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### Plan

#### The United States Federal Government should remove by statute the President’s authority under Title 50 for targeted killing by drones

### Adv 1

#### Advantage 1: Terrorism

#### Congress blocked Obama’s transfer of drones to the military --- ensures widespread backlash

Auner, 14 [1/21/14, Eric, senior analyst at Guardian Six Consulting, “Congress Resists Pentagon Drone Oversight as U.S. and Partners Continue Targeted Killing”, <http://www.worldpoliticsreview.com/trend-lines/13513/congress-resists-pentagon-drone-oversight-as-u-s-and-partners-continue-targeted-killings>]

As U.S. forces draw down in Afghanistan, the United States continues to carry out targeted killings against suspected terrorist leaders in several theaters—including through the use of armed drones—and to enhance the ability of partner nations to carry out lethal operations. But U.S. drone strikes can kill innocent civilians along with their intended targets, generating **backlash abroad and concerns domestically**. According to reporting last week by the Washington Post, one such strike moved Congress to insert language into the $1.1 trillion spending bill that blocks Obama administration attempts to transfer the U.S. drone program from the CIA tothe Pentagon. Currently, both the CIA and the Department of Defense operate their own drone programs under different legal authorities, with the CIA drone program governed by covert operations statutes. In December, a strike carried out by the military hit a convoy in Yemen, which Yemeni tribal leaders told news organizations was part of a wedding party. In addition to several al-Qaida targets, approximately half a dozen civilians were killed, and the incident raised concerns over the targeting capabilities of the military. Micah Zenko of the Council on Foreign Relations, who has argued that lead authority for drone strikes should be consolidated under the Defense Department, explains that placing the program under Pentagon control “would allow the program to be defended publicly,” which is not the case for the covert drone program controlled by the CIA. He adds that the move would not necessarily have operational implications for how the program is carried out. But in general, he suggests, there is little appetite among lawmakers on either side of the aisle to enact major reforms to U.S. targeted killing programs or to significantly increase oversight. Although the Senate Intelligence Committee approved a plan to improve government oversight of U.S. drone strikes in November, the current partisan configuration may make it less likely that Congress will oppose drone strikes and other methods of targeted killing. Democrats hesitate to oppose their own party’s president, and many conservatives cheer a vigorous prosecution of the fight against terrorism. But a lack of interest in major reform may also reflect a level of basic agreement in Washington on the efficacy of targeted strikes as a counterterrorism tool. According to Clint Watts of the Homeland Security Policy Institute at George Washington University, although the frequency of their use has gone down over the past two years, targeted killings via drone are still “the best available option of interdicting terrorists that produces the fewest civilian casualties.” He says that media accounts frequently exaggerate the extent of collateral damage from drone strikes and usually **fail to consider the consequences of alternative strategies** for going after terrorists. Other approaches, such as “clear, hold and build” counterinsurgency operations and funding local militias, can also cause collateral damage and generate instability in sensitive areas, Watts explains. Moreover, with the domestic controversy over detaining suspected terrorists, the military feels more constrained in its ability to capture suspected terrorists alive. The United States has pursued a range of different types of cooperation with several partner countries in terms of drone strikes, which have taken place in Afghanistan and Pakistan, as well as Yemen, where 450 militants were killed in strikes in 2012 and 119 in 2013, according to the New America Foundation. But Zenko has also cataloged other instances of the U.S. assisting allies in carrying out lethal operations, including assisting the French in Mali and the Ugandan government in its fight against the Lord’s Resistance Army.

#### CIA targeted killing undermines program sustainability – conflicting legal regimes

Burt and Wagner, 12 [Blurred Lines: An Argument for a More Robust Legal Framework Governing the CIA Drone Program Andrew Burt† & Alex Wagner Yale Law School, J.D. expected 2014. ‡ Special Advisor for Rule of Law and Detainee Policy, Office of the Secretary of Defense, and Adjunct Professor of Law, Georgetown University Law Center. All views expressed herein are solely those of the authors and not those of the United States, the Office of the Secretary of Defense, or the Department of Defens The Yale Journal of International Law Online]

The principle of “distinction” between civilians and combatants forms the basis for one of the core concepts of international humanitarian law. During armed conflict, civilians are presumptively assumed not to be taking a direct role in the conduct of hostilities, must not be attacked, and are entitled to various degrees of protection under the Fourth Geneva Convention. Civilians lose these protections under the law of war when they cease operating in a civilian capacity and instead take a direct role in the conduct of hostilities. According to the Interpretive Guidance of the ICRC, civilian “direct participation in hostilities” (DPH) refers to “specific acts carried out by individuals as part of the conduct of hostilities between parties to an armed conflict,” and civilians become targetable while performing those acts.48 For those unprivileged belligerents who assume a larger, consistent role in hostilities (know as a “continuous combat function”), such conduct alters their status, enabling them to be targeted as belligerents, rather than only for the time they commit a specific hostile act. Without the legal status of combatant, and thus the privileges described above, CIA civilians who operate drones that hunt and shoot Hellfire missiles at al Qaeda militants arguably lose both the protection due to civilians and the immunity reserved for lawful combatants, rendering them both lawful targets of attack and criminally liable (for war crimes under international law or for murder under domestic law where the hostilities occur). Two principal problems arise from this uncomfortable similarity in legal status between CIA civilians and the terrorists they combat. The first is one of misalignment: it is less than ideal for the United States to be waging a military, diplomatic, and public relations campaign against a global network of terrorists whose members arguably share the same legal status as a segment of the Americans targeting them, especially when the legal status of the terrorists as unlawful belligerents is part of the justification for pursuing them. Second, U.S. domestic law itself (the Military Commissions Act of 2009) treats the conduct of unprivileged belligerents as inconsistent with the laws of war.49 A legal regime justifying the United States’ global fight against al Qaeda jeopardizes its sustainability, but most importantly, its credibility, with this type of contradiction at its core. Indeed, the undeniable success of the drone strikes in pushing al Qaeda to the brink of strategic defeatmakes it **imperative** that critics cannot assert a legal—or perhaps even moral—equivalency between the CIA and al Qaeda. The drone program’s continued viability necessitates a stronger grounding in both international and domestic law.

