.16 While Foucault consistently describes the presence of such resistances- through-truth, he also normatively advocates the production of truths to modify power relations. This more imaginative and creative dimension is often revealed in Foucault’s reflec- tions on the role of the author, which is:

...to see how far the liberation of thought can make... transformations urgent enough for people to want to carry them out and difficult enough to carry out for them to be profoundly rooted in reality. It is a question of making conflicts more visible... Out of these conflicts, these confrontations, a new power relation must emerge, whose first, temporary expression will be a reform.17

However, the project of “making conflicts more visible” is one which need not be based on present conditions or their limited range of options. Instead, one must constructively pro- blematize the epistemic relations which give rise to the present and question the truths which undergird existing power relations and creatively imagine strategic alternatives. Foucault in- dicates both this diagnostic and strategic procedure in another interview:

Why the truth rather than myth? Why the truth rather than illusion? And I think that, instead of trying to find out what truth, as opposed to error, is, it might be more interesting to take up the problem posed by Nietzsche: how is it that, in our societies, “the truth” has been given this value, thus placing us absolutely under its thrall?18

### 2nc alternative

#### The alternative can use parrhesia to leak on the United States Federal Government—the only way to get out of the trap of the emperor’s cloths, to refuse to be “one of the president’s men” is to use the minute ballot to *convert oneself* from the nexus of power and knowledge that scripts the 1ac’s response to war powers—decision making is an argument you can decide the debate on

Weiskopf and Willmott 13. Richard Weiskopf, professor of organization and learning at the University of Innsbruck, and Hugh Willmott, professor of organizational studies at Cardiff University, “Ethics as Critical Practice: The ‘Pentagon Papers,’ Deciding Responsibility, Truth-telling, and the Unsettling of Organizational Morality,” Organization Studies 34(4) pg. 484

Parrhesiastes are “those who undertake to tell the truth at an unspecified price, which may be as high as their death” (Foucault, 2010: 56). When Ellsberg blew the whistle by sending a copy of the Papers to the Times, there was minimal risk of physical death (except perhaps from an assassin), should he be identified as the perpetrator of this act of treason. But there was the prospect of sym- bolic death, in the form of termination of his employment as a reputable, high-ranking advisor who enjoyed a materially comfortable life but now faced the real prospect of a long-term prison sen- tence.18 What, on his own account, Ellsberg feared most, and what deterred him from blowing the whistle earlier, was the prospective loss of his liberty. Other fears about loss of esteem and the likely evaporation of opportunities to apply his specialist expertise had been progressively dis- solved and eventually removed as he engaged in practices that loosened their grip. As we noted earlier, the final stage of overcoming his fears occurred as he read the Papers in full – a process that “burned out of me the desire to work for presidents, to be in any sense a ‘president’s man’” (2003: 277). With this final disillusionment

... came a new freedom. I would no longer be awaiting a call from the White House or any official serving at the president’s pleasure. That was as liberating, as expanding of options of resistance, as my newfound willingness to go to prison if necessary. ... I was no longer held in line by that fear. From their [the colleagues at Rand] point of view, I was about to become dangerous to know. (2003: 277–8)

What Ellsberg describes here is a form of ethical “conversion to oneself” (Gros, 2005: 546) in which a self-relation is established that allows some independence from prevailing relations of power and knowledge. Such a “relationship of self-possession and self-sovereignty” (Foucault, 2001a: 144) ena- bles the subject to overcome fears, resist seductions and so make (different) choices among conflict- ing demands. Contingent on the development of critical self-knowledge, the development of such a self-relation is not to be confused with, or reduced to, a process of soul-searching resulting in the purported discovery or revelation of one’s “true” or “authentic” self.19 Rather, it emerges from an engagement in practices in which the other, in various forms, is critically present. A critical/ethical relation of the self to the self is dependent on some other, and it unfolds in relation to others. In devel- oping a critical self-relation, “we cannot dispense with the other” (Foucault, 2005: 398). As Foucault (1997a: 287) notes, “we are our own flatterers”, and for this reason “one needs a guide, a counsellor, a friend, someone who will be truthful to you” (2005: 398). In ethical self-formation, the other may act as a “basanos”,20 a sort of touchstone, which recalls subjects to themselves – “a marker, or sign- post – a buoy, perhaps in troubled waters – by which to get one’s bearings” (Luxon, 2008: 389). In Ellsberg’s case, it was the (critical) friendship of a number of people – Patricia Marx, who was to become his wife, but also Randy Kehler, an anti-war activist, and Janaki, a non-violent campaigner – that enabled him to develop a critical/ethical relation to the self and thereby reconstitute himself first as an employee of Rand and senior advisor in the Pentagon, and then as a citizen prepared to speak out against what he believed, or knew, to be the duplicity of the state.

The process of “conversion to oneself” is illustrated in Ellsberg’s account of an ostensibly trivial event – a minor peace demonstration – that he was extremely reluctant to join. He recalls how he felt “naked and raw” as he experienced a “process of shedding that skin” (Ellsberg, 2003: 268), a skin which had made him a recognized and respected member of the executive branch. Initially, he had felt “ridiculous” as a participant in something so insignificant as “try[ing] to change the minds of a few dozen random pedestrians by handing them leaflets”. Yet, as he distributed the leaflets, Ellsberg found his mood changing and he became “unaccountably lighthearted” (2003: 269). He recalls how “[s]omething very important had happened to me. I felt liberated ... I had become free of the fear of appearing absurd, of looking foolish, of stepping out of line (2003: 269).

In organizational contexts, there are multiple sources of anxiety about “appearing absurd, of looking foolish” (2003: 269). Ethical self-formation implies an engagement with these anxieties in which there is a necessary agonism. Ethical self-formation is manifest in a readiness to “internalise the parrhesiastic struggle” (Foucault, 2001a: 133) rather than seeking comfort and reassurance in external truths and valued social identities.

