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### 1

#### Restriction is a prohibition

**Oxford English Dictionary, 89** (“restrict” Second edition, http://quod.lib.umich.edu/cgi/o/oed/oed-idx?type=entry&byte=379013667)

restrict

b. To restrain by prohibition.

1835 Penny Cycl. III. 381/1 The act of 1797, which restricted the Bank from making payments in gold.

#### The aff regulates authority, they don’t prohibit the action

Sinha 6

<http://www.indiankanoon.org/doc/437310/>

Supreme Court of India Union Of India & Ors vs M/S. Asian Food Industries on 7 November, 2006 Author: S.B. Sinha Bench: S Sinha, Mark, E Katju CASE NO.: Writ Petition (civil) 4695 of 2006 PETITIONER: Union of India & Ors. RESPONDENT: M/s. Asian Food Industries DATE OF JUDGMENT: 07/11/2006 BENCH: S.B. Sinha & Markandey Katju JUDGMENT: J U D G M E N T [Arising out of S.L.P. (Civil) No. 17008 of 2006] WITH CIVIL APPEAL NO. 4696 OF 2006 [Arising out of S.L.P. (Civil) No. 17558 of 2006] S.B. SINHA, J :

We may, however, notice that this Court in State of U.P. and Others v. M/s. Hindustan Aluminium Corpn. and others [AIR 1979 SC 1459] stated the law thus:

"It appears that a distinction between regulation and restriction or prohibition has always been drawn, ever since Municipal Corporation of the City of Toronto v. Virgo. Regulation promotes the freedom or the facility which is required to be regulated in the interest of all concerned, whereas prohibition obstructs or shuts off, or denies it to those to whom it is applied. The Oxford English Dictionary does not define regulate to include prohibition so that if it had been the intention to prohibit the supply, distribution, consumption or use of energy, the legislature would not have contented itself with the use of the word regulating without using the word prohibiting or some such word, to bring out that effect."

#### Voting issue – the destroy predictable limits, conditions on authority are multi-directional, and there are dozens of different small conditions on any executive action. They can claim to enhance the credibility of executive actions- effectively making the topic bidirectional

### 2

#### 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.

### 3

#### 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 regarding targeted killing as a first resort outside zones of active hostilities. The Department of Justice officials involved should counsel against using targeted killing as a first resort outside zones of active hostilities. The Executive Order should also require written publication of Office of Legal Counsel opinions.

#### The counterplan restrains the executive through DOJ adjudication—solves case through pre-commitment

**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 makes the counterplan credible and checks impulsive decisions

**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.

### 4

#### Rather than entering the legal threshold at all, you should adopt a messianic approach to the law. Accepting the plan as a legitimate subject of debate eviscerates sovereignty—instead we should enter into study to deactivate the sovereign myths about the law that justify its perversion

McLoughlin 13. Daniel McLoughlin, professor of law at the University of South Wales, “The Fiction of Sovereignty and the Real State of Exception: Giorgio Agamben’s Critique of Carl Schmitt,” Law, Culture and the Humanities 0(0) pg. 17

State of Exception suggests that the studious deactivation of the law is exemplified by Kafka’s characters.86 While his reading of Kafka is only one strand of the politics of inoperativity within his work, it is nonetheless an important one for our purposes, given Agamben’s tendency to illuminate the relationship between messianism, nihil- ism and law through Kafka.87 To conclude, then, I briefly examine the way in which Kafka’s characters seek to “deactivate” the law; how this might relate to the production of a “real state of exception”; and how Agamben conceives the stakes of this politics of “use.”

According to Homo Sacer, Kafka’s parable “Before the Law” represents the “struc- ture of the sovereign ban in an exemplary abbreviation.”88 The story begins with the “man from the country” approaching the door of the law, only to be informed by its gatekeeper that, although the door is open, he cannot enter at the moment. The man asks if permission will be forthcoming: the gatekeeper responds that it is possible, “but not now,”89 and that, although he is welcome to enter the door without permission, he will only encounter door after door, and guardian after guardian, each more fearsome than the last. Taking a seat before the door of the law, the man from the country then waits for days and years, all the while trying to convince the gatekeeper to grant him entry. Still before the law in old age, with little time left to live, he sees a radiance streaming from the gateway to the law. As his life begins to fade, the man from the country asks why in all this time no-one else has attempted to gain entry, to which the doorkeeper responds: “No one else could ever be admitted here, since this gate was made only for you. I am now going to shut it.”90

According to Agamben, “Before the Law” is usually read as a tale of “irremediable defeat,”91 a story of the impossibility of surpassing the structure of sovereignty. Agamben, by contrast, argues that the man from the country is engaged in a patient and ultimately successful attempt to deactivate the law’s “being in force without sig- nificance.” At the end of the story, despite the risk to his life entailed by his struggle with the law, the man remains alive and the door to the Law is shut. In his essay “K,” Agamben elaborates on this reading with a subtle yet important shift of emphasis: the lesson of the man from the country is, he argues, that the deactivation of the law does not require the study of law itself, but rather, the “long study of its doorkeepers.”92 While the law is absent in Kafka’s world, what keeps it at work is the fact that the guardians of the law claim to act on its behalf. If one wants to deactivate the law, then the decisive politi- cal struggle is not with law itself, which is already inoperative, but with those who cover over this fact with the claim that they represent the law. In the same essay, Agamben makes a similar point about The Castle: the land surveyor who tries to gain access to the castle does not engage in a struggle “against God or supreme sovereignty ... but against the angels, the messengers and functionaries who appear to represent it ... (it is) a conflict with the fabrications of men (or of angels) regarding the divine.”93

This helps to illuminate the sense in which the real state of exception can simultane- ously be a situation to which we are subject; a situation that has been exposed as such by Benjamin; and also a crucial political task to undertake that will “help in the struggle against Fascism.” In Agamben’s account of Paul, the coming of the messiah has deacti- vated the law and yet the law remains at work; in his analyses of the state of exception the law is suspended yet remains in force; in his reading of Kafka, the Law is absent yet still present. In each instance, then, there is a messianic tension between an “already” existing lawlessness that is “not yet” fully experienced as such, because it is being cov- ered over by authority: the katechon in Paul, the guardians of the law in Kafka, and those trying to control the state in his account of the exception. To produce a real state of exception is to deactivate the law, which requires undermining the claims of the repre- sentatives of the law and the political divisions that they maintain on this basis. While the lawlessness of the real state of exception is at work, it can only come to light in and through a “conflict with the fabrications of men” about the continued existence of law.94

Agamben sees the politics of deactivating the law as the only appropriate (and indeed conceptually viable) response to the state of emergency as rule. As we have observed, Schmitt’s analysis of sovereignty closed down the idea of pure violence and the possi- bility of a radically revolutionary act through the idea of the force-of-law, which placed the power to suspend the law into the hands of the state and those who seek to control it. However, Benjamin’s eighth thesis turns the tables on Schmitt, as the idea of sover- eignty becomes utterly implausible when the state of emergency is the rule. Within the contemporary political horizon, then, it is conceptually impossible to claim legal author- ity and legitimacy: as Agamben asserts in The Church and the Kingdom “nowhere on earth today is a legitimate power to be found.”95 What is conceptually possible, how- ever, is a politics that seeks to deactivate the law by neutralizing the claims to legality made by those who present themselves as its guardians. It is only through such a politics that the lawlessness of the ‘‘real state of exception’’ is experienced as such, as any poli- tics that makes claims to legal authority rests upon the fiction of sovereignty and hence continues to conceal the deactivation of the law.

What is at stake in this account of the real state of exception is an attempt to break with the sense of political stagnation that characterizes contemporary politics. In a frag- ment from The Coming Community entitled “Halos,” Agamben recounts a version of a parable about the Kingdom of the Messiah told to Ernst Bloch by Walter Benjamin: “The Hassidim tell a story about the world to come that says everything there will be just as it is here. Just as our room is now, so will it be in the world to come; where our baby sleeps now, there too it will sleep in the other world. And the clothes we wear in this world, so too we will wear there. Everything will be as it is now, just a little bit different.”96 After recounting Benjamin’s version of the parable, Agamben goes on to say that “the tiny displacement does not refer to things, but to their sense and their limits ... the parable introduces a possibility there where everything is perfect, an ‘otherwise’ where every- thing is finished forever.”97 For Agamben, then, the sense of “inversion” that is charac- teristic of Benjamin’s messianism brings to light a possibility to be otherwise. Similarly, Agamben’s messianic inversion of sovereignty responds to a sense of political closure by trying to introduce a sense that it is possible for things to be otherwise.

Throughout his political work, he asserts that the political tradition has reached its end due to the increasing indistinction of the fundamental oppositions (law/anomie, politics/ life) that have historically delimited the political and thereby made it possible. The con- ceptual and institutional structures that framed and helped to make sense of our political experience have collapsed and it is not possible to return to their shelter.98 Despite this crisis, we do not seem capable of conceiving of political experience beyond the terms offered by the political tradition, and the theory of sovereignty plays a key role in this sense of political closure, anchoring all political experience to the law, and foreclosing the idea of a political action that breaks with the order of legal violence.