#### The plan makes targeted killing sustainable and effective—fosters legal clarity and perception of oversight

Waxman, 13 [3/20, Matthew, law professor at Columbia Law School, co-chair, Roger Hertog Program on Law and National Security, Adjunct Senior Fellow for Law and Foreign Policy at the Council on Foreign Relations, member of the Hoover Institution Task Force on National Security and Law, “Going Clear,” Foreign Policy, http://www.foreignpolicy.com/articles/2013/03/20/going\_clear?wp\_login\_redirect=0]

According to Daniel Klaidman at the Daily Beast, "[T]he White House is poised to sign off on a plan to shift the CIA's lethal targeting program to the Defense Department." Many critics of the government's targeted-killing policy have been calling for such a move, hoping that it would (in Klaidman's words) "toughen the criteria for drone strikes, strengthen the program's accountability, and increase transparency." That may be. But if what those critics really want is to end the practice of killing suspected al Qaeda fighters with unmanned aircraft far from active combat zones, they should be careful what they wish for. Although technically "covert" and carried out under statutory and presidential authorities designed to preserve "plausible deniability," it's an open secret that the CIA has been conducting counterterrorism strikes in places like Pakistan and Yemen. The U.S. military conducts similar strikes, usually through Joint Special Operations Command, including in Yemen and Somalia. Many argue that these strikes are illegal or counterproductive -- regardless of who conducts them -- because they deny targeted suspects legal process, violate national sovereignty, cause collateral damage, and fuel radicalism. Others believe, however, that these problems are compounded when the CIA is in charge because of the secrecy and impunity with which it operates. In truth, critics often underestimate oversight of CIA activities and overestimate the openness of military operations. Even if the Pentagon conducts all U.S. drone strikes, the operational details will still be shrouded in secrecy, the CIA will still provide targeting information, and much of the congressional oversight will still be conducted behind closed doors (though it will shift from the intelligence committees to the armed services committees). The CIA is also subject to some statutory congressional reporting requirements that the Defense Department is not. That said, moving all strikes under Defense Department control and eliminating their officially covert status will probably allow executive branch officials and members of Congress to speak more **clearly and openly** about general policy in this area. With regard to the legal rules that govern targeting, it may be that shifting operations to the Defense Department will promotestricter compliance. In a 2012 speech, the CIA general counsel stated that the agency conducts its operations "in a manner consistent with the...basic principles in the law of armed conflict" -- not that the CIA is legally required to comply with the rules -- which led many to wonder whether the agency was operating outside their bounds. The military is also much better practiced than the CIA in applying the law of armed conflict and assessing collateral damage. Even if the CIA has in reality been fully compliant, it is in the U.S. interest to promote these international legal rules by communicating unambiguously and demonstrating its own normative commitment to them. Those are things that the military is much better able to do, on account of **tradition, institutional culture, and legal requirements**. So, moving operations to the Pentagon may modestly improve transparency and compliance with the law but -- ironically for drone critics -- it may also entrench targeted-killing policy for the long term. For one thing, the U.S. government will now be better able to defend publicly its practices at home and abroad. The CIA is institutionally oriented toward extreme secrecy rather than public relations, and the covert status of CIA strikes makes it difficult for officials to explain and justify them. The more secretive the U.S. government is about its targeting policies, the less effectively it can **participate in** the **broader debates** about the law, ethics, and strategy of counterterrorism. Many of the criticisms of drones and targeting are fundamentally about whether it's appropriate to treat the fight against al Qaeda and its allies as a war -- with all the legal authorities that flow from that, like the powers to detain and kill. The U.S. government can better defend its position without having to maintain plausible deniability of its most controversial program and without the negative image (whether justified or not) that many audiences associate with the CIA. Under a military-only policy, the United States would also be better positioned to correct lingering misperceptions about targeted killings and to take remedial action when it makes a mistake. Moreover, clearer legal limits and the perception of stricter oversight will make drone policy more legitimate in the public's eyes. Polling shows that Americans support military drone strikes more strongly than CIA ones, so this move will likely strengthen political backing for continued strikes. Consider the case of Guantanamo: The shuttering of black sites, as well as the Supreme Court's decisions that detainees there can challenge their detention in federal court and that all detainees are protected by the Geneva Convention, have muted criticism of the underlying practice of detention without trial. Here, too, the proposed reforms would put the remaining policy on stronger footing. It's difficult to assess fully the pros and cons of getting the CIA out of the lethal targeting business because the government has not explained why it has been using the CIA for some operations and not others. As to efficacy -- how the advantages of targeted strikes match up against the costs -- strategy should dictate which agency should be responsible, not the other way around. That said, the result of shifting control to the Pentagon will likely be a more sustainable, if perhaps more restrained and formalized, long-term policy of targeted killing.