#### Rather than continuing to speak the language of power, use this game as an opportunity for *parrhesia* or speaking truth to power—the act of writing the ballot can signify a radical commitment to fearless speech

Brigstocke 13. Julian Brigstocke, professor of geography at the University of Plymouth, “Artistic Parrhesia and the Genealogy of Ethics in Foucault and Benjamin,” Theory Culture Society 2013 30: pg. 71

While Benjamin’s history of 19th-century Paris contributes in important ways to the Foucauldian problematic of courageous truth-telling, how- ever, it also takes this framework to its limits. The practice of parrhesia is a game in which many players participate. Parrhesia requires a willing- ness on the part of authorities to be challenged by those outside legit- imized authority structures. It requires the cultivation of affective relations of trust between those who are authorized to speak the truth and the parrhesiasts who challenge those truths (Luxon, 2004). If the truth-teller is afraid of being punished for the truths she speaks, there is a danger that she will fall back into flattery or silence. For Foucault, parrhesia is an improvisatory, agonistic encounter between the parrhe- siast and the authority that she is challenging. Through courageous truth-telling, the present structures of governance of self and others can be creatively transformed. Foucault’s ethics, that is, aim at confront- ing present limits rather than reaching beyond them; rather than sum- moning transformative new forms of potential energy or life, for example, he concentrates on the work of undoing present configurations of forces (Hallward, 2000; Revel, 2009). The starting point of his ethics is a polemical refusal of the self (O’Leary, 2002: 15). He rejects any ethical or political project that aims to find outside a given system of power relations ‘the bubbling source of life itself, life in an as yet uncaptured state’ (Foucault, 2002: 85). The ‘outside’ of present networks of power relations, then, is always folded into the inside, always immanent to those networks. The outside does not exist as such, or ‘only as an absence that pulls as far away from itself as possible’ (Foucault, 2000d: 155).

### 2nc permutation

#### The perm turns debate into a laboratory for the containment of radical ideas that destroys—their reliance on institutional power/knowledge eviscerates their ability to effectuate change, which turns the case

Chaulia 09. Sreeram Chaulia, professor of World Politics at Jindal Global Law School, 2009, “One Step Forward, Two Steps Backward: The United States Institute of Peace,” International Journal of Peace Studies, Vol. 14 No. 1

Hegemonic power structures, be they domestic or international, rest on a tissue of ideas that is beefed up with economic and military muscle. Rationality dictates that powerful actors in a society or international system cannot permanently rely on coercion to achieve their ends. This is due to the impossibility of policing each nook and cranny of the space that is subject to rule, as well as the natural instinct of the weak to attempt “everyday forms of resistance” (Scott, 1985). No system of rule can completely avoid slippage and subversion at the margins, but it can employ a vast intellectual apparatus to ensure that dissenting knowledge is contained at manageable levels or quarantined, so that the whole forest does not catch flame. Successful power operators tend to recognise the seductive talents of the intelligentsia in winning general consent for their rule and edging out anti-systemic nuisance value. The case of government-sponsored think tanks bears this strategy out in clear-cut terms and serves as an apt illustration. The conceptual framework of this article posits that certain elite institutions produce knowledge and ideas with the intent of arresting the growth of anti-establishment knowledge in society. While punitive institutions like the police force, prisons, and the security apparatus overtly discipline societies through strong arm tactics, ideational institutions like governmental think tanks perform a subtler task of marginalising alternative voices that seek to restructure the means and ends of policymaking. If the former crush and liquidate dissent in the name of law and order, the latter mould the space of understanding about critical issues in society and push radical perspectives to the fringe. This essay argues that knowledge-centric institutions beholden to political power work on twin tracks of appropriation and distortion. If they are unable to fully obstruct existing ideas emanating from the grassroots that are contrary to the interests of their patrons, they try to consume and repackage them in a manner that retains the form but not the content. Such an act of appropriation of dissenting ideas helps the patrons to claim that their visions and preferences are shared by the ‘mainstream’ of society. The target idea that is being poached by elite institutions in the process of appropriation need not meekly give in. If it is a product of social mobilisation and advocacy, its progenitors will try to resist the cooptation and a tug-of-war could ensue. If the balance of power between the elite institutions and the social movement is not overly lopsided in favour of the former, the final outcome of this struggle could be a compromise rather than outright obstruction or total appropriation. For the movement, compromise is a necessary adjustment to the structural pressure placed on it by the establishment so that at least the core of the idea is preserved. For the power wielders, compromise is a tactical concession to the initial momentum generated by the movement and a temporary modus vivendi prior to full appropriation of the idea. Secondly, knowledge-based institutions attempt to popularise their patrons and their schemes by painting them as beneficial for greater good of humanity. By releasing a steady output of views and opinions that burnish the track record of their patrons, they aim at marshalling public sympathy, loyalty and obedience for the establishment. Distortion is thus a function of propaganda and manipulation of mass opinion with the objective of constructing a justificatory cushion for illegitimate or immoral actions of the powerful. Theoretically, the intimacy of knowledge to power was spelt out by Michel Foucault. Power can be visualised in the Foucaultian lens as a set of techniques and tactics of domination that are subtler and more nuanced that brute force, “delicate mechanisms that cannot function unless knowledge, or rather knowledge apparatuses, are formed, organised, and put into circulation” (Foucault, 1997, 33). Concrete institutions and organisations can be knowledge apparatuses that are “more readily definable macroobjects, grosser instruments for the finer, more elemental workings of power” (Caputo and Yount, 1993, 4, 5). Through such institutions, “the production of knowledge and the exercise of administrative power intertwine, and each begins to enhance the other” (Allen, 1999,70). Foucault titled this reciprocal relationship “power/knowledge.” There is a mutually reinforcing relationship between the circulation of knowledge through institutional discourses and the control of conduct. In particular, dominant discourses always define boundaries of exclusion by imposing limits to ‘normal’ knowledge and excommunicating competing constructions that end up becoming ‘subjugated knowledges.’ Institutions are meant to reform the abnormal persons who stray beyond the limits or to contain and marginalise those who do not submit to the officially designated ‘Truth’. “A whole series of knowledges have been disqualified as non-conceptual knowledges, as insufficiently elaborated knowledges, naïve knowledges, hierarchically inferior knowledges, knowledges that are below the required level of erudition or scientificity” (Foucault, 1997, 7). Antonio Gramsci’s notion of hegemony demonstrates that structures of domination are underpinned by both material reality and ideational constructions. To Gramscians, ‘social structure’ includes inter-subjective ideas, ideologies and social institutions, besides materialistic socio- economic system and political power relations. Hegemony is much more than raw force advantages enjoyed by militarily and economically strong states. It is a “structure of values and understandings about the nature of order that is stable and unquestioned” (Gill, 1993, 42). Gramscians discern a critical role for civil society institutions (parties, unions, religious centres, education system, media, art, literature etc.) as instruments through which hegemonic values are transmitted (similar to Foucault’s ‘circulation’ of knowledge) through society at the domestic and international level. The manufacturing of ‘consent’ for hegemony is achieved through these allegedly ‘non-governmental’ cultural institutions that are integral to the hegemonic regulatory complex known as “extended state.”