By undermining the idea of sovereignty, Benjamin’s eighth thesis re-opens the con- ceptual possibility of a politics of pure violence. Pure violence is, Agamben writes, mani- fest in the purification of violence: that is, in the “exposure and deposition”99 of the nexus between violence and law. This is precisely what Benjamin achieves in his philo- sophical combat with Schmitt, meaning that the eighth thesis is a manifestation of the politics of pure violence at the level of theory.100 But while Benjamin may have disabled the apparatus of sovereignty at a philosophical level, the force-of-law is consistently invoked by the messengers and guardians of the law to justify the anomic violence that is leading us towards catastrophe.101 Benjamin’s eighth thesis then grounds Agamben’s call for, and attempt to theorize the conditions of, a messianic politics dedicated to bringing to light the inoperativity of the law that is already at work in the politics of our time. For Agamben, to live messianically means to take the illegitimacy of state power as the premise of one’s politics: to act on the basis that the law is already inoperative, that the claims to authority of its representatives are a fiction, and that their power needs to be deactivated.

#### The impact is the sovereign’s ability to exploit fundamental flaws in the legal system and continue the global biopolitical war—the ballot should side with the global countermovement against such violence

Gulli 13. Bruno Gulli, professor of history, philosophy, and political science at Kingsborough College in New York, “For the critique of sovereignty and violence,” <http://academia.edu/2527260/For_the_Critique_of_Sovereignty_and_Violence>, pg. 1

We live in an unprecedented time of crisis. The violence that characterized the twentieth century, and virtually all known human history before that, seems to have entered the twenty-first century with exceptional force and singularity. True, this century opened with the terrible events of September 11. However, September 11 is not the beginning of history. Nor are the histories of more forgotten places and people, the events that shape those histories, less terrible and violent – though they may often be less spectacular. The singularity of this violence, this paradigm of terror, does not even simply lie in its globality, for that is something that our century shares with the whole history of capitalism and empire, of which it is a part. Rather, it must be seen in the fact that terror as a global phenomenon has now become self-conscious. Today, the struggle is for global dominance in a singularly new way, and war –regardless of where it happens—is also always global. Moreover, in its self-awareness, terror has become, more than it has ever been, an instrument of racism. Indeed, what is new in the singularity of this violent struggle, this racist and terrifying war, is that in the usual attempt to neutralize the enemy, there is a cleansing of immense proportion going on. To use a word which has become popular since Michel Foucault, it is a biopolitical cleansing. This is not the traditional ethnic cleansing, where one ethnic group is targeted by a state power – though that is also part of the general paradigm of racism and violence. It is rather a global cleansing, where the sovereign elites, the global sovereigns in the political and financial arenas (capital and the political institutions), in all kinds of ways target those who do not belong with them on account of their race, class, gender, and so on, but above all, on account of their way of life and way of thinking. These are the multitudes of people who, for one reason or the other, are liable for scrutiny and surveillance, extortion (typically, in the form of over- taxation and fines) and arrest, brutality, torture, and violent death. The sovereigns target anyone who, as Giorgio Agamben (1998) shows with the figure of homo sacer, can be killed without being sacrificed – anyone who can be reduced to the paradoxical and ultimately impossible condition of bare life, whose only horizon is death itself. In this sense, the biopolitical cleansing is also immediately a thanatopolitical instrument.

The biopolitical struggle for dominance is a fight to the death. Those who wage the struggle to begin with, those who want to dominate, will not rest until they have prevailed. Their fanatical and self-serving drive is also very much the source of the crisis investing all others. The point of this essay is to show that the present crisis, which is systemic and permanent and thus something more than a mere crisis, cannot be solved unless the struggle for dominance is eliminated. The elimination of such struggle implies the demise of the global sovereigns, the global elites – and this will not happen without a global revolution, a “restructuring of the world” (Fanon 1967: 82). This must be a revolution against the paradigm of violence and terror typical of the global sovereigns. It is not a movement that uses violence and terror, but rather one that counters the primordial terror and violence of the sovereign elites by living up to the vision of a new world already worked out and cherished by multitudes of people. This is the nature of counter-violence: not to use violence in one’s own turn, but to deactivate and destroy its mechanism. At the beginning of the modern era, Niccolò Machiavelli saw the main distinction is society in terms of dominance, the will to dominate, or the lack thereof. Freedom, Machiavelli says, is obviously on the side of those who reject the paradigm of domination:

[A]nd doubtless, if we consider the objects of the nobles and of the people, we must see that the first have a great desire to dominate, whilst the latter have only the wish not to be dominated, and consequently a greater desire to live in the enjoyment of liberty (Discourses, I, V).

Who can resist applying this amazing insight to the many situations of resistance and revolt that have been happening in the world for the last two years? From Tahrir Square to Bahrain, from Syntagma Square and Plaza Mayor to the streets of New York and Oakland, ‘the people’ speak with one voice against ‘the nobles;’ the 99% all face the same enemy: the same 1%; courage and freedom face the same police and military machine of cowardice and deceit, brutality and repression. Those who do not want to be dominated, and do not need to be governed, are ontologically on the terrain of freedom, always-already turned toward a poetic desire for the common good, the ethics of a just world. The point here is not to distinguish between good and evil, but rather to understand the twofold nature of power – as domination or as care.

The biopolitical (and thanatopolitical) struggle for dominance is unilateral, for there is only one side that wants to dominate. The other side –ontologically, if not circumstantially, free and certainly wiser—does not want to dominate; rather, it wants not to be dominated. This means that it rejects domination as such. The rejection of domination also implies the rejection of violence, and I have already spoken above of the meaning of counter-violence in this sense. To put it another way, with Melville’s (2012) Bartleby, this other side “would prefer not to” be dominated, and it “would prefer not to” be forced into the paradigm of violence. Yet, for this preference, this desire, to pass from potentiality into actuality, action must be taken – an action which is a return and a going under, an uprising and a hurricane. Revolution is to turn oneself away from the terror and violence of the sovereign elites toward the horizon of freedom and care, which is the pre- existing ontological ground of the difference mentioned by Machiavelli between the nobles and the people, the 1% (to use a terminology different from Machiavelli’s) and the 99%. What is important is that the sovereign elite and its war machine, its police apparatuses, its false sense of the law, be done with. It is important that the sovereigns be shown, as Agamben says, in “their original proximity to the criminal” (2000: 107) and that they be dealt with accordingly. For this to happen, a true sense of the law must be recuperated, one whereby the law is also immediately ethics. The sovereigns will be brought to justice. The process is long, but it is in many ways already underway. The recent news that a human rights lawyer will lead a UN investigation into the question of drone strikes and other forms of targeted killing (The New York Times, January 24, 2013) is an indication of the fact that the movement of those who do not want to be dominated is not without effect. An initiative such as this is perhaps necessarily timid at the outset and it may be sidetracked in many ways by powerful interests in its course. Yet, even positing, at that institutional level, the possibility that drone strikes be a form of unlawful killing and war crime is a clear indication of what common reason (one is tempted to say, the General Intellect) already understands and knows. The hope of those who “would prefer not to” be involved in a violent practice such as this, is that those responsible for it be held accountable and that the horizon of terror be canceled and overcome. Indeed, the earth needs care. And when instead of caring for it, resources are dangerously wasted and abused, it is imperative that those who know and understand revolt –and what they must revolt against is the squandering and irresponsible elites, the sovereign discourse, whose authority, beyond all nice rhetoric, ultimately rests on the threat of military violence and police brutality.

#### Refuse attempts to reform the legal system and doom it to its own nihilistic destruction—we must refuse all conceptual apparatuses of capture

Prozorov 10. Sergei Prozorov, professor of political and economic studies at the University of Helsinki, “Why Giorgio Agamben is an optimist,” Philosophy Social Criticism 2010 36: pg. 1057

The second principle of Agamben’s optimism is best summed up by Ho ̈lderlin’s phrase, made famous by Heidegger: ‘where danger grows, grows saving power also’.20 Accord- ing to Agamben, radical global transformation is actually made possible by nothing other than the unfolding of biopolitical nihilism itself to its extreme point of vacuity. On a number of occasions in different contexts, Agamben has asserted the possibility of a radi- cally different form-of-life on the basis of precisely the same things that he initially set out to criticize. Agamben paints a convincingly gloomy picture of the present state of things only to undertake a majestic reversal at the end, finding hope and conviction in the very despair that engulfs us.21 Our very destitution thereby turns out be the condition for the possibility of a completely different life, whose description is in turn entirely devoid of fantastic mirages. Instead, as Agamben repeatedly emphasizes, in the redeemed world ‘everything will be as is now, just a little different’,22 no momentous transformation will take place aside from a ‘small displacement’ that will nonetheless make all the difference. While we shall deal with this ‘small displacement’ in the follow- ing section, let us now elaborate the logic of redemption through the traversal of ‘danger’ in more detail.