#### JSOC key to combat terrorism --- the plan’s mode of selective disclosure assuages public fears, while maintaining JSOC’s core competence

Sahadi, 13 [By: Michael J. Sahadi, Jr., J.D. Ave Maria School of Law Class of 2013KEEPING JSOC A SECRET: The Exposure of Special Warfare and its Adverse Effects on National Security and Defense to the United States, p. internet]

It is no secret that the United States uses drones as a military tool. Transparency has extended to the drone program as well. Guiora said, “everyone knows what we are doing,” and people want “transparency with drones” as well.90 The best way to handle this situation is be upfront about it. The government should tell the people, “this is what we do, these ourare guidelines, policy is policy” and “drone policy is the future of combat, and there is a lack of transparency” in this area.91 Transparency is good for certain things the government does, however, the drone program is complicated. Although not confirmed, some “drones likely fall under JSOC.”92 If there are drones that JSOC utilizes, that should be one area that remains non-transparent. By contrast, if the government uses drones in a search and rescue situation during a natural disaster, that is a scenario where the drone usage could be transparent. Drones are highly effective tools, and they appear to be an integral part of military operations moving forward, therefore it would be adverse to share such sensitive information. Drones were likely used leading up to Operation Neptune Spear to catch bin Laden, whereby “Obama in turn drafted a memo to Panetta in June, 2009 directing the CIA to create a “detailed operation plan” for finding the AQ leader and to ‘ensure that we have expended every effort’ to track bin Laden down, as well as to intensify the CIA’s classified drone program.”93 Furthermore, “Predator drones have reportedly been used “at least hundreds of times to fire on targets in Afghanistan, Pakistan, Yemen, Iraq, and elsewhere.”94 Drone warfare has increased over the last few years, because “President Obama has authorized nearly four times the number of drone strikes for targeted killing in Pakistan in his first two years in office as President Bush did in his eight years.”95 It appears that “Africa may end up becoming the next front in Obama’s drone war, and he may have bipartisan support.”96 Both drone warfare and transparency will be hotly contested issues in the coming years, especially during campaign seasons. The people want transparency, the politicians will promise it, and all will conflict with national security. Certain drones could be disclosed to the public, but others must remain hidden. Any drone associated with JSOC should never be disclosed to the public. The operators in JSOC risk their lives on every mission, if there are drones that can help reduce that risk, there is no reason to disclose them, as there is no public benefit. Conclusion This paper has demonstrated why it is so important to keep JSOC a secret organization, exposure does nothing more than counteract all that JSOC is trying to accomplish. Exposing JSOC and its units only makes the command ineffective as a fighting force. JSOC was largely unknown before Operation Neptune Spear took place. Post-Neptune Spear, the entire world was privy to highly sensitive information. The leaking of this information was not for historical value, merely personal gain, which makes it utterly wrong. Operation Red Dawn was handled properly, whereby the world was made known of Saddam Hussein’s capture, and then moved on. Operation Neptune Spear was handled with much less care and wisdom, thereby jeopardizing the lives of the operators and possible success in future missions. The world needed to know Osama bin Laden was neutralized. The world did not need to know who did it, why it was done the way it was, how it was planned and executed, where it took place, and when each stage occurred. Had the administration not leaked this highly sensitive information, the floodgates would never have been opened whereby countless news articles, television shows, books, and now movies advertise in great detail what our operators are capable of. JSOC operates successfully when left deep in the dark shadows. Shining blinding lights into places that ought not be illuminated with media only threat(en)s the success of the command. From the beginning JSOC was designed in secret, and was to operate in secret, that was its ethos. The cloak of secrecy has been more than pierced, it has been completely ripped away by the onslaught of media outlets, journalists, and do-gooders out to set the record straight. The rationale by these groups is that Neptune Spear will forever be studied in the history books. That is highly unlikely as bin Laden’s death did not bring with it the collapse of al-Qaeda and all its terror cells in the same way Hitler’s death brought down Nazi Germany. If Neptune Spear makes in the history books of time, it will be nothing more than a small section buried in a chapter. This paper is not stating Operation Neptune Spear or the death of Osama bin Laden are irrelevant or of no great importance, this paper argued that how that operation was conducted needed to be kept a secret, as all of JSOC’s countless missions should be. Classified or Top Secret information does not mean that it is only reserved for those with the necessary security clearances to divulge to the world, it means it should not be divulged at all. JSOC was designed in secret, JSOC operates in secret, and therefore JSOC should remain a secret. Any exposure is too much exposure.