#### The permutation is tainted law, law that is sanitized into the liberal international order yet reflects its anti-liberal past—this proves the importance of our historical method as well as the implicit turns the case argument

Cercel 12. Dr. Cosmin Sebastian Cercel is a Research Fellow at the University of Nottingham School of Law, “Where is the Law ?”: Legal Discourse and Ideology in Interwar Romania, http://www.inter-disciplinary.net/at-the-interface/wp-content/uploads/2012/04/cercelespaper.pdf pg. 3

From this vantage point, the complicity between law and authoritarian or totalitarian regimes becomes somehow clearer. An ‘unlawful law’, to use the term coined by Radbruch8, is not only a subject opened to theoretical inquiry, but a reality legal systems and lawyers had to face and deal with at the outcome of major crisis all along 20th century9. This pure empirical reality brings us before a deeper level of understanding of the relation between law and fascism. As legal historians argue, there has been more than a factual and ephemeral relation between legal discourse and different forms of authoritarianism10. Lawyers might have been members of the Fascist and Nazi party, sincere or complacent followers of Stalinism, legal statutes of the time may have bore traces of these ideological catastrophes, but more importantly, legal thought itself may have been touched by this encounter with the Other of the liberal-democratic nomos. Historical accounts of this uncanny encounter provide us with evidence to such an extent that one could legitimately describe such legal systems as examples of ‘tainted law’11, that is ‘law that appears to have been produced, or absorbed and ‘sanitised’, by a democratic order but which is connected, explicitly or implicitly, with the anti-democratic past’12. It is a question of a law which continues to silently wear the traces of the radical encounters years or even decades after our polities celebrated the demise of totalitarian systems.

Against this background it is important to address this question once again, for if law, in its cultural, socio-historical embeddedness, in its responsiveness to its environment continues to wear the scars of its relation with a past, which it has been thought it could redeem and close, its very core may have been tainted. This is to say that not only the law wears the traces of historical violence, but it continues actively and positively to re- enact this encounter through its own performative power. Let us recall at this juncture the fact that totalitarian law in all its forms was not separated from the law existing in democratic regimes by a theoretical, epistemological or practical abyss. As David Fraser notes,

‘Throughout the Nazi period, German lawyers continued to act as lawyers [...]. Judges judged, even while Auschwitz spewed forth its smoke and ash. The rhetoric and ideology of the rule of law and the criminal Nazi state do not allow for such complications. This is the lie of law after Nuremberg, just as it is the lie of law after Auschwitz. Law continued while six million died’.13

In other words, owing to its force and authority, legal discourse, by the concepts, categories and practices it promotes still renders the authoritarian past active. In the words of Robert Cover, ‘legal interpretation takes place in a field of pain and death’14 Thus, asking how legal systems of our days relate to a defunct ideology, pertains both to the realm of the relation to the past and to the status of contemporaneity. Such a question has to be asked as long as traces of the encounter with the radical other of totalitarianism are still tracing back towards us. It also should be supported by another question, one which seeks to find out why it is now that the law and fascism seem to have entered into legibility more than before.

If during the last decade the ‘state of exception’ has asserted itself as the effective and dominant paradigm of government in our polities15, if the fundamental distinction between law (as a normative category) and fact has become even hazier, and the ‘exception has reached its maximum worldwide deployment’16, it seems that the shadows of our legal past haunt us once again.

### 2nc alt solves

#### Their technocratic solution to the problem of legal accountability fails—the alternative is a prerequisite

Gregory 13. Derek Gregory, Peter Wall Distinguished Professor of geography at the University of British Columbia, “The individuation of warfare?” August 26, 2013, <http://geographicalimaginations.com/2013/08/26/the-individuation-of-warfare/>, accessed September 7, 2013

These various contributions identify a dispersion of responsibility across the network in which the drone crews are embedded and through which they are constituted.  The technical division of labour is also a social division of labour – so that no individual bears the burden of killing another individual – but the social division of labour is also a technical division of labour through which ‘agency’ is conferred upon what Pugliese calls its prostheses:

‘Articulated in this blurring of lines of accountability is a complex network of prostheticised and tele-techno mediated relations and relays that can no longer be clearly demarcated along lines of categorical divisibility: such is precisely the logic of the prosthetic. As the military now attempts to grapple with this prostheticised landscape of war, it inevitably turns to technocratic solutions to questions of accountability concerning lethal drone strikes that kill the wrong targets.’

If the mandated technical procedures (1 above) fail to execute a sanctioned target (2 above) and if this triggers an investigation, the typical military response is to assign responsibility to the improper performance of particular individuals (which protects the integrity of the process) and/or to technical malfunctions or inefficiencies in the network and its instruments (which prompts technical improvements).  What this does not do – is deliberately designed not to do – is to probe the structure of this ‘techno-legal economy of war at a distance’ (Pugliese’s phrase) that turns, as I’ve tried to suggest, on a highly particular sense of individuation.  Still less do these inquiries disclose the ways in which, to paraphrase Weizman, ‘drones legislate’ by admitting or enrolling into this techno-legal economy particular subjectivities and forcefully excluding others .