It is evident that the danger at issue in Agamben’s work is nihilism in its dual form of the sovereign ban and the capitalist spectacle. If, as we have shown in the previous sec- tion, the reign of nihilism is general and complete, we may be optimistic about the pos- sibility of jamming its entire apparatus since there is nothing in it that offers an alternative to the present ‘double subjection’. Yet, where are we to draw resources for such a global transformation? It would be easy to misread Agamben as an utterly utopian thinker, whose intentions may be good and whose criticism of the present may be valid if exaggerated, but whose solutions are completely implausible if not outright embarras- sing.23 Nonetheless, we must rigorously distinguish Agamben’s approach from utopian- ism. As Foucault has argued, utopias derive their attraction from their discursive structure of a fabula, which makes it possible to describe in great detail a better way of life, precisely because it is manifestly impossible.24 While utopian thought easily pro- vides us with elaborate visions of a better future, it cannot really lead us there, since its site is by definition a non-place. In contrast, Agamben’s works tell us quite little about life in a community of happy life that has done away with the state form, but are remark- ably concrete about the practices that are constitutive of this community, precisely because these practices require nothing that would be extrinsic to the contemporary condition of biopolitical nihilism. Thus, Agamben’s coming politics is manifestly anti-utopian and draws all its resources from the condition of contemporary nihilism.

Moreover, this nihilism is the only possible resource for this politics, which would otherwise be doomed to continuing the work of negation, vainly applying it to nihilism itself. Given the totality of contemporary biopolitical nihilism, any ‘positive’ project of transformation would come down to the negation of negativity itself. Yet, as Agamben demonstrates conclusively in Language and Death, nothing is more nihilistic than a negation of nihilism.25 Any project that remains oblivious to the extent to which its valorized positive forms have already been devalued and their content evacuated would only succeed in plunging us deeper into nihilism. As Heidegger adds in his commentary on Ho ̈lderlin, ‘It may be that any other salvation than that, which comes from where the danger is, is still within non-safety’.26 Moreover, as Roberto Esposito’s work on the par- adox of immunity in biopolitics demonstrates, any attempt to combat danger through ‘negative protection’ (immunization) that seeks to mediate the immediacy of life through extrinsic principles (sovereignty, liberty, property) necessarily introjects within the social realm the very negativity that it claims to battle, so that biopolitics is always at risk of collapsing into thanatopolitics.27 In contrast, Agamben’s coming politics does not attempt to introduce anything new or ‘positive’ into the condition of nihilism but to use this condition itself in order to reappropriate human existence from its biopolitical confinement.28

Thus, while the aporia of the negation of negativity might lead other thinkers to res- ignation about the possibilities of political praxis, it actually enhances Agamben’s opti- mism. Renouncing any project of reconstructing social life on the basis of positive principles, his work illuminates the way the unfolding of biopolitical nihilism itself pro- duces the conditions of possibility for radical transformation. We can now see that the state of total crisis that Agamben has diagnosed must be understood in the strict medical sense. In pre-modern medicine, the crisis of the disease is its kairos, the moment in which the disease truly manifests itself and allows for the doctor’s intervention that might finally defeat it.29 For this reason, the crisis is not something to be feared and avoided but an opportunity that must be seized. Similarly, insofar as the sovereign state of excep- tion and the absolutization of exchange-value completely empty out any content of pos- itive forms-of-life, the contemporary biopolitical apparatus prepares its self-destruction by fully manifesting its own vacuity.

### terror

#### Terror – doesn’t happen

**Schneidmiller 9** (Chris, Experts Debate Threat of Nuclear, Biological Terrorism, 13 January 2009, http://www.globalsecuritynewswire.org/gsn/nw\_20090113\_7105.php, AMiles)

There is an "almost **vanishingly small" likelihood** that terrorists would ever be able to acquire and detonate a nuclear weapon, one expert said here yesterday (see GSN, Dec. 2, 2008). In even the most likely scenario of nuclear terrorism, there are 20 barriers between extremists and a successful nuclear strike on a major city, said John Mueller, a political science professor at Ohio State University. The process itself is seemingly straightforward but exceedingly difficult -- buy or steal highly enriched uranium, manufacture a weapon, take the bomb to the target site and blow it up. Meanwhile, variables strewn across the path to an attack would increase the complexity of the effort, Mueller argued. Terrorists would have to bribe officials in a state nuclear program to acquire the material, while avoiding a sting by authorities or a scam by the sellers. The material itself could also turn out to be bad. "Once the purloined material is purloined, [police are] going to be chasing after you. They are also going to put on a high reward, extremely high reward, on getting the weapon back or getting the fissile material back," Mueller said during a panel discussion at a two-day Cato Institute conference on counterterrorism issues facing the incoming Obama administration. Smuggling the material out of a country would mean relying on criminals who "are very good at extortion" and might have to be killed to avoid a double-cross, Mueller said. The terrorists would then have to find scientists and engineers willing to give up their normal lives to manufacture a bomb, which would require an expensive and sophisticated machine shop. Finally, further technological expertise would be needed to sneak the weapon across national borders to its destination point and conduct a successful detonation, Mueller said. Every obstacle is "difficult but not impossible" to overcome, Mueller said, putting the chance of success at no less than one in three for each. The likelihood of successfully passing through each obstacle, in sequence, would be roughly one in 3 1/2 billion, he said, but for argument's sake dropped it to 3 1/2 million. "It's a total gamble. This is a very expensive and difficult thing to do," said Mueller, who addresses the issue at greater length in an upcoming book, Atomic Obsession. "So unlike buying a ticket to the lottery ... you're basically putting everything, including your life, at stake for a gamble that's maybe one in 3 1/2 million or 3 1/2 billion." Other scenarios are even less probable, Mueller said. A nuclear-armed state is "exceedingly unlikely" to hand a weapon to a terrorist group, he argued: "States just simply won't give it to somebody they can't control." Terrorists are also not likely to be able to steal a whole weapon, Mueller asserted, dismissing the idea of "loose nukes." Even Pakistan, which today is perhaps the nation of greatest concern regarding nuclear security, keeps its bombs in two segments that are stored at different locations, he said (see GSN, Jan. 12). Fear of an "extremely improbable event" such as nuclear terrorism produces support for a wide range of homeland security activities, Mueller said. He argued that there has been a major and costly overreaction to the terrorism threat -- noting that the Sept. 11 attacks helped to precipitate the invasion of Iraq, which has led to far more deaths than the original event. Panel moderator Benjamin Friedman, a research fellow at the Cato Institute, said academic and governmental discussions of acts of nuclear or biological terrorism have tended to focus on "worst-case assumptions about terrorists' ability to use these weapons to kill us." There is need for consideration for what is probable rather than simply what is possible, he said. Friedman took issue with the finding late last year of an experts' report that an act of WMD terrorism would "more likely than not" occur in the next half decade unless the international community takes greater action. "I would say that the report, if you read it, actually offers no analysis to justify that claim, which seems to have been made to change policy by generating alarm in headlines." One panel speaker offered a partial rebuttal to Mueller's presentation. Jim Walsh, principal research scientist for the Security Studies Program at the Massachusetts Institute of Technology, said he agreed that nations would almost certainly not give a nuclear weapon to a nonstate group, that most terrorist organizations have no interest in seeking out the bomb, and that it would be difficult to build a weapon or use one that has been stolen.

#### accidents— nope, safeguards and ocean targeting

**Slocombe 9** (Walter, senior advisor for the Coalition Provisional Authority in Baghdad and a former Under Secretary of Defense for Policy, he is a four-time recipient of an award for Distinguished Public Service and a member of the Council on Foreign Relations, “De-Alerting: Diagnoses, Prescriptions, and Side-Effects,” Presented at the seminar on Re-framing De-Alert: Decreasing the Operational Readiness of Nuclear Weapons Systems in the US-Russia Context in Yverdon, Switzerland, June 21-23)