#### Program backlash inhibits effective use, even if it doesn’t end it—the aff is key middle ground

Zenko, 13 [Micah Zenko is the Douglas Dillon fellow in the Center for Preventive Action (CPA) at the Council on Foreign Relations (CFR). Previously, he worked for five years at the Harvard Kennedy School and in Washington, DC, at the Brookings Institution, Congressional Research Service, and State Department's Office of Policy Planning, Council Special Report No. 65, January 2013, “U.S. Drone Strike Policies”, i.cfr.org/content/publications/attachments/Drones\_CSR65.pdf‎]

In his Nobel Peace Prize acceptance speech, President Obama declared: “Where force is necessary, we have a moral and strategic interest in binding ourselves to certain rules of conduct. Even as we confront a vicious adversary that abides by no rules, I believe the United States of America must remain a standard bearer in the conduct of war.”63 Under President Obama drone strikes have expanded and intensified, and they will remain a central component of U.S. counterterrorism operations for at least another decade, according to U.S. officials.64 But much as the Bush administration was compelled to reform its controversial counterterrorism practices, it is likely that the United States will ultimately be forced by domestic and international pressure to scale back its drone strike policies. The Obama administration can preempt this pressure by clearly articulating that the rules that govern its drone strikes, like all uses of military force, are based in the laws of armed conflict and international humanitarian law; by engaging with emerging drone powers; and, most important, by matching practice with its stated policy by limiting drone strikes to those individuals it claims are being targeted (which would reduce the likelihood of civilian casualties since the total number of strikes would significantly decrease). The choice the United States faces is not between unfettered drone use and sacrificing freedom of action, but between drone policy reforms by design or drone policy reforms **by default**. Recent history demonstrates that domestic political pressure could severely limit drone strikes in ways that the CIA or JSOC have not anticipated. In support of its counterterrorism strategy, the Bush administration engaged in the extraordinary rendition of terrorist suspects to third countries, the use of enhanced interrogation techniques, and warrantless wiretapping. Although the Bush administration defended its policies as critical to protecting the U.S. homeland against terrorist attacks, unprecedented domestic political pressure led to significant reforms or termination. Compared to Bush-era counterterrorism policies, drone strikes are vulnerable to similar—albeit still largely untapped—moral outrage, and they are even more susceptible to political constraints because they occur in ~~plain sight~~ [obviously]. Indeed, a negative trend in U.S. public opinion on drones is already apparent. Between February and June 2012, U.S. support for drone strikes against suspected terrorists fell from 83 percent to 62 percent—which represents less U.S. support than enhanced interrogation techniques maintained in the mid-2000s.65 Finally, U.S. drone strikes are also widely opposed by the citizens of important allies, emerging powers, and the local populations in states where strikes occur.66 States polled reveal overwhelming opposition to U.S. drone strikes: Greece (90 percent), Egypt (89 percent), Turkey (81 percent), Spain (76 percent), Brazil (76 percent), Japan (75 percent), and Pakistan (83 percent).67 This is significant because the United States cannot conduct drone strikes in the most critical corners of the world by itself. Drone strikes require the tacit or overt support of host states or neighbors. If such states decided not to cooperate—or to actively resist—U.S. drone strikes, their effectiveness would be immediately and sharply reduced, and the likelihood of civilian casualties would increase. This danger is not hypothetical. In 2007, the Ethiopian government terminated its U.S. military presence after public revelations that U.S. AC-130 gunships were launching attacks from Ethiopia into Somalia. Similarly, in late 2011, Pakistan evicted all U.S. military and intelligence drones, forcing the United States to completely rely on Afghanistan to serve as a staging ground for drone strikes in Pakistan. The United States could attempt to lessen the need for tacit host-state support by making significant investments in armed drones that can be flown off U.S. Navy ships, conducting electronic warfare or missile attacks on air defenses, allowing downed drones to not be recovered and potentially transferred to China or Russia, and losing access to the human intelligence networks on the ground that are critical for identifying targets. According to U.S. diplomats and military officials, active resistance— such as the Pakistani army shooting down U.S. armed drones— is a legitimate concern. In this case, the United States would need to either end drone sorties or escalate U.S. military involvement by attacking Pakistani radar and antiaircraft sites, thus increasing the likelihood of civilian casualties.68 Beyond where drone strikes currently take place, political pressure could severely limit options for new U.S. drone bases. For example, the Obama administration is debating deploying armed drones to attack al-Qaeda in the Islamic Maghreb (AQIM) in North Africa, which would likely require access to a new airbase in the region. To some extent, anger at U.S. sovereignty violations is an inevitable and necessary trade-off when conducting drone strikes. Nevertheless, in each of these cases, domestic anger would partially or fully abate if the United States modified its drone policy in the ways suggested below.