### 2nc serial policy failure

#### Conceptualizing targeted killing as a juridical juridical problem causes serial policy failure

Krasmann 12. Susanne Krasmann, prof. Dr, Institute for Criminological Research, University of Hamburg, “Targeted Killing and Its Law: On a Mutually Constitutive Relationship,” Leiden Journal of International Law (2012), 25, pg. 673

According to Foucault, social phenomena cannot be isolated from and are only decipherable within the practices, procedures, and forms of knowledge that allow them to surface as such.50 In this sense, ‘all phenomena are singular, every historical or social fact is a singularity’.51 Hence, they need to be studied within their historically and locally specific contexts, so as to account for both the subject’s singularity and the conditions of its emergence. It is against this background that a crucial question to be posed is how targeted killing could emerge on the political stage as a subject of legal debate. Furthermore, this analytical perspective on power and knowledge intrinsically being interlinked highlights that our access to reality always entails a productive moment. Modes of thinking, or what Foucault calls rationalities, render reality conceivable and thus manageable.52 They implicate certain ways of seeing things, and they induce truth effects whilst translating into practices and technologies of government. These do not merely address and describe their subject; they constitute or produce it.53

Law is to be approached accordingly.54 It cannot be extracted from the forms of knowledge that enact it, and it is in this sense that law is only conceivable as practice. Even if we only think of the law in ideal terms, as being designated to contain governmental interference, for example, or to provide citizens’ rights, it is already a practice and a form of enacting the law. To enforce the law is always a form of enactment, since it involves a productive moment of bringing certain forms of knowledge into play and of rendering legal norms meaningful in the first place. Law is susceptible to certain forms of knowledge and rationalities in a way that these constitute it and shape legal claims. Rather than on the application of norms, legal reasoning is on the production of norms.

Legality, within this account of law, then, is not only due to a normative authority that, based in our political culture, is external to law, nor is it something that is just inherent in law, epitomized by the principles that constitute law’s ‘inner morality’.55 Rather, the enforcement of law and its attendant reasoning produce their own – legal – truth effects. Independently of the purported intentions of the interlocutors, the juridical discourse on targeted killing leads to, in the first instance, conceiving of and receiving the subject in legal terms.

### 2nc turns case

#### The 1ac renders the possibility of drone operations legalized, creating the endpoint in the United States’ geo-legal armature and making a grey area of the law totally permitted,

Gregory 13. Derek Gregory, Peter Wall Distinguished Professor of geography at the University of British Columbia, “The individuation of warfare?” August 26, 2013, <http://geographicalimaginations.com/2013/08/26/the-individuation-of-warfare/>, accessed September 7, 2013

These new modalities increase the asymmetry of war – to the point where it no longer looks like or perhaps even qualifies as war – because they preclude what Joseph Pugliese describes as ‘“a general system of exchange” [the reference is to Achille Mbembe’s necropolitics] between the hunter-killer apparatus ‘and its anonymous and unsuspecting victims, who have neither a right of reply nor recourse to judicial procedure.’

Pugliese insists that drones materialise what he calls a ‘prosthetics of law’, and the work of jurists and other legal scholars provides a revealing window into the constitution of later modern war and what, following Michael Smith, I want to call its geo-legal armature. To date, much of this discussion has concerned the reach of international law – the jurisdiction of international law within(Afghanistan) and beyond (Pakistan, Yemen and Somalia) formal zones of conflict – and the legal manoeuvres deployed by the United States to sanction its use of deadly force in ‘self-defence’ that violates the sovereignty of other states (which includes both international law and domestic protocols like the Authorization for the Use of Military Force and various executive orders issued after 9/11) . These matters are immensely consequential, and bear directly on what Frédéric Mégret [calls](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1986548) ‘[the deconstruction of the battlefield](http://geographicalimaginations.com/2012/11/21/gaza-stripped-the-deconstruction-of-the-battlefield/)’ It’s important to understand that the ‘battlefield’ is more than a physical space; it’s also a normative space – the site of ‘exceptional norms’ within whose boundaries it is permissible to kill other human beings (subject to particular codes, rules and laws). Its deconstruction is not a new process. Modern military violence has rarely been confined to a champ de mars insulated from the supposedly safe spaces of civilian life. Long-range strategic bombing radically re-wrote the geography of war. This was already clear by the end of the First World War, and in 1921 Giulio Douhetcould already confidently declare that

‘By virtue of this new weapon, the repercussions of war are no longer limited by the farthest artillery range of guns, but can be felt directly for hundreds and hundreds of miles… The battlefield will be limited only by the boundaries of the nations at war, and all of their citizens will become combatants, since all of them will be exposed to the aerial offensives of the enemy. There will be no distinction any longer between soldiers and civilians.’

The laboratory for these experimental geographies before the Second World War was Europe’s colonial (dis)possessions – so-called ‘air control’ in North Africa, the Middle East and along the North-West Frontier – but colonial wars had long involved ground campaigns fought with little or no distinction between combatants and civilians.

What does seem to be novel about more recent deconstructions, so Mégret argues, is ‘a deliberate attempt to manipulate what constitutes the battlefield and to transcend it in ways that liberate rather than constrain violence.’

This should not surprise us. Law is not a deus ex machina that presides over war as impartial tribune. Law, Michel Foucault reminds us, ‘is born of real battles, victories, massacres and conquests’; law ‘is born in burning towns and ravaged fields.’ Today so-called ‘operational law’ has incorporated military lawyers into the kill-chain, moving them closer to the tip of the spear, but law also moves in the rear of military violence: in Eyal Weizman’s [phrase](http://www.e-flux.com/journal/the-least-of-all-possible-evils/), ‘violence legislates.’ In the case that most concerns him, that of the Israel Defense Force, military lawyers work in the grey zone between ‘the black’ (forbidden) and ‘the white’ (permitted) and actively seek to turn the grey into the white: to use military violence to extend the permissive envelope of the law.

The liber(alis)ation of violence that Mégret identifies transforms the very meaning of war. In conventional wars combatants are authorised to kill on the basis of what Paul Kahn [calls](http://www.iilj.org/courses/documents/2011Colloquium.Kahn.pdf) their corporate identity:

‘…the combatant has about him something of the quality of the sacred. His acts are not entirely his own….

‘The combatant is not individually responsible for his actions because those acts are no more his than ours…. [W]arfare is a conflict between corporate subjects, inaccessible to ordinary ideas of individual responsibility, whether of soldier or commander. The moral accounting for war [is] the suffering of the nation itself – not a subsequent legal response to individual actors.’

The exception, Kahn continues, which also marks the boundary of corporate agency, is a war crime, which is ‘not attributable to the sovereign body, but only to the individual.’ Within that boundary, however, the enemy can be killed no matter what s/he is doing (apart from surrendering). There is no legal difference between killing a general and killing his driver, between firing a missile at a battery that is locking on to your aircraft and dropping a bomb on a barracks at night. ‘The enemy is always faceless,’ Kahn explains, ‘because we do not care about his personal history any more than we care about his hopes for the future.’ Combatants are vulnerable to violence not only because they are its vectors but also because they are enrolled in the apparatus that authorizes it: they are killed not as individuals but as the corporate bearers of a contingent (because temporary) enmity.