Let’s start with Technical Failure – the focus of a great deal of the advocacy, or at least of stress on past incidents of failures of safety and control mechanisms.4 Much of the “de-alerting” literature points to a succession of failures to follow proper procedures and draw from that history the inference that a relatively simple procedural failure could produce a nuclear detonation. The argument is essentially that nuclear weapons systems are sufficiently susceptible of pure accident (including human error or failure at operational/field level) that it is essential to take measures that have the effect of making it necessary to undertake a prolonged reconfiguration of the elements of the nuclear weapons force for a launch or detonation to be physically possible. Specific measures said to serve this objective include separating the weapons from their launchers, burying silo doors, removal of fuzing or launching mechanisms, deliberate avoidance of maintenance measures need to permit rapid firing, and the like. . My view is that this line of action is unnecessary in its own terms and highly problematic from the point of view of other aspects of the problem and that there is a far better option that is largely already in place, at least in the US force – the requirement of external information – a code not held by the operators -- to arm the weapons Advocates of other, more “physical,” measures often describe the current arrangement as nuclear weapons being on a “hair trigger.” That is – at least with respect to US weapons – a highly misleading characterization. The “hair trigger” figure of speech confuses “alert” status – readiness to act quickly on orders -- with susceptibility to inadvertent action. The “hair trigger” image implies that a minor mistake – akin to jostling a gun – will fire the weapon. The US StratCom commander had a more accurate metaphor when he recently said that US nuclear weapons are less a pistol with a hair trigger than like a pistol in a holster with the safety turned on – and he might have added that in the case of nuclear weapons the “safety” is locked in place by a combination lock that can only be opened and firing made possible if the soldier carrying the pistol receives a message from his chain of command giving him the combination. Whatever other problems the current nuclear posture of the US nuclear force may present, it cannot reasonably be said to be on a “hair trigger.” Since the 1960s the US has taken a series of measures to insure that US nuclear weapons cannot be detonated without the receipt of both external information and properly authenticated authorization to use that information. These devices – generically Permissive Action Links or “PALs” – are in effect combination locks that keep the weapons locked and incapable of detonation unless and until the weapons’ firing mechanisms have been unlocked following receipt of a series of numbers communicated to the operators from higher authority. Equally important in the context of a military organization, launch of nuclear weapons (including insertion of the combinations) is permitted only where properly authorized by an authenticated order. This combination of reliance on discipline and procedure and on receipt of an unlocking code not held by the military personnel in charge of the launch operation is designed to insure that the system is “fail safe,” i.e., that whatever mistakes occur, the result will not be a nuclear explosion. Moreover, in recent years, both the US and Russia, as well as Britain and China, have modified their procedures so that **even if** a nuclear-armed missile were **launched**, it would go not to a “real” target in another country but – at least in the US case - to empty ocean. In addition to the basic advantage of insuring against a nuclear detonation in a populated area, the fact that a missile launched in error would be on flight path that diverged from a plausible attacking trajectory should be detectable by either the US or the Russian warning systems, reducing the possibility of the accident being perceived as a deliberate attack. De-targeting, therefore, provides a significant protection against technical error. These arrangements – PALs and their equivalents coupled with continued observance of the agreement made in the mid-90s on “de-targeting” – do not eliminate the possibility of technical or operator-level failures, but they come very close to providing absolute assurance that such errors cannot lead to a nuclear explosion or be interpreted as the start of a deliberate nuclear attack.6 The advantage of such requirements for external information to activate weapons is of course that the weapons remain available for authorized use but not susceptible of appropriation or mistaken use.

#### turns instability and multilateralism

**Schirch 12** [Lisa Schirch, Director, 3P Human Security, “9 Costs of Drone Strikes,” 6/28/2012, <http://www.huffingtonpost.com/lisa-schirch/drones_b_1630592.html>]

1. Drones Substitute for a Coherent Strategy to Address Root Causes: Relying on the short-term tactics of drone strikes postpones and undermines the development of a comprehensive strategy to address the root causes driving militancy. Militant extremists are not simply a group of evil people without cause. Militant extremism is a mindset and a set of ideas. Drones do not kill their ideas. Rather drones amplify the voices of militant extremists who condemn foreign invasion and demand local control over their region. Drones bring legitimacy, credibility and sway public opinion toward the militant's arguments. Even if the drones kill militant extremists, it makes their ideas more powerful.¶ A more successful strategy will center on robust diplomatic engagement at all levels to address legitimate grievances. Tribal groups targeted by drones have legitimate grievances against their governments. A better strategy would draw tribal groups toward cooperation by fostering reconciliation and dialogue to address underlying grievances such as government corruption, vast unemployment and lack of basic services. In contrast, drone strikes decidedly turn local populations away from their own governments. A June 2012 International Crisis Group report argues that U.S. "focus on military funding has failed to deliver counter-terrorism dividends, instead entrenching the military's control over state institutions and delaying reforms. In order to help stabilize a fragile country in a conflict-prone region, the U.S. and other donors should focus instead on long-term civilian assistance to improve the quality of state services, in cooperation with local civil society organisations, NGOs with proven track records and national and provincial legislatures."¶ Civil society leaders in each country receiving drones plead with the U.S. to stop the counterproductive military attacks and instead use its global power to push for local and regional solutions to underlying diplomatic, humanitarian and development problems. But with a foreign policy that puts far more investment into military strategies than diplomatic strategies, U.S. diplomacy simply lacks the staff capacity and the training in principled negotiation to be the robust diplomatic presence needed in so many regions of the world.

#### turns terror

**Schirch 12** [Lisa Schirch, Director, 3P Human Security, “9 Costs of Drone Strikes,” 6/28/2012, <http://www.huffingtonpost.com/lisa-schirch/drones_b_1630592.html>]

2. Drones Fuel al Qaeda Networks and Anti-Americanism: Measurable body counts of suspected militants appeal to some U.S. policymakers amidst a lack of any other tangible signs of progress in Afghanistan or Pakistan. U.S. officials who acknowledge drone related civilian deaths claim, "sometimes you have to take a life to save lives." Yet there is not credible evidence that lives are being saved by drone attacks.¶ Drones are fueling anti-American militancy. Using drones on tribal areas is like taking a hammer to a beehive. It creates a fury of anti-Americanism. In the war of ideas, drones turn locals toward Al Qaeda and away from the United States. Militant groups are growing and multiplying in response to the use of drones. While militants themselves are unpopular, drone strikes seem to unite rather than separate civilians from militants. Drone strikes inspire frequent public protests, reproachful media coverage, and public polls showing widespread condemnation and fear of the strikes. In May 2012, the Washington Post reported that "Across the vast, rugged terrain of southern Yemen, an escalating campaign of U.S. drone strikes is stirring increasing sympathy for al-Qaeda-linked militants and driving tribesmen to join a network linked to terrorist plots against the United States." CIA Pakistan station chief from 2004-2006, Robert Grenier states that drones create safe havens for militants. "It [the drone program] needs to be targeted much more finely. We have been seduced by them and the unintended consequences of our actions are going to outweigh the intended consequences."

### norms

#### Syria – no impact

**Young 11** – opinion editor of the Daily Star newspaper in Beirut and author of The Ghosts of Martyrs Square: An Eyewitness Account of Lebanon's Life Struggle (Michael, "Assad's overreach pushes former allies into a corner" The National, http://www.thenational.ae/thenationalconversation/comment/assads-overreach-pushes-former-allies-into-a-corner?pageCount=2)

More prosaically, the Saudis and their Gulf partners, like Turkey, have plainly concluded that the policies pursued by the Assad regime are not only failing, they are heightening regional volatility in dangerous ways. The Syrian leader was quietly given time and room to put his house in order, but couldn't deliver. This now permits Saudi Arabia to review its options and look at how it might use Mr Al Assad's exit to its own advantage. Turkey has taken a more roundabout path to the same conclusion. Before the Turkish elections, Prime Minister Recep Tayyip Erdogan was highly critical of the Assad regime's behaviour, particularly after the military campaign in Idlib province that forced thousands of Syrians to flee into Turkey. At the same time the Turks are said to have proposed that the defence minister, Gen Ali Habib, an Alawite, head a transitional committee after Mr Al Assad's departure. This was turned down by the Assads. The general's dismissal on Monday, a day before Turkey's Foreign Minister Ahmet Davutoglu arrived in Damascus to deliver a rebuke to the Syrian president, could have been an irrevocable rejection of the Turkish plan - a way of saying that it's either the Assads or chaos. Now Turkey is bracing for the repercussions. Mr Davutoglu left Damascus moderately optimistic that Mr Al Assad would implement reforms, but the absence of specifics was worrying. Thousands of Syrian refugees remain in Turkey and the Assad regime's tactics make it more likely that Syria will dissolve into ethnic-sectarian conflict. Fragmentation might lead to de facto autonomy for Syria's Kurds, which could affect Turkey's Kurdish community. Moreover, in the event of civil war, Alawites in Turkey's Hatay province might demand intervention on behalf of their Syrian brethren. With the regional doors slamming shut, the options are narrowing for Mr Al Assad. There is no military answer to his regime's problems. Even the method the Syrians have traditionally adopted to protect themselves, namely **wreaking havoc in their neighbourhood** to negotiate advantageous resolutions, **has been virtually neutralised.** Iraq's Prime Minister Nouri Al Maliki has backed the Assad regime, fearing the emergence of a Sunni-dominated Syria to Iraq's west; while Lebanon, a perennial outlet for Syrian power games, is governed by a coalition sympathetic to Mr Al Assad. Syria can convey limited warnings through both countries, but cannot readily subvert their civil peace.