#### Credible threat of legal backlash creates a chilling effect

Goldsmith, 12 [Jack Goldsmith, Harvard Law School Professor, focus on national security law, presidential power, cybersecurity, and conflict of laws, Former Assistant Attorney General, Office of Legal Counsel, and Special Counsel to the Department of Defense, Hoover Institution Task Force on National Security and Law, March 2012, Power and Constraint, P. 199-201]

For the GTMO Bar and its cousin NGOs and activists, however, the al-Aulaqi lawsuit, like other lawsuits on different issues, was merely an early battle in a long war over the legitimacy of U.S. targeting practices—a war that will take place not just in the United States, but in other countries as well. When the CCR failed to achieve what it viewed as adequate accountability for Bush administration officials in the United States in connection with interrogation and detention practices, it started pursuing, and continues to pursue, lawsuits and prosecutions against U.S. officials in Spain, Germany, and other European countries. "You look for every niche you can when you can take on the issues that you think are important," said Michael Ratner, explaining the CCR's strategy for pursuing lawsuits in Europe. Clive Stafford Smith, a former CCR attorney who was instrumental in its early GTMO victories and who now leads the British advocacy organization Reprieve, is using this strategy in the targeted killing context. "There are endless ways in which the courts in Britain, the courts in America, the international Pakistani courts can get involved" in scrutinizing U.S. targeting killing practices, he argues. "It's going to be the next 'Guantanamo Bay' issue."' Working in a global network of NGO activists, Stafford Smith has begun a process in Pakistan to seek the arrest of former CIA lawyer John Rizzo in connection with drone strikes in Pakistan, and he is planning more lawsuits in the United States and elsewhere against drone operators." "The crucial court here is the court of public opinion," he said, explaining why the lawsuits are important even if he loses. His efforts are backed by a growing web of proclamations in the United Nations, foreign capitals, the press, and the academy that U.S. drone practices are unlawful. What American University law professor Ken Anderson has described as the "international legal-media-academic-NGO-international organization-global opinion complex" is hard at work to stigmatize drones and those who support and operate them." This strategy is having an impact. The slew of lawsuits in the United States and threatened prosecutions in Europe against Bush administration officials imposes reputational, emotional, and financial costs on them that help to promote the human rights groups' ideological goals, even if courts never actually rule against the officials. By design, these suits also give pause to current officials who are considering controversial actions for fear that the same thing might later happen to them. This effect is starting to be felt with drones. Several Obama administration officials have told me that they worry targeted killings will be seen in the future (as Stafford Smith predicts) as their administration's GTMO. The attempted judicial action against Rizzo, the earlier lawsuits against top CIA officials in Pakistan and elsewhere, and the louder and louder proclamations of illegality around the world all of which have gained momentum after al-Aulaqi's killing—are also having an impact. These actions are rallying cries for protest and political pushback in the countries where the drone strikes take place. And they lead CIA operators to worry about legal exposure before becoming involved in the Agency's drone program." We don't know yet whether these forces have affected actual targeting practices and related tactics. But they induce the officials involved to take more caution. And it is only a matter of time, if it has not happened already, before they lead the U.S. government to forgo lawful targeted killing actions otherwise deemed to be in the interest of U.S. national security.

#### Drone use prevents planning and executing terrorist attacks

Johnston 12 (Patrick B. Johnston is an associate political scientist at the RAND Corporation, a nonprofit, nonpartisan research institution. He is the author of "Does Decapitation Work? Assessing the Effectiveness of Leadership Targeting in Counterinsurgency Campaigns," published in International Security (Spring 2012)., 8/22/2012, "Drone Strikes Keep Pressure on al-Qaida", www.rand.org/blog/2012/08/drone-strikes-keep-pressure-on-al-qaida.html)

Should the U.S. continue to strike at al-Qaida's leadership with drone attacks? A recent poll shows that while most Americans approve of drone strikes, in 17 out of 20 countries, more than half of those surveyed disapprove of them. My study of leadership decapitation in 90 counter-insurgencies since the 1970s shows that when militant leaders are captured or killed militant attacks decrease, terrorist campaigns end sooner, and their outcomes tend to favor the government or third-party country, not the militants. Those opposed to drone strikes often cite the June 2009 one that targeted Pakistani Taliban leader Baitullah Mehsud at a funeral in the Tribal Areas. That strike reportedly killed 60 civilians attending the funeral, but not Mehsud. He was killed later by another drone strike in August 2009. His successor, Hakimullah Mehsud, developed a relationship with the foiled Times Square bomber Faisal Shahzad, who cited drone strikes as a key motivation for his May 2010 attempted attack. Compared to manned aircraft, drones have some advantages as counter-insurgency tools, such as lower costs, longer endurance and the lack of a pilot to place in harm's way and risk of capture. These characteristics can enable a more deliberative targeting process that serves to minimize unintentional casualties. But the weapons employed by drones are usually identical to those used via manned aircraft and can still kill civilians—creating enmity that breeds more terrorists. Yet many insurgents and terrorists have been taken off the battlefield by U.S. drones and special-operations forces. Besides Mehsud, the list includes Anwar al-Awlaki of al-Qaida in the Arabian Peninsula; al-Qaida deputy leader Abu Yahya al-Li-bi; and, of course, al-Qaida leader Osama bin Laden. Given that list, it is possible that the drone program has prevented numerous attacks by their potential followers, like Shazad. What does the removal of al-Qaida leadership mean for U.S. national security? Though many in al-Qaida's senior leadership cadre remain, the historical record suggests that "decapitation" will likely weaken the organization and could ~~cripple~~ its ability to conduct major attacks on the U.S. homeland. Killing terrorist leaders is not necessarily a knockout blow, but can make it harder for terrorists to attack the U.S. Members of al-Qaida's central leadership, once safely amassed in northwestern Pakistan while America shifted its focus to Iraq, have been killed, captured, forced underground or scattered to various locations with little ability to communicate or move securely. Recently declassified correspondence seized in the bin Laden raid shows that the relentless pressure from the drone campaign on al-Qaida in Pakistan led bin Laden to advise al-Qaida operatives to leave Pakistan's Tribal Areas as no longer safe. Bin Laden's letters show that U.S. counterterrorism actions, which had forced him into self-imposed exile, had made running the organization not only more risky, but also more difficult. As al-Qaida members trickle out of Pakistan and seek sanctuary elsewhere, the U.S. military is ramping up its counterterrorism operations in Somalia and Yemen, while continuing its drone campaign in Pakistan. Despite its controversial nature, the U.S. counter-terrorism strategy has demonstrated a degree of effectiveness. The Obama administration is committed to reducing the size of the U.S. military's footprint overseas by relying on drones, special operations forces, and other intelligence capabilities. These methods have made it more difficult for al-Qaida remnants to reconstitute a new safe haven, as Osama bin Laden did in Afghanistan in 1996, after his ouster from Sudan.