## 1NR

### 2NC Impact

#### The aff kills nuanced debates

Kenneth Anderson 11, Professor at Washington College of Law, American University, Hoover Institution visiting fellow, Non-Resident Visiting Fellow at Brookings, “Efficiency in Bello and ad Bellum: Targeted Killing Through Drone Warfare,” Sept 23 2011, http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=1812124

Speaking to the broad future of the technology, however, and given the direction of technology and cost, it appears inevitable that drones will take on many more operational roles over time, whether in conventional war, special operations, and what has here been called generically “intelligence-driven uses of force.” Drones will likely evolve – as aircraft, as well as in the weapons and sensor systems they bear – into many specialized types. They will get both bigger and smaller than they are now, for example, and they will surely evolve into those specialized for surveillance and those specialized to fire weapons. And they will also surely evolve into those specialized in high-value, “intelligence-driven” targeted killing of individuals and those that are suited to conventional operations. Bearing in mind these increasingly varied uses is essential to understanding, when it comes to targeted killing and/or drone warfare, that one-size-fits-all legal analysis is not sufficient.

#### Best consensus definition of targeted killings excludes signature strikes---identification of individual targets is the key defining factor throughout the lit

Philip Alston 11, the John Norton Pomeroy Professor of Law, New York University School of Law, was UN Special Rapporteur on extrajudicial, summary or arbitrary executions from 2004 until 2010, 2011, “ARTICLE: The CIA and Targeted Killings Beyond Borders,” Harvard National Security Journal, 2 Harv. Nat'l Sec. J. 283

As with many terms that have entered the popular consciousness as though they had a clear and defined meaning, there is no established or formally agreed upon legal definition of the term "targeted killings" and scholarly definitions vary widely. Some commentators have sought to "call a spade a spade" and used terms such as "leadership decapitation," n30 which clearly captures only some of the practices at stake, assassinations, n31 or "extrajudicial executions," which has the downside of building per se illegality into the description of the process, or "targeted pre-emptive actions," which is designed to characterize a killing as a legal exercise of the right of self-defense. n32 But these usages have not caught on and do not seem especially helpful in light of the range of practices generally sought to be covered by the use of the term-targeted killing.

The term was brought into common usage after 2000 to describe Israel's self-declared policy of "targeted killings" of alleged terrorists in the Occupied Palestinian Territories. n33 But influential commentators also sought to promote more positive terminology. The present head of the [\*296] Israeli Military Intelligence Directorate, for example, argued that they should be termed "preventive killing," which was consistent with the fact that they were "acts of self-defense and justified on moral, ethical and legal grounds." n34 Others followed suit and adopted definitions designed to reflect Israeli practice. n35 Kremnitzer, for example, defined a "preventative (targeted) killing" as "the intended and precise assassination of an individual; in many cases of an activist who holds a command position in a military organization or is a political leader." n36 For Kober, it is the "selective execution of terror activists by states." n37 But such definitions reflect little, if any, recognition of the constraints imposed by international law, a dimension to which subsequent definitions have, at least in theory, been more attuned. Most recently, Michael Gross has defined such killing as "an unavoidable, last resort measure to prevent an immediate and grave threat to human life." Although this too remains rather open-ended, Gross relies on international standards to defend it when he suggests that it tracks "exactly the same rules that guide law enforcement officials." n38 He cites as authority for that proposition the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, n39 but these principles contain no such provisions. The quotation he uses is, in fact, a rough summary of the text of Article 2(2) of the European Convention on Human Rights, a standard that was adopted in 1950 and has since been interpreted in a much more restrictive manner than he suggests. n40 Gross then goes on to suggest that the approach he proposes is "like that of the Israeli courts," when in fact the key judgment of the Israeli Supreme Court on the question [\*297] of targeted killings does not apply international human rights law at all, but instead uses the customary law applicable to international armed conflicts. n41

At the other end of the definitional spectrum is a five-part definition proposed by Gary Solis. For there to be a targeted killing: (i) there must be an armed conflict, either international or non-international in character; (ii) the victim must be specifically targeted; (iii) he must be "beyond a reasonable possibility of arrest"; (iv) the killing must be authorized by a senior military commander or the head of government; (v) and the target must be either a combatant or someone directly participating in the hostilities. n42 But whereas Gross seeks to use a human rights-based definition, Solis proposes one which is unsuitable outside of international humanitarian law.

A more flexible approach is needed in order to reflect the fact that "targeted killing" has been used to describe a wide range of situations. They include, for example: the killing of a "rebel warlord" by Russian armed forces, the killing of an alleged al Qaeda leader and five other men in Yemen by a CIA-operated Predator drone using a Hellfire missile; killings by both the Sri Lankan government and the Liberation Tigers of Tamil Eelam of individuals accused by each side of collaborating with the other; and the killing in Dubai of a Hamas leader in January 2010, allegedly carried out by a team of Israeli Mossad intelligence agents. Targeted killings therefore take place in a variety of contexts and may be committed by governments and their agents in times of peace as well as armed conflict, or by organized armed groups in armed conflict. The means and methods of killing vary, and include shooting at close range, sniper fire, firing missiles from helicopters or gunships, firing from UAVs, the use of car bombs, and poison.

There are thus three central requirements for a workable definition. The first is that it be able to embrace the different bodies of international law that apply and is not derived solely from either IHRL or IHL. The second is that it should not prejudge the question of the legality or illegality [\*298] of the practice in question. And the third is that it must be sufficiently flexible to be able to encompass a broad range of situations in relation to which it has regularly been applied.

The common element in each of the very different contexts noted earlier is that lethal force is intentionally and deliberately used, with a degree of pre-meditation, against an individual or individuals specifically identified in advance by the perpetrator. n43 In a targeted killing, the specific goal of the operation is to use lethal force. This distinguishes targeted killings from unintentional, accidental, or reckless killings, or killings made without conscious choice. It also distinguishes them from law enforcement operations, e.g., against a suspected suicide bomber. Under such circumstances, it may be legal for law enforcement personnel to shoot to kill based on the imminence of the threat, but the goal of the operation, from its inception, should not be to kill.