#### ME – no impact

**Maloney and Takeyh, 2007** – \*senior fellow for Middle East Policy at the Saban Center for Middle East Studies at the Brookings Institution AND \*\*senior fellow for Middle East Studies at the Council on Foreign Relations (Susan and Ray, International Herald Tribune, 6/28, “Why the Iraq War Won't Engulf the Mideast”, http://www.brookings.edu/opinions/2007/0628iraq\_maloney.aspx)

Yet, the Saudis, Iranians, Jordanians, Syrians, and others are very unlikely to go to war either to protect their own sect or ethnic group or to prevent one country from gaining the upper hand in Iraq.¶ The reasons are fairly straightforward. First, Middle Eastern leaders, like politicians everywhere, are primarily interested in one thing: **self-preservation**. Committing forces to Iraq is an inherently risky proposition, which, if the conflict went badly, could threaten domestic political stability. Moreover, most Arab armies are geared toward regime protection rather than projecting power and thus have little capability for sending troops to Iraq.¶ Second, there is cause for concern about the so-called blowback scenario in which jihadis returning from Iraq destabilize their home countries, plunging the region into conflict.¶ Middle Eastern leaders are preparing for this possibility. Unlike in the 1990s, when Arab fighters in the Afghan jihad against the Soviet Union returned to Algeria, Egypt and Saudi Arabia and became a source of instability, Arab security services are being vigilant about who is coming in and going from their countries.¶ In the last month, the Saudi government has arrested approximately 200 people suspected of ties with militants. Riyadh is also building a 700 kilometer wall along part of its frontier with Iraq in order to keep militants out of the kingdom.¶ Finally, **there is no precedent** for Arab leaders to commit forces to conflicts in which they are not directly involved. The Iraqis and the Saudis did send small contingents to fight the Israelis in 1948 and 1967, but they were either ineffective or never made it. In the 1970s and 1980s, Arab countries other than Syria, which had a compelling interest in establishing its hegemony over Lebanon, never committed forces either to protect the Lebanese from the Israelis or from other Lebanese. The civil war in Lebanon was regarded as someone else's fight.¶ Indeed, this is the way many leaders view the current situation in Iraq. To Cairo, Amman and Riyadh, the situation in Iraq is worrisome, but in the end it is an Iraqi and American fight.¶ As far as Iranian mullahs are concerned, they have long preferred to press their interests through proxies as opposed to direct engagement. At a time when Tehran has access and influence over powerful Shiite militias, a massive cross-border incursion is both unlikely and unnecessary.¶ So Iraqis will remain locked in a sectarian and ethnic struggle that outside powers may abet, but will remain within the borders of Iraq.¶ The Middle East is a region both prone and accustomed to civil wars. But given its experience with ambiguous conflicts, the region has also developed **an intuitive ability** to contain its civil strife and prevent local conflicts from enveloping the entire Middle East.

#### ME – no impact

**Gelb, 10** – President Emeritus of the Council on Foreign Relations. He was a senior official in the U.S. Defense Department from 1967 to 1969 and in the State Department from 1977 to 1979 (Leslie, Foreign Affairs, “GDP Now Matters More Than Force: A U.S. Foreign Policy for the Age of Economic Power,” November/December, proquest)

Also reducing the likelihood of conflict today is that there is no arena in which the vital interests of great powers seriously clash. Indeed, the most worrisome security threats today-rogue states with nuclear weapons and terrorists with weapons of mass destruction-actually tend to **unite the great powers more than divide** them. In the past, and specifically during the first era of globalization, major powers would war over practically nothing. Back then, they fought over the Balkans, a region devoid of resources and geographic importance, a strategic zero. Today, they are unlikely to shoulder their arms over almost anything, even the highly strategic Middle East. All have much more to lose than to gain from turmoil in that region. To be sure, great powers such as China and Russia will tussle with one another for advantages, but they will stop well short of direct confrontation.

#### no scs war

**Carlson 13** – Associate Professor in the Government Department of Cornell University [(Allan, “China Keeps the Peace at Sea” http://www.foreignaffairs.com/articles/139024/allen-carlson/china-keeps-the-peace-at-sea](file:///C:\Users\Marc\AppData\Roaming\Microsoft\Word\(Allan,)) Jacome

The nuclear test, though, is a red herring in terms of the conflict over the disputed islands. In truth, the roots of the conflict -- and the reasons it has not yet exploded -- are much deeper. Put simply, China cannot afford military conflict with any of its Asian neighbors.

It is not that China believes it would lose such a spat; the country increasingly enjoys strategic superiority over the entire region, and it is difficult to imagine that its forces would be beaten in a direct engagement over the islands, in the South China Sea or in the disputed regions along the Sino-Indian border. However, Chinese officials see that even the most pronounced victory would be outweighed by the collateral damage that such a use of force would cause to Beijing's two most fundamental national interests -- economic growth and preventing the escalation of radical nationalist sentiment at home. These constraints, rather than any external deterrent, will keep Xi Jinping, China's new leader, from authorizing the use of deadly force in the Diaoyu Islands theater.

For over three decades, Beijing has promoted peace and stability in Asia to facilitate conditions amenable to China's economic development. The origins of the policy can be traced back to the late 1970s, when Deng Xiaoping repeatedly contended that to move beyond the economically debilitating Maoist period, China would have to seek a common ground with its neighbors. Promoting cooperation in the region would allow China to spend less on military preparedness, focus on making the country a more welcoming destination for foreign investment, and foster better trade relations. All of this would strengthen the Chinese economy. Deng was right. Today, China's economy is second only to that of the United States.

#### No senkaku war

**Feng 10 –** professor at the Peking University International Studies [Zhu, “An Emerging Trend in East Asia: Military Budget Increases and Their Impact”, http://www.fpif.org/articles/an\_emerging\_trend\_in\_east\_asia?utm\_source=feed]

As such, the surge of defense expenditures in East Asia does not add up to an arms race. No country in East Asia wants to see a new geopolitical divide and spiraling tensions in the region. The growing defense expenditures powerfully illuminate the deepening of a regional “security dilemma,” whereby the “defensive” actions taken by one country are perceived as “offensive” by another country, which in turn takes its own “defensive” actions that the first country deems “offensive.” As long as the region doesn’t split into rival blocs, however, an arms race will not ensue. What is happening in East Asia is the extension of what Robert Hartfiel and Brian Job call “competitive arms processes.” The history of the cold war is telling in this regard. Arm races occur between great-power rivals only if the rivalry is doomed to intensify. The perceived tensions in the region do not automatically translate into consistent and lasting increases in military spending. Even declared budget increases are reversible. Taiwan’s defense budget for fiscal year 2010, for instance, will fall 9 percent. This is a convincing case of how domestic constraints can reverse a government decision to increase the defense budget. Australia’s twenty-year plan to increase the defense budget could change with a domestic economic contraction or if a new party comes to power. China’s two-digit increase in its military budget might vanish one day if the type of regime changes or the high rate of economic growth slows. Without a geopolitical split or a significant great-power rivalry, military budget increases will not likely evolve into “arms races.” The security dilemma alone is not a leading variable in determining the curve of military expenditures. Nor will trends in weapon development and procurement inevitably induce “risk-taking” behavior. Given the stability of the regional security architecture—the combination of U.S.-centered alliance politics and regional, cooperation-based security networking—any power shift in East Asia will hardly upset the overall status quo. China’s military modernization, its determination to “prepare for the worst and hope for the best,” hasn’t yet led to a regional response in military budget increases. In contrast, countries in the region continue to emphasize political and economic engagement with China, though “balancing China” strategies can be found in almost every corner of the region as part of an overall balance-of-power logic. In the last few years, China has taken big strides toward building up asymmetric war capabilities against Taiwan. Beijing also holds to the formula of a peaceful solution of the Taiwan issue except in the case of the island’s de jure declaration of independence. Despite its nascent capability of power projection, China shows no sign that it would coerce Taiwan or become **militarily assertive** over contentious territorial claims ranging from the Senkaku Islands to the Spratly Islands to the India-China border dispute. 

### solvency

#### Aff doenst solve – leaves drones unregulated

**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.

**Definitional ambiguity means the plan is just an enormous loophole**

**Blank, 10** – professor of law at Emory (Laurie, “Defining the Battlefield in Contemporary Conflict and Counterterrorism: Understanding the Parameters of the Zone of Combat” SSRN)

Notwithstanding the complicated nature of the conflict between the U.S. and al Qaeda and affiliated terrorist groups, and the resulting confusion in trying to define the space where that conflict is taking place, identifying the parameters of the zone of combat is a critical task. At the same time that many debate whether a state can even be engaged in an armed conflict with a terrorist group, a critically important question with ramifications for generations to come, the U.S. has declared that it indeed is in such an armed conflict and is operating accordingly. Analyzing how we can understand the parameters of the zone of combat and assessing relevant factors for doing so must become part of the debate and discussion surrounding the appropriate response to and manner of combating terrorism.