#### The impact is nuclear miscalc

Barrett et al 13 PhD in Engineering and Public Policy from Carnegie Mellon University, Fellow in the RAND Stanton Nuclear Security Fellows Program, and Director of Research at Global Catastrophic Risk Institute—AND Seth Baum, PhD in Geography from Pennsylvania State University, Research Scientist at the Blue Marble Space Institute of Science, and Executive Director of Global Catastrophic Risk Institute—AND Kelly Hostetler, BS in Political Science from Columbia and Research Assistant at Global Catastrophic Risk Institute (Anthony, 24 June 2013, “Analyzing and Reducing the Risks of Inadvertent Nuclear War Between the United States and Russia,” Science & Global Security: The Technical Basis for Arms Control, Disarmament, and Nonproliferation Initiatives, Volume 21, Issue 2, Taylor & Francis)

War involving significant fractions of the U.S. and Russian nuclear arsenals, which are by far the largest of any nations, could have globally catastrophic effects such as severely reducing food production for years, 1 potentially leading to collapse of modern civilization worldwide, and even the extinction of humanity. 2 Nuclear war between the United States and Russia could occur by various routes, including accidental or unauthorized launch; deliberate first attack by one nation; and inadvertent attack. In an accidental or unauthorized launch or detonation, system safeguards or procedures to maintain control over nuclear weapons fail in such a way that a nuclear weapon or missile launches or explodes without direction from leaders. In a deliberate first attack, the attacking nation decides to attack based on accurate information about the state of affairs. In an inadvertent attack, the attacking nation mistakenly concludes that it is under attack and launches nuclear weapons in what it believes is a counterattack. 3 (Brinkmanship strategies incorporate elements of all of the above, in that they involve intentional manipulation of risks from otherwise accidental or inadvertent launches. 4 ) Over the years, nuclear strategy was aimed primarily at minimizing risks of intentional attack through development of deterrence capabilities, and numerous measures also were taken to reduce probabilities of accidents, unauthorized attack, and inadvertent war. For purposes of deterrence, both U.S. and Soviet/Russian forces have maintained significant capabilities to have some forces survive a first attack by the other side and to launch a subsequent counter-attack. However, concerns about the extreme disruptions that a first attack would cause in the other side's forces and command-and-control capabilities led to both sides’ development of capabilities to detect a first attack and launch a counter-attack before suffering damage from the first attack. 5 Many people believe that with the end of the Cold War and with improved relations between the United States and Russia, the risk of East-West nuclear war was significantly reduced. 6 However, it also has been argued that inadvertent nuclear war between the United States and Russia has continued to present a substantial risk. 7 While the United States and Russia are not actively threatening each other with war, they have remained ready to launch nuclear missiles in response to indications of attack. 8 False indicators of nuclear attack could be caused in several ways. First, a wide range of events have already been mistakenly interpreted as indicators of attack, including weather phenomena, a faulty computer chip, wild animal activity, and control-room training tapes loaded at the wrong time. 9 Second, terrorist groups or other actors might cause attacks on either the United States or Russia that resemble some kind of nuclear attack by the other nation by actions such as exploding a stolen or improvised nuclear bomb, 10 especially if such an event occurs during a crisis between the United States and Russia. 11 A variety of nuclear terrorism scenarios are possible. 12 Al Qaeda has sought to obtain or construct nuclear weapons and to use them against the United States. 13 Other methods could involve attempts to circumvent nuclear weapon launch control safeguards or exploit holes in their security. 14 It has long been argued that the probability of inadvertent nuclear war is significantly higher during U.S.–Russian crisis conditions, 15 with the Cuban Missile Crisis being a prime historical example. It is possible that U.S.–Russian relations will significantly deteriorate in the future, increasing nuclear tensions. There are a variety of ways for a third party to raise tensions between the United States and Russia, making one or both nations more likely to misinterpret events as attacks. 16