Although in most circumstances targeted killings violate the right to life, in the exceptional circumstance of armed conflict, they may be legal. This is in contrast to other terms with which "targeted killing" has sometimes been interchangeably used, such as "extrajudicial execution," "summary execution," and "assassination," all of which are, by definition, illegal. n44 Consistent with the detailed analysis developed by Nils Melzer, n45 this Article adopts the following definition: a targeted killing is the intentional, premeditated, and deliberate use of lethal force, by States or their agents acting under color of law, or by an organized armed group in armed conflict, against a specific individual who is not in the physical custody of the perpetrator. n46

### precision good

#### Precision is vital—turns solvency and research quality

**Resnick 1** [Evan Resnick, Journal of International Affairs, 0022197X, Spring 2001, Vol. 54, Issue 2, “Defining Engagement”]

In matters of national security, establishing a clear definition of terms is a precondition for effective policymaking. Decisionmakers who invoke critical terms in an erratic, ad hoc fashion risk alienating their constituencies. They also risk exacerbating misperceptions and hostility among those the policies target. Scholars who commit the same error undercut their ability to conduct valuable empirical research. Hence, if scholars and policymakers fail rigorously to define "engagement," they undermine the ability to build an effective foreign policy.

#### Precision outweighs

Gene Whitney (Section Research Manager at the Congressional Research Service), Carl E. Behrens (Specialist in Energy Policy at the CRS) and Carol Glover (Information Research Specialist at the CRS) November 2010 “U.S. Fossil Fuel Resources:

Terminology, Reporting, and Summary” http://epw.senate.gov/public/index.cfm?FuseAction=Files.view&FileStore\_id=04212e22-c1b3-41f2-b0ba-0da5eaead952

Terminology A search for energy statistics in the literature quickly reveals a large number of terms used to describe amounts of fossil fuels. Most of these terms have precise and legitimate definitions, and even a careful comparison of statistics for diverse forms of fossil fuels can become quite difficult to reconcile or understand. Not only do oil, natural gas, and coal occur in many diverse geologic environments, but each commodity may occur in different modes or in different geologic settings that impose vastly different economics on their recovery and delivery to market. A vocabulary of terms has developed over the decades to capture the nature of deposits in terms of their likelihood of being developed and their stage of development.

### limits good

#### Limits outweigh:

#### 1. Participation

**Rowland 84** (Robert C., Baylor U., “Topic Selection in Debate”, American Forensics in Perspective. Ed. Parson, p. 53-4)

The first major problem identified by the work group as relating to topic selection is the decline in participation in the National Debate Tournament (NDT) policy debate. As Boman notes: There is a growing dissatisfaction with academic debate that utilizes a policy proposition. Programs which are oriented toward debating the national policy debate proposition, so-called “NDT” programs, are diminishing in scope and size.4 This decline in policy debate is tied, many in the work group believe, to excessively broad topics. The most obvious characteristic of some recent policy debate topics is extreme breath. A resolution calling for regulation of land use literally and figuratively covers a lot of ground. Naitonal debate topics have not always been so broad. Before the late 1960s the topic often specified a particular policy change.5 The move from narrow to broad topics has had, according to some, the effect of limiting the number of students who participate in policy debate. First, the breadth of the topics has all but destroyed novice debate. Paul Gaske argues that because the stock issues of policy debate are clearly defined, it is superior to value debate as a means of introducing students to the debate process.6 Despite this advantage of policy debate, Gaske belives that NDT debate is not the best vehicle for teaching beginners. The problem is that broad policy topics terrify novice debaters, especially those who lack high school debate experience. They are unable to cope with the breadth of the topic and experience “negophobia,”7 the fear of debating negative. As a consequence, the educational advantages associated with teaching novices through policy debate are lost: “Yet all of these benefits fly out the window as rookies in their formative stage quickly experience humiliation at being caugh without evidence or substantive awareness of the issues that confront them at a tournament.”8 The ultimate result is that fewer novices participate in NDT, thus lessening the educational value of the activity and limiting the number of debaters or eventually participate in more advanced divisions of policy debate. In addition to noting the effect on novices, participants argued that broad topics also discourage experienced debaters from continued participation in policy debate. Here, the claim is that it takes so much times and effort to be competitive on a broad topic that students who are concerned with doing more than just debate are forced out of the activity.9 Gaske notes, that “broad topics discourage participation because of insufficient time to do requisite research.”10 The final effect may be that **entire programs** either **cease functioning** or shift to value debate as a way to avoid unreasonable research burdens. Boman supports this point: “It is this expanding necessity of evidence, and thereby research, which has created a competitive imbalance between institutions that participate in academic debate.”11 In this view, it is the competitive imbalance resulting from the use of broad topics that has led some small schools to cancel their programs.

#### 2. Innovation

Intrator, 10 [David President of The Creative Organization, October 21, “Thinking Inside the Box,” http://www.trainingmag.com/article/thinking-inside-box

One of the most pernicious myths about creativity, one that seriously inhibits creative thinking and innovation, is the belief that one needs to “think outside the box.” As someone who has worked for decades as a professional creative, nothing could be further from the truth. This a is view shared by the vast majority of creatives, expressed famously by the modernist designer Charles Eames when he wrote, “Design depends largely upon constraints.” The myth of thinking outside the box stems from a fundamental misconception of what creativity is, and what it’s not. In the popular imagination, creativity is something weird and wacky. The creative process is magical, or divinely inspired. But, in fact, creativity is not about divine inspiration or magic. It’s about problem-solving, and by definition a problem is a constraint, a limit, a box. One of the best illustrations of this is the work of photographers. They create by excluding the great mass what’s before them, choosing a small frame in which to work. Within that tiny frame, literally a box, they uncover relationships and establish priorities. What makes creative problem-solving uniquely challenging is that you, as the creator, are the one defining the problem. You’re the one choosing the frame. And you alone determine what’s an effective solution. This can be quite demanding, both intellectually and emotionally. Intellectually, you are required to establish limits, set priorities, and cull patterns and relationships from a great deal of material, much of it fragmentary. More often than not, this is the material you generated during brainstorming sessions. At the end of these sessions, you’re usually left with a big mess of ideas, half-ideas, vague notions, and the like. Now, chances are you’ve had a great time making your mess. You might have gone off-site, enjoyed a “brainstorming camp,” played a number of warm-up games. You feel artistic and empowered. But to be truly creative, you have to clean up your mess, organizing those fragments into something real, something useful, something that actually works. That’s the hard part. It takes a lot of energy, time, and willpower to make sense of the mess you’ve just generated. It also can be emotionally difficult. You’ll need to throw out many ideas you originally thought were great, ideas you’ve become attached to, because they simply don’t fit into the rules you’re creating as you build your box.