This Article demonstrates that traditional conceptions of belligerency and neutrality are not designed to address the complex spatial and temporal nature of terrorist attacks and states responses. Nor can human rights law or domestic criminal law, which are both legal regimes of general applicability, offer a useful means for defining where a state can conduct military operations against terrorist groups. LOAC, in contrast, provides a framework not only for when it applies, but where and for how long. By using this framework and analogizing relevant factors and considerations to the conflict with al Qaeda, we can identify factors that can help define the zone of combat.

First, some terrorist attacks and activities fall closer to the traditional conception of hostilities as understood within LOAC. Areas where these types of attacks occur naturally have a stronger link to a battlefield. In addition, when such attacks or activities occur regularly or over a defined time period, we can more clearly define the temporal parameters of the zone of combat as well.

Second, in declaring that it is “at war with terrorists,” a state may envision the whole world as a battlefield. But the state’s actual conduct in response to the threat posed offers a more accurate lens through which to view the battlefield. Areas where the state uses military force, particularly multiple facets of military power, on a regular or recurring basis, should fall within the zone of combat. In contrast, those areas where the state chooses diplomatic or law enforcement measures, or relies on such efforts by another state, do not demonstrate the characteristics of the battlefield. This same analysis holds true for the temporal parameters as well. Applying this type of analysis in a simplistic manner does indeed leave room for abuse by states that might overuse military power merely to try to squeeze otherwise nonbattlefield areas within the zone of combat. While this is certainly a consideration, government response is only one factor to take into account in assessing the parameters of the zone of combat and both the nature of the international community and the great expense, both human and material, of applying military might where not necessary will likely weigh against any such abuse.

The third factor—territory—requires the most creative application. Terrorist groups do not use or connect to territory in the same manner as either states or non-state actors seeking to gain power or independence. Conflicts against terrorist groups, as a result, do not follow the boundaries on a map or the dictates of state sovereignty or international legal niceties. But territory can be a contributing factor to a paradigm defining the zone of combat nonetheless. Looking at territory from a new angle, we can see that terrorists use certain areas for safe havens and training camps and identify certain areas as prime targets for repeated attacks. Those territorial areas must therefore have a stronger connection to the zone of combat than others, both geographically and temporally, because the way terrorists use particular areas will naturally change over time.

Besides these factors drawn from the law of armed conflict, we can look to judicial interpretations and policy considerations as well. Taken as a whole, these analytical tools form a first step in the critical task of identifying where and when a state can conduct operations within an armed conflict framework, a necessary companion to the ongoing debate about whether a state can conduct operations within such a framework.both geographically and temporally, because the way terrorists use particular areas will naturally change over time.

#### Daskal’s proposal doesn’t create legal certainty – it makes the US appear to be even more arbitrary

**Blank, 13 –** professor of law at Emory (Laurie, “LEARNING TO LIVE WITH (A LITTLE) UNCERTAINTY: THE OPERATIONAL ASPECTS AND CONSEQUENCES OF THE GEOGRAPHY OF CONFLICT DEBATE” <http://www.pennlawreview.com/online/161-U-Pa-L-Rev-Online-347.pdf>) **LOAC = Law of Armed Conflict**

The procedural and legal protections proposed in the sort of rules-based, geographically diﬀerentiated law of war framework that Daskal proposes could certainly maximize protections for certain groups of people in certain areas during certain speciﬁc conﬂicts. To that end, such enhanced protections would indeed be an important contribution. However, the operational imperatives of conﬂict—all conﬂicts, not only the complex current conﬂict with al Qaeda and associated terrorist groups—suggest that such a framework would likely have more signiﬁcant detrimental consequences through diminished clarity and predictability in the application of LOAC at all stages and unfortunate modiﬁcations in the future development of LOAC. Learning to accept some uncertainty in assessing the geography of conﬂict therefore helps to protect equally important LOAC goals and may well be a better option than it appears at ﬁrst blush.

#### The plan generates new legal uncertainty and undermines international norms

**Blank, 13 –** professor of law at Emory (Laurie, “LEARNING TO LIVE WITH (A LITTLE) UNCERTAINTY: THE OPERATIONAL ASPECTS AND CONSEQUENCES OF THE GEOGRAPHY OF CONFLICT DEBATE” <http://www.pennlawreview.com/online/161-U-Pa-L-Rev-Online-347.pdf>) **LOAC = Law of Armed Conflict**

Uncertainty about the geographic scope of armed conflict leads to a variety of analytical and implementation challenges with regard to LOAC, human rights law, jus ad bellum, and other relevant legal regimes. The simple fact that within an armed conﬂict, a party to the conﬂict can use lethal force as a ﬁrst resort, while outside an armed conﬂict, such deadly force may only be used as a last resort, is the starkest reminder of why such extensive attention has been focused on this question over the past few years. For the purpose of achieving LOAC’s central goal of “alleviating, as much as possible the calamities of war,”32 greater clarity regarding where an armed conﬂict is taking place and to where the concomitant authorities and obligations extend certainly would be a signiﬁcant contribution. The international community—military lawyers, policymakers, international law scholars— should therefore address these issues head-on in a continuing eﬀort to better understand how to apply the law most eﬀectively and eﬃciently.33 Daskal’s proposal for a rules-driven new law of war framework is therefore a welcome and important contribution to the discussion and debate. At the same time, however, these eﬀorts must stay true to the needs and goals of LOAC as a pragmatic, operationally focused body of law that is, above all, designed to work in the inherent chaos and uncertainty of armed conﬂict. As I have argued elsewhere, there are signiﬁcant risks for the future implementation and development of LOAC as a result of conﬂating norms from LOAC with norms from human rights law, or of borrowing one from the other without careful delineation, including, in particular, the rules regarding surrender and capture and the different applications and purposes of proportionality in each legal regime.34 No place is this risk more profound than in relation to the legal authority to employ force against an enemy belligerent.

In the context of a speciﬁc legal framework for one particular type of conﬂict, the same concerns about blurring the lines between legal regimes remain. LOAC does not require an individualized threat assessment in the targeting of combatants, who are presumed hostile by dint of their status. Over time, however, the requirement for an individualized threat assessment in certain geographical zones in a new law of war framework for conﬂicts with transnational terrorist groups may well begin to bleed into the application of LOAC in more traditional conﬂicts. In essence, therefore, a carefully designed paradigm for one complex and diﬃcult conﬂict scenario ultimately impacts LOAC writ large, even absent any perceived need or direct motivation for such change. Interpreting LOAC to require an individualized threat assessment for all targeting decisions—even those against the regular armed forces of the enemy state in an international armed conﬂict—introduces signiﬁcant tactical and operational risk for soldiers not mandated or envisioned by the law.35 The same conﬂation problem holds true for other non-LOAC obligations that might be imported into LOAC depending on the analysis of where and how a new law of war framework were to apply. It is important to recognize, notwithstanding the focus on the operational eﬀectiveness of LOAC in this Response, that conﬂation and “borrowing” oﬀer the same challenges for the implementation of human rights law, to the extent that norms from LOAC begin to bleed into the application of human rights norms. Lastly, superimposing an artiﬁcially created framework detracts attention from—or even papers over—current challenges within LOAC, such as the identiﬁcation of enemy operatives, the nature and amount of proof required for determinations of reasonableness or unreasonableness in targeting decisions, and other perennially tricky issues.

#### 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 framework—theory

#### 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.

#### Focus on top down executive regulation solutions reinforces a notion of sovereignty that is unitary that marginalizes alternative political formations—choose the model of Edward Snowden rather than the congressional representative

Buell 13. John Buell, columnist for The Progressive Populist, adjunct professor at Cochise College, “Nationalism, Tech Giants, and Spy States,” The Contemporary Condition August 10, 2013 <http://contemporarycondition.blogspot.com/2013/08/nationalism-tech-giants-and-spy-states.html> accessed September 4, 2013

That's is one reason it is hard today to remain aloof from politics. But for those who seek to do so the message is just as clear. If the Internet has progressive possibilities, their realization will not be automatic. Today a countersubversive culture nurtures and is nurtured by an evolving alliance of high tech giants, government bureaucrats (whom Smith calls securecrats), the older more established military industrial complex and powerful private corporations that benefit from close ties to the state, including especially the oil  and investment banking community.

If the most repressive outcomes are to be avoided, the best course might be an evolving counter-coalition that would emerge from moral and historical critiques of and alternative to the countersubversive tradition. In Emergency Politics, Honig argues that the very focus on the question of the rules that should govern declarations of emergency and the protections that can be revoked in emergencies reinforce a notion of sovereignty as unitary and top down. Thus they "marginalize forms of popular sovereignty in which action in concert rather than institutional governance is the mark of democratic power and legitimacy." Unitary and decisive sovereignty committed to its own invulnerability is "most likely to perceive crisis where there may only be political conflict and to respond...with antipolitical measures."