#### Attacks are feasible

Bunn, et al, 13 [Bunn, Matthew, Valentin Kuznetsov, Martin B. Malin, Yuri Morozov, Simon Saradzhyan, William H. Tobey, Viktor I. Yesin, and Pavel S. Zolotarev. "Steps to Prevent Nuclear Terrorism." Paper, Belfer Center for Science and International Affairs, Harvard Kennedy School, October 2, 2013, Matthew Bunn. Professor of the Practice of Public Policy at Harvard Kennedy School andCo-Principal Investigator of Project on Managing the Atom at Harvard University’s Belfer Center for Science and International Affairs. • Vice Admiral Valentin Kuznetsov (retired Russian Navy). Senior research fellow at the Institute for U.S. and Canadian Studies of the Russian Academy of Sciences, Senior Military Representative of the Russian Ministry of Defense to NATO from 2002 to 2008. • Martin Malin. Executive Director of the Project on Managing the Atom at the Belfer Center for Science and International Affairs. • Colonel Yuri Morozov (retired Russian Armed Forces). Professor of the Russian Academy of Military Sciences and senior research fellow at the Institute for U.S. and Canadian Studies of the Russian Academy of Sciences, chief of department at the Center for Military-Strategic Studies at the General Staff of the Russian Armed Forces from 1995 to 2000. • Simon Saradzhyan. Fellow at Harvard University’s Belfer Center for Science and International Affairs, Moscow-based defense and security expert and writer from 1993 to 2008. • William Tobey. Senior fellow at Harvard University’s Belfer Center for Science and International Affairs and director of the U.S.-Russia Initiative to Prevent Nuclear Terrorism, deputy administrator for Defense Nuclear Nonproliferation at the U.S. National Nuclear Security Administration from 2006 to 2009. • Colonel General Viktor Yesin (retired Russian Armed Forces). Leading research fellow at the Institute for U.S. and Canadian Studies of the Russian Academy of Sciences and advisor to commander of the Strategic Missile Forces of Russia, chief of staff of the Strategic Missile Forces from 1994 to 1996. • Major General Pavel Zolotarev (retired Russian Armed Forces). Deputy director of the Institute for U.S. and Canadian Studies of the Russian Academy of Sciences, head of the Information and Analysis Center of the Russian Ministry of Defense from1993 to 1997, section head - deputy chief of staff of the Defense Council of Russia from 1997 to 1998.<http://belfercenter.ksg.harvard.edu/publication/23430/steps_to_prevent_nuclear_terrorism.html>]

1. Introduction In 2011, Harvard’s Belfer Center for Science and International Affairs and the Russian Academy of Sciences’ Institute for U.S. and Canadian Studies published “The U.S. – Russia Joint Threat Assessment on Nuclear Terrorism.” The assessment analyzed the means, motives, and access of would-be nuclear terrorists, and concluded that the threat of nuclear terrorism is urgent and real. The Washington and Seoul Nuclear Security Summits in 2010 and 2012 established and demonstrated a consensus among political leaders from around the world that nuclear terrorism poses a serious threat to the peace, security, and prosperity of our planet. For any country, a terrorist attack with a nuclear device would be an immediate and catastrophic disaster, and the negative effects would reverberate around the world far beyond the location and moment of the detonation. Preventing a nuclear terrorist attack requires international cooperation to secure nuclear materials, especially among those states producing nuclear materials and weapons. As the world’s two greatest nuclear powers, the United States and Russia have the greatest experience and capabilities in securing nuclear materials and plants and, therefore, share a special responsibility to lead international efforts to prevent terrorists from seizing such materials and plants. The depth of convergence between U.S. and Russian vital national interests on the issue of nuclear security is best illustrated by the fact that bilateral cooperation on this issue has continued uninterrupted for more than two decades, even when relations between the two countries occasionally became frosty, as in the aftermath of the August 2008 war in Georgia. Russia and the United States have strong incentives to forge a close and trusting partnership to prevent nuclear terrorism and have made enormous progress in securing fissile material both at home and in partnership with other countries. However, to meet the evolving threat posed by those individuals intent upon using nuclear weapons for terrorist purposes, the United States and Russia need to deepen and broaden their cooperation. The 2011 “U.S. - Russia Joint Threat Assessment” offered both specific conclusions about the nature of the threat and general observations about how it might be addressed. This report builds on that foundation and analyzes the existing framework for action, cites gaps and deficiencies, and makes specific recommendations for improvement. “The U.S. – Russia Joint Threat Assessment on Nuclear Terrorism” (The 2011 report executive summary): • Nuclear terrorism is a real and urgent threat. Urgent actions are required to reduce the risk. The risk is driven by the rise of terrorists who seek to inflict unlimited damage, many of whom have sought justification for their plans in radical interpretations of Islam; by the spread of information about the decades-old technology of nuclear weapons; by the increased availability of weapons-usable nuclear materials; and by globalization, which makes it easier to move people, technologies, and materials across the world. • Making a crude nuclear bomb would not be easy, but is potentially within the capabilities of a technically sophisticated terrorist group, as numerous government studies have confirmed. Detonating a stolen nuclear weapon would likely be difficult for terrorists to accomplish, if the weapon was equipped with modern technical safeguards (such as the electronic locks known as Permissive Action Links, or PALs). Terrorists could, however, cut open a stolen nuclear weapon and make use of its nuclear material for a bomb of their own. • The nuclear material for a bomb is small and difficult to detect, making it a major challenge to stop nuclear smuggling or to recover nuclear material after it has been stolen. Hence, a primary focus in reducing the risk must be to keep nuclear material and nuclear weapons from being stolen by continually improving their security, as agreed at the Nuclear Security Summit in Washington in April 2010. • Al-Qaeda has sought nuclear weapons for almost two decades. The group has repeatedly attempted to purchase stolen nuclear material or nuclear weapons, and has repeatedly attempted to recruit nuclear expertise. Al-Qaeda reportedly conducted tests of conventional explosives for its nuclear program in the desert in Afghanistan. The group’s nuclear ambitions continued after its dispersal following the fall of the Taliban regime in Afghanistan. Recent writings from top al-Qaeda leadership are focused on justifying the mass slaughter of civilians, including the use of weapons of mass destruction, and are in all likelihood intended to provide a formal religious justification for nuclear use. While there are significant gaps in coverage of the group’s activities, al-Qaeda appears to have been frustrated thus far in acquiring a nuclear capability; it is unclear whether the the group has acquired weapons-usable nuclear material or the expertise needed to make such material into a bomb. Furthermore, pressure from a broad range of counter-terrorist actions probably has reduced the group’s ability to manage large, complex projects, but has not eliminated the danger. However, there is no sign the group has abandoned its nuclear ambitions. On the contrary, leadership statements as recently as 2008 indicate that the intention to acquire and use nuclear weapons is as strong as ever.