#### Also productivity

Slee, 10 [Mark Slee, May 24, 2010, “Are limitless resources or a certain number of constraints more beneficial for creativity?,” online: http://www.quora.com/Art-Creativity/Are-limitless-resources-or-a-certain-number-of-constraints-more-beneficial-for-creativity]

Both anecdotally and from personal experience, I'm inclined to say that constraints are a strong enabler of creative output, and a requirement for most. The degree certainly varies by individual and depends upon the method. With that said, I think the most commonly applied creative approach essentially involves two steps: \* Define a set of parameters to work within (you'll often hear artists/musicians speaking similarly about "setting up a creative space") \* Explore the space as freely and fully as possible (the bulk of creative time tends to be spent in this phase) The obvious pitfalls here are creating either too large or too narrow a space to work in. Intuitively, it may seem that a larger space is better due to the freedom it affords, but I tend to think the opposite is actually the case. Having too many variables or resources to work with can be very paralyzing, especially for highly creative types. Highly creative people may easily overwhelm themselves with an incredible number of exciting new ideas, which can make it very difficult to actually execute on anything (I don't have personal experience with attention-deficit hyperactivity disorder, but I imagine there's a reasonably strong analogy to be made here). Generating creative output (not just a deluge of ideas) requires finding a way to artificially suppress the firehose of competing new concepts, thereby enabling a more intense focus.

#### Empirical ev

Slee, 10 [Mark Slee, May 24, 2010, “Are limitless resources or a certain number of constraints more beneficial for creativity?,” online: http://www.quora.com/Art-Creativity/Are-limitless-resources-or-a-certain-number-of-constraints-more-beneficial-for-creativity]

There are countless clear examples of this approach. Pablo Picasso had his Blue Period. Mark Rothko spent a great deal of time exploring compositions of colored rectangles. Most musical composers use highly restricted forms, in both structure and instrumentation, and some composers will write countless variations on a single piece. Brian Eno talks a lot about generative music, which evolves from a fixed set of starting rules. Periods of Frank Lloyd Wright's architecture, or even architectural trends in general, show adherence to clear themes (many constrained by the requirements of structural engineering). I actually think it is more difficult to identify great works of creativity that have not employed constraints, many of which are self-imposed.

### 2NC A2: Not Distinct

#### The government also draws a distinction between the two

Micah Zenko 12, the Douglas Dillon Fellow at the Council on Foreign Relations, 7/16/12, “Targeted Killings and Signature Strikes,” http://blogs.cfr.org/zenko/2012/07/16/targeted-killings-and-signature-strikes/

Although signature strikes have been known as a U.S. counterterrorism tactic for over four years, no administration official has acknowledged or defended them on-the-record. Instead, officials emphasize that targeted killings with drones (the official term is “targeted strikes”) are only carried out against specific individuals, which are usually lumped with terms like “senior” and “al-Qaeda.”

Harold Koh: “The United States has the authority under international law, and the responsibility to its citizens, to use force, including lethal force, to defend itself, including by targeting persons such as high-level al-Qaeda leaders who are planning attacks.”

John Brennan: “This Administration’s counterterrorism efforts outside of Afghanistan and Iraq are focused on those individuals who are a threat to the United States.”

Jeh Johnson: “In an armed conflict, lethal force against known, individual members of the enemy is a long-standing and long-legal practice.”

Eric Holder: “Target specific senior operational leaders of al Qaeda and associated forces.”

In April, Brennan was asked, “If you could address the issue of signature strikes, which I guess aren’t necessarily targeted against specific individuals?” He replied: “You make reference to signature strikes that are frequently reported in the press. I was speaking here specifically about targeted strikes against individuals who are involved.” Shortly thereafter, when the White House spokesperson was asked about drone strikes, he simply stated: “I am not going to get into the specifics of the process by which these decisions are made.”

#### Historical analysis proves

Afsheen John Radsan 12, Professor, William Mitchell College of Law, Assistant General Counsel at the Central Intelligence Agency from 2002 to 2004; and Richard Murphy, the AT&T Professor of Law, Texas Tech University School of Law, 2012, “The Evolution of Law and Policy for CIA Targeted Killing,” Journal of National Security Law & Policy, Vol. 5, p. 439-463

Some of the concerns about a CIA drone campaign relate to the personalized nature of targeted killing. All attacks in an armed conflict must, as a matter of basic law and common sense, be targeted. To attack something, whether by shooting a gun at a person or dropping a bomb on a building, is to target it. “Targeted killing,” however, refers to a premeditated attack on a specific person. President Franklin D. Roosevelt, for instance, ordered Admiral Yamamoto killed not because he was any Japanese sailor, but because he was the author of “tora, tora, tora” on Pearl Harbor. President Obama, more recently, ordered Osama bin Laden killed not because the Saudi was any member of al Qaeda, but because he was the author of 9/11 who continued to command the terrorist organization. Targeted killing is psychologically disturbing because it is individualized. It is easier for a U.S. operator to kill a faceless soldier in a uniform than someone whom the operator has been tracking with photographs, videos, voice samples, and biographical information in an intelligence file.

### 2NC A2: Contextual Definitions

#### Contextual definitions bad – intent to define outweighs

Eric Kupferbreg 87, University of Kentucky, Senior Assistant Dean, Academic & Faculty Affairs at Northeastern University, College of Professional Studies Associate Director, Trust Initiative at Harvard School of Public Health 1987 “Limits - The Essence of Topicality” http://groups.wfu.edu/debate/MiscSites/DRGArticles/Kupferberg1987LatAmer.htm

Often, field contextual definitions are too broad or too narrow for debate purposes. Definitions derived from the agricultural sector necessarily incorporated financial and bureaucratic factors which are less relevant in considering a 'should' proposition. Often subject experts' definitions reflected administrative or political motives to expand or limit the relevant jurisdiction of certain actors. Moreover, field context is an insufficient criteria for choosing between competing definitions. A particularly broad field might have several subsets that invite restrictive and even exclusive definitions. (e.g., What is considered 'long-term' for the swine farmer might be significantly different than for the grain farmer.) Why would debaters accept definitions that are inappropriate for debate? If we admit that debate is a unique context, then additional considerations enter into our definitional analysis.