The best answer lies not merely in challenging the constitutional status of this surveillance state but in building a political coalition that embodies the forms of popular sovereignty of which Honig speaks. This would include labor, consumer and environmentalist critiques of and alternatives to the role of the state and markets in fostering inequality. It would be attentive to the possibilities and risks of the social media and the limits of its own interventions in these.  The coalition might advance more democratic forms of enterprise and media as well as decentralized and more sustainable forms of energy production and transportation.  And in an era where hyper nationalism erodes so many democratic impulses, cross border initiatives in the interest of widespread access to an open Internet with robust privacy protections would be paramount. (Let's hope that) Edward Snowden's travels (in a world dominated by the state passport and surveillance system) helps to highlight the stake citizens of many lands have in a democratic Internet but a more exploratory and democratic polity.

### 2nc turns the case

#### The exception is intrinsic to the law itself—durable fiat cannot function educationally in the same way on this topic as it does on others—the possibility of excepting ALL OF THE CONSTITUTION is literally written into it and ALWAYS A POSSIBILITY that fiat cannot solve—try or die for a new system

Kohn 06. Margaret Kohn, assistant professor of political science at the University of Florida, “Bare Life and the Limits of the Law” Theory and Event9:2, muse

At this point it should be clear that Agamben would be deeply skeptical of the liberal call for more vigorous enforcement of the rule of law as a means of combating cruelties and excesses carried out under emergency powers. His brief history of the state of exception establishes that the phenomenon is a political reality that has proven remarkably resistant to legal limitations. Critics might point out that this descriptive point, even if true, is no reason to jettison the ideal of the rule of law. For Agamben, however, the link between law and exception is more fundamental; it is intrinsic to politics itself.  The sovereign power to declare the state of exception and exclude bare life is the same power that invests individuals as worthy of rights. The two are intrinsically linked. The disturbing implication of his argument is that we cannot preserve the things we value in the Western tradition (citizenship, rights, etc.) without preserving the perverse ones.

Agamben presents four theses that summarize the results of his genealogical investigation. (1) The state of exception is a space devoid of law. It is not the logical consequence of the state's right to self-defense, nor is it (qua commissarial or sovereign dictatorship) a straightforward attempt to reestablish the norm by violating the law. (2) The space devoid of law has a "decisive strategic relevance" for the juridical order. (3) Acts committed during the state of exception (or in the space of exception) escape all legal definition. (4) The concept of the force-of-law is one of the many fictions, which function to reassert a relationship between law and exception, nomos and anomie.

The core of Agamben's critique of liberal legalism is captured powerfully, albeit indirectly, in a quote from Benjamin's eighth thesis on the philosophy of history.  According to Benjamin,

(t)he tradition of the oppressed teaches us that the 'state of exception' in which we live is the rule. We must attain a concept of history that accords with this fact. Then we will clearly see that it is our task to bring about the real state of exception, and this will improve our position in the struggle against fascism. (57)

Here Benjamin endorses the strategy of more radical resistance rather than stricter adherence to the law. He recognizes that legalism is an anemic strategy in combating the power of fascism. The problem is that conservative forces had been willing to ruthlessly invoke the state of exception in order to further their agenda while the moderate Weimar center-left was paralyzed; frightened of the militant left and unwilling to act decisively against the authoritarian right, partisans of the rule of law passively acquiesced to their own defeat. Furthermore, the rule of law, by incorporating the necessity of its own dissolution in times of crisis, proved itself an unreliable tool in the struggle against violence.

From Agamben's perspective, the civil libertarians' call for uniform application of the law simply denies the nature of law itself.  He insists, "From the real state of exception in which we live, it is not possible to return to the state of law. . ." (87) Moreover, by masking the logic of sovereignty, such an attempt could actually further obscure the zone of indistinction that allows the state of exception to operate.  For Agamben, law serves to legitimize sovereign power. Since sovereign power is fundamentally the power to place people into the category of bare life, the law, in effect, both produces and legitimizes marginality and exclusion.

### 2nc alternative

#### Potential politics: the alternative sufficiently solves if it demonstrates that a life otherwise is POSSIBLE—we cannot know precisely what movements the alternative would take, but SUBTRACTION itself is sufficient to demonstrate that a world otherwise is possible—scripting the forms the alternative would take is a link argument and should be ethically rejected.

Prozorov 10. Sergei Prozorov, professor of political and economic studies at the University of Helsinki, “Why Giorgio Agamben is an optimist,” Philosophy Social Criticism 2010 36: pg. 1069

The contingency of the outcome is certainly not the reason to evade the wager on ‘happy life’ or renounce all dreams of it, which would merely turn the contingent into the necessarily impossible. What we must do with our dreams is simply take the risk of using them without any fear of using them up, of ‘destroying’ and ‘falsifying’ them, of going to the bottom of them and finding nothing but the void. And even if they all amount to nothing, if the potential subjects of whatever being shrug and say ‘whatever’ in response to Agamben’s vision of happy life, this only means that ‘not only this is pos- sible’, that the possibility of a happy life remains a possibility, a possibility to succeed or, in Beckett’s terms, to fail better. This is the ultimate limit of Agamben’s optimism, beyond which his thought cannot venture, having dispensed with both will and necessity and finding its ground in absolute contingency alone. This curious optimism, which is only strengthened with each successive failure, resonates with Wallace Stevens’ famous words in Notes on the Supreme Fiction, ‘It is possible, possible, possible, it must be pos- sible. It must be that in time the real will from its crude compoundings come.’

### 2nc permutation

#### The only ethical position is to refuse the sovereign fiction of lines between inside and outside—it prefigures util because it prefigures their ability to know the world

Edkins and Pin-Fat 05. Jenny Edkins, professor of international politics at Prifysgol Aberystwyth University (in Wales) and Veronique Pin-Fat, senior lecturer in politics at Manchester Universit, “Through the Wire: Relations of Power and Relations of Violence,” Millennium - Journal of International Studies 2005 34: pg. 14

One potential form of challenge to sovereign power consists of a refusal to draw any lines between zoe- and bios, inside and outside**.**59 As we have shown, sovereign power does not involve a power relation in Foucauldian terms. It is more appropriately considered to have become a form of governance or technique of administration through relationships of violence that reduce political subjects to mere bare or naked life. In asking for a refusal to draw lines as a possibility of challenge, then, we are not asking for the elimination of power relations and consequently, we are not asking for the erasure of the possibility of a mode of political being that is empowered and empowering, is free and that speaks: quite the opposite. Following Agamben, we are suggesting that it is only through a refusal to draw any lines at all between forms of life (and indeed, nothing less will do) that sovereign power as a form of violence can be contested and a properly political power relation (a life of power as potenza) reinstated. We could call this challenging the logic of sovereign power through refusal. Our argument is that we can evade sovereign power and reinstate a form of power relation by contesting sovereign power’s assumption of the right to draw lines, that is, by contesting the sovereign ban. Any other challenge always inevitably remains within this relationship of violence. To move outside it (and return to a power relation) we need not only to contest its right to draw lines in particular places, but also to resist the call to draw any lines of the sort sovereign power demands.

The grammar of sovereign power cannot be resisted by challenging or fighting over where the lines are drawn. Whilst, of course, this is a strategy that can be deployed, it is not a challenge to sovereign power per se as it still tacitly or even explicitly accepts that lines must be drawn somewhere (and preferably more inclusively). Although such strategies contest the violence of sovereign power’s drawing of a particular line, they risk replicating such violence in demanding the line be drawn differently**.** This is because such forms of challenge fail to refuse sovereign power’s line-drawing ‘ethos’, an ethos which, as Agamben points out, renders us all now homines sacri or bare life.

#### The permutation is a red herring—detracts from a systemic critique which is the best way to understand the status quo

Saas 12. William O. Saas, PhD in communications from Penn State University, “Critique of Charismatic Violence,” symploke, Volume 20, Numbers 1-2, 2012, pg. 65

Hidden in plain sight: a sprawling bureaucracy designed to justify and deliver military violence—clothed in the new war lexicon—to the world. How might one critique this massive network of violence that has become so enmeshed in our contemporary geo-socio-political reality? Is there any hope for reversing the expansion of executive violence in the current politi- cal climate, in which the President enjoys minimal resistance to his most egregious uses of violence? How does exceptional violence become routine? Answers to these broad and difficult questions, derived as they are from the disorientingly vast and hyper-accelerated retrenchment of our current politi- cal situation, are best won through the broad strokes of what Slavoj Žižek calls “systemic” critique. For Žižek, looking squarely at interpersonal or subjec- tive violences (e.g., torture, drone strikes), drawn as we may be by their grue- some and immediate appeal, distorts the critic’s broader field of vision. For a fuller picture, one must pull one’s critical focus back several steps to reveal the deep, objective structures that undergird the spectacular manifestations of everyday, subjective violence (Žižek 2008, 1-2). Immediately, however, one confronts the limit question of Žižek’s mandate: how does one productively draw the boundaries of a system without too severely dampening the force of objective critique?

### More cards

#### The ballot is the choice of Edward Snowden—will your ballot imply complacency or using your situated position to build a network of popular insurrection?