#### authority means permission, not ability

Taylor, 96 – professor of law at Georgia State (Ellen, “New and Unjustified Restrictions on Delaware Directors' Authority” 21 Del. J. Corp. L. 870 (1996), Hein Online)

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

#### cp answer is power of the purse, that’s not authority

**Paulsen, 10** - Distinguished University Chair & Professor of Law, The University of St. Thomas (Michael, “The War Power”, 114 Harvard Journal of Law & Public Policy [Vol. 33, <http://www.harvard-jlpp.com/wp-content/uploads/2010/01/paulsen.pdf>)

Some folks mistakenly take this to mean that Congress’s real war power is the appropriations power and that the “declare War” clause is either toothless, mere surplusage, or must mean something other than a war‐authorization power.51 Not at all. The power to declare war—or not—remains the relevant substantive power of Congress. The power over appropriations is merely Congress’s trump‐card, “shoot‐out” power—a different substantive power, but a powerful one that Congress may em‐ ploy to effectuate its other constitutional powers, including its substantive constitutional power to initiate war. But note that de‐funding does not de‐authorize; a resumption of funding would return to the President the practical ability to continue to wage war without need for re‐authorization. There remains a legitimate debate over the propriety of Congress using its appropriations power so as to leverage it into impairment of the President’s Commander‐in‐Chief Clause powers—but without having repealed a declaration or authorization of war. This may be unfair, but it too would seem to be a part of the separation‐of‐powers game. The branches may attempt to leverage the powers they have in order to press their respective positions with respect to the Constitution’s (sometimes debatable) allocations of the war power. And the branches may, and should, resist such leveraging by the others with the powers at their disposal. Put concretely, Congress may push but the President should push back.52

Voting issue for predictable limits and negative ground. The aff sidesteps the number one controversy in the topic literature about the allocation of authority

### 2nc at: reasonability

#### 1. Voting for the better topic is the only standard not manipulated to set the bar just low enough for questionable affs. The existence of any other aff proves they chose this one for strategic gain, not out of necessity.

#### 2. Begs the question—reasonability is a function of everything above, asserting a general standard for “good enough” takes the debate out of the hands of the debaters and crushes predictability.

**They say race to the bottom, but…**

If our interpretation is arbitrary they should be able to impact why, the only race to the bottom is determining they’re reasonable BEFORE looking at the rest of the flow.

**They say we have ground, but…**

It’s a function of predictable limits—we also have ground against the poverty topic but that doesn’t make a Medicaid aff topical.

**And, their arg makes them violate core meaning of substantial—independent voter**

**Brennan 88** (Justice, Pierce v. Underwood (Supreme Court Decision), 487 U.S. 552, http://socsec.law. cornell.edu/cgi-bin/foliocgi.exe/socsec\_case\_full/query=%5Bjump!3A!27487+u!2Es!2E+552+opinion+n1!2 7%5D/doc/%7B@ 825%7D?)

The underlying problem with the Court's methodology is that it uses words or terms with similar, but not identical, meanings as a substitute standard, rather than as an aid in choosing among the assertedly different meanings of the statutory language. Thus, instead of relying on the legislative history and other tools of interpretation to help resolve the ambiguity in the word "substantial," the Court uses those tools essentially to jettison the phrase crafted by Congress. This point is well illustrated by the Government's position in this case. Not content with the term "substantially justified," the Government asks us to hold that it may avoid fees if its position was "reasonable." Not satisfied even with that substitution, we are asked to hold that a position is "reasonable" if "it has some substance and a fair possibility of success." Brief for Petitioner 13. While each of the Government's successive definitions may not stray too far from the one before, the end product is significantly removed from "substantially justified." I believe that Congress intended the EAJA to do more than award fees where the Government's position was one having no substance, or only a slight possibility of success; I would hope that the Government rarely engages in litigation fitting that definition, and surely not often enough to warrant the $ 100 million in attorney's fees Congress expected to spend over the original EAJA's 5-year life. My view that "substantially justified" means **more than merely reasonable**, aside from conforming to the words Congress actually chose, is bolstered by the EAJA's legislative history. The phrase "substantially justified" was a congressional attempt to fashion a "middle ground" between an earlier, unsuccessful proposal to award fees in all cases in which the Government did not prevail, and the Department of Justice's proposal to award fees only when the Government's position was "arbitrary, frivolous, unreasonable, or groundless." S. Rep., at 2-3. Far from occupying the middle ground, "the test of reasonableness" is firmly encamped near the position espoused by the Justice Department. Moreover, the 1985 House Committee Report pertaining to the EAJA's reenactment expressly states that "substantially justified" means more than "mere reasonableness." H. R. Rep. No. 99-120, p. 9 (1985). Although I agree with the Court that this Report is not dispositive, the Committee's unequivocal rejection of a pure "reasonableness" standard in the course of considering the bill reenacting the EAJA is deserving of some weight. Finally, however lopsided the weight of authority in the lower courts over the meaning of "substantially justified" might once have been, lower court opinions are no longer nearly unanimous. The District of Columbia, Third, Eighth, and Federal Circuits have all adopted a standard higher than mere reasonableness, and the Sixth Circuit is considering the question en banc. See Riddle v. Secretary of Health and Human Services, 817 F.2d 1238 (CA6) (adopting a higher standard), vacated for rehearing en banc, 823 F.2d 164 (1987); Lee v. Johnson, 799 F.2d 31 (CA3 1986); United States v. 1,378.65 Acres of Land, 794 F.2d 1313 (CA8 1986); Gavette v. OPM, 785 F.2d 1568 (CA Fed. 1986) (en banc); Spencer v. NLRB, 229 U. S. App. D. C. 225, 712 F.2d 539 (1983). In sum, the Court's journey from "substantially justified" to "reasonable basis both in law and fact" to "the test of reasonableness" does not crystallize the law, nor is it true to Congress' intent. Instead, it allows the Government to creep the standard towards "having some substance and a fair possibility of success," a position I believe Congress intentionally avoided. In my view, we should hold that the Government can avoid fees only where it makes a clear showing that its position had a solid basis (as opposed to a marginal basis or a not unreasonable basis) in both law and fact. That it may be less "anchored" than "the test of reasonableness," a debatable proposition, is no excuse to abandon the test Congress enacted. n2