Connolly 13. William Connolly, Krieger-Eisenhower professor of political science at Johns Hopkins, “‘The East’ and Corporate Terrorism,” The Contemporary Condition, July 7, 2013 <http://contemporarycondition.blogspot.com/2013/07/the-east-and-corporate-terrorism.html>, accessed September 4, 2013

Eventually Sarah develops a strategy of public expose and activism that draws some sustenance from her two identities and resists the traps each sets for her. I will let that part unfold when you watch the film. Is it enough?  Probably not. Could more of us participate in such acts to augment the potential they hold? Yes, we could. Many of us are what Michel Foucault called “specific intellectuals”, people with special knowledges and skills because of the work we do in law firms, medical practices, college teaching, blog writing, pharmaceutical companies, intelligence agencies, the media, school boards, churches, geological research, corporate regulatory agencies, and so on, endlessly. Each of us has specific modes of strategic information and critical skill linked to our role assignments. We can expose horrendous practices, as Snowden has done recently. We can also support others who do so as we seek to build a critical assemblage of public insurrection together.

#### Refuse the false fusion of democracy and sovereignty and make this debate into an island of revolt—constituting any space part of a global revolt archipelago against sovereignty is always an option—we can win the debate because we have a better MEANING for the ballot alone

Lambert 13. Leopold Lambert, post-structuralist French Architect, editor of the Funambulist, author of Weaponized Architecture, The Funambulist Pamphlets: Occupy Wall Street, “The Political Archipelago: For a New Paradigm of Territo- rial Sovereignty” pg. 82

Similar phenomena have been observed since 2011 on mul- tiple territories of the world. The archipelago of the revolt counts many islands whose names resonate in the relation that link them together: Sidi Bouzid, Tahrir, Douma, S’derot Rotshield, Dawwar Al-Lu’Lu, Puerta del Sol, Zuccotti, Oak- land, La Petite Patrie, Natal, Bayda, Taksim, Megaro Tis ERT and so much more. These small territories gathered millions of bodies and some of them continue to be inhabited as I am writing these words, embodying a new way to live politically.

These islands do not have any immigration problems: all bodies are welcome and it is their very presence on that terri- tory that defines them as inhabitants and citizens. Each body has to choose at each moment the space that it occupies. It can be only at one place at a time and only this given body can be present on this given place. That is the principle of occupation and its political implication, whether we talk about the Israeli occupation of the West Bank and East Jerusalem, or the Occupy movement. At each moment, we are confront- ed with an oxymoronic choice, simultaneously necessary — since we cannot not choose — and radical — since our choice of a space excludes every other — of the space that our body occupies.

The islands of the archipelago are formed by groups of bodies that accept, implicitly or explicitly, to create a politi- cal community. These groups, through the materiality of the bodies that form them, define territories whose limits are con- tinually redefined. Elsewhere, other islands are formed and, despite the fact that each develops its own identity, dialogues between them are effectuated and thus, they can acquire the status of political archipelago. The ‘sea’ that separates them is a region of flux. Fast fluxes, slow fluxes, just like the ocean, they constitute the ambient milieu of the islands whose name, “occupation,” informs about their ‘sedentary’ nature. One has to understand this term, not as the absence of movement or as a permanence, but rather as the space of a constructive intensive movement that lasts as long as the island exists; in other words, as long as bodies form a political community on this territory.

Far from the representative democracy’s scheme that we know too well, the political archipelago incarnates a para- digm in which the notion of majority, and therefore the no- tion of norm, are considered less important than the one of political intensity, i.e. the corporal and spatial engagement of an ethical community. This is the condition for new politi- cal practices to emerge without being synonymous with the domination of a group — even if it is a majority — on another. As I was attempting to demonstrate above, this political ar- chipelago already exists in coexistence with the recognized sovereignty paradigm. Nevertheless, we can imagine it as the only form of worldwide sovereignty and forget about the ob- solete concept of country. Such a reformulation of the notion of territory also implies important redefinition of architecture that currently carries the symptoms of the political paradigm in which we live.

## 1NR

### drones

#### Drones produce Pakistani instability

**Schirch 12** [Lisa Schirch, Director, 3P Human Security, “9 Costs of Drone Strikes,” 6/28/2012, <http://www.huffingtonpost.com/lisa-schirch/drones_b_1630592.html>]

3. Drones Create Humanitarian Crises, Seeding Long-Term Instability: Over a million internally displaced Pakistanis have fled their homes, schools, and businesses to escape drone bombings, military bombing, and ground fighting. In Yemen, drones have displaced nearly 100,000. Seven aid agencies warn that Yemen is on the brink of a catastrophic food crisis with 10 million people -- nearly half of the population lacking food to eat. Drone-related displacement disrupts long-term stability by decreasing the capacity of local people to respond through civil society initiatives that foster stability, democracy and moderation and increase displaced people's vulnerability to insurgent recruitment. The U.S. is spending billions of dollars on the drone program while failing to adequately respond to the humanitarian crisis that may have significant long-term political and economic impacts.

#### Pakistan instability causes loose nukes and Indian intervention --- goes nuclear

Michael O’Hanlon 5, senior fellow with the Center for 21st Century Security and Intelligence and director of research for the Foreign Policy program at the Brookings Institution, visiting lecturer at Princeton University, an adjunct professor at Johns Hopkins University, and a member of the International Institute for Strategic Studies

PhD in public and international affairs from Princeton, Apr 27 2005, “Dealing with the Collapse of a Nuclear-Armed State: The Cases of North Korea and Pakistan,” http://www.princeton.edu/~ppns/papers/ohanlon.pdf

Were Pakistan to collapse, it is unclear what the United States and like-minded states would or should do. As with North Korea, it is highly unlikely that “surgical strikes” to destroy the nuclear weapons could be conducted before extremists could make a grab at them. The United States probably would not know their location – at a minimum, scores of sites controlled by Special Forces or elite Army units would be presumed candidates – and no Pakistani government would likely help external forces with targeting information. The chances of learning the locations would probably be greater than in the North Korean case, given the greater openness of Pakistani society and its ties with the outside world; but U.S.-Pakistani military cooperation, cut off for a decade in the 1990s, is still quite modest, and the likelihood that Washington would be provided such information or otherwise obtain it should be considered small.¶ If a surgical strike, series of surgical strikes, or commando-style raids were not possible, the only option would be to try to restore order before the weapons could be taken by extremists and transferred to terrorists. The United States and other outside powers might, for example, respond to a request by the Pakistani government to help restore order. Given the embarrassment associated with requesting such outside help, the Pakistani government might delay asking until quite late, thus complicating an already challenging operation. If the international community could act fast enough, it might help defeat an insurrection. Another option would be to protect Pakistan’s borders, therefore making it harder to sneak nuclear weapons out of the country, while only providing technical support to the Pakistani armed forces as they tried to quell the insurrection. Given the enormous stakes, the United States would literally have to do anything it could to prevent nuclear weapons from getting into the wrong hands.¶ India would, of course, have a strong incentive to ensure the security of Pakistan’s nuclear weapons. It also would have the advantage of proximity; it could undoubtedly mount a large response within a week, but its role would be complicated to say the least. In the case of a dissolved Pakistani state, India likely would not hesitate to intervene; however, in the more probable scenario in which Pakistan were fraying but not yet collapsed, India’s intervention could unify Pakistan’s factions against the invader, even leading to the deliberate use of Pakistani weapons against India. In such a scenario, with Pakistan’s territorial integrity and sovereignty on the line and its weapons put into a “use or lose” state by the approach of the Indian Army, nuclear dangers have long been considered to run very high.

### norms

#### No Turkey-Syria war

**Barzegar 11** (Kayhan Barzegar, Director of the Institute for Middle East Strategic Studies in Tehran and Chair of the Department of Political Science and International Relations at the Science and Research Branch of the Islamic Azad University in Tehran, “Iran-Turkey's Role in Solving the Syrian Crisis”, <http://www.fairobserver.com/article/iran-turkeys-role-solving-syrian-crisis>, December 25, 2011)

The line of geopolitical discrepancy between Iran and Turkey is the issue of possible “military intervention" in Syria—either by Turkey or the West and NATO. Despite its rhetorical and symbolic policies, Turkey is unable to convince its public of any military intervention in Syria. Without Turkey's military intervention, the possibility of NATO’s attack against Syria faces serious doubts. Waging a new war without the required legitimacy and support of the Middle East public would be disastrous for the West. Although some western analyses that regard Turkey as the winner and Iran as the loser of Arab Spring, the role of these two players cannot yet be fully determined because they depend on how the Arab public perceives them, and future policies in the region, particularly in Syria. Experience shows that the Arab world will resist accepting “big brother” models such as a moderate Islamist or secular Turkey. Meanwhile, different political factions, especially secularists in Turkey, strongly oppose Turkey’s deep involvement in Arab Spring because they consider it beyond Turkey's actual political-strategic and economic potential. Although some layers of Arab societies favor the Turkish model, it simultaneously faces serious challenges by ideological trends in the region.

### 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.”