**Drones key to heg--- prevents escalation**

**Bruntstetter 12** Daniel, Assistance Professor of Political Science at the School of Social Sciences at the University of California, "Drones: The Future of Warfare?", April 10, www.e-ir.info/2012/04/10/drones-the-future-of-warfare/

Since President Obama took office, the use of and hype surrounding drones has greatly increased. Obama has conducted more than three times as many drone strikes per year compared to his predecessor in the White House.[1] The increase use of drones points to a potential revolution in warfare, or at least a shift in the perspective of how wars will be fought in the future. As robotics expert P.W. Singer argues, “the introduction of unmanned systems to the battlefield doesn’t change simply how we fight, but for the first time changes who fights at the most fundamental level. It transforms the very agent of war, rather than just its capabilities.”[2] The three major reasons **drones are seen as the future of warfare** are: **they remove the risk to our soldiers, they make fewer mistakes than other weapons platforms, and technology will continue to improve such that drones become even more precise, efficient, and infallible in the future, thus rendering less precise, efficient and fallible human forms of war obsolete**. Drones are thus seen as marking “a step forward in humanitarian technology,” and viewed as “a weapon of choice for future presidents, future administrations, in **future conflicts and circumstances of self-defense and vital national security** of the United States.”[3] Yet, there has been much criticism of these assertions. Journalists challenge the claim that there are diminished civilian deaths from drone strikes, while just war scholars suggest that drones loosen the moral restraints on the use of force and legal scholars grapple with the relation between drones and international law.[4] Notwithstanding these ethical and legal challenges, and despite what advocates say about their place in the future of armed combat, drones are, like any weapons platform, inherently limited in what they can do. In this brief article, I make three claims to contextualize the idea that **drones are the future of war** to shed light on the circumscribed role they might play in the foreseeable future. First, that drones are an improvement – in terms of providing surveillance capabilities and satisfying the rules of war – compared to previous technology. Their technical advantages (loitering capacity, removal of risk to pilots, and precision) **make them an important addition to any military arsenal**. Second, however, drones are nevertheless limited in their potential. While perhaps the best option to fight Al Qaeda, they will not, due to their technical and tactical limitations, fully replace weapons with greater destructive and evasive capabilities because they are not equipped to respond to all scenarios within the subset of international crises. Third, the extent to which drones are the weapon of the future, they will not, despite the imagination of some pundits, remove entirely the human element from the future of war. Rather, humans, despite the hype surrounding drones, remain an essential piece of the future of war, and are subject to the inevitable risks associated with war. Technical Advantages of Drones The advantages of drones compared to other military options are well publicized, and fall into two categories.[5] In terms of surveillance, drones are capable of slipping across international borders with relative ease without putting human personnel at risk. Their ability to loiter over targets allows them to observe “patterns of life” to provide surveillance data 24/7, identify and track potential targets, and determine the best time to strike to avoid civilian casualties.[6] This leads to the second advantage: drones are claimed to be highly effective at satisfying the rules of war. In terms of lethal use of force, the pinpoint accuracy of their missiles and computer software that models the blast area of each proposed strike greatly reduces collateral damage compared to other weapons systems, and potentially could even **eliminate it.** In the words of one proponent, **drones provide a “limited, pinprick, covert strike” in order “to avoid a wider war**.”[7] Moreover, the removal of pilots from the zone of combat – drones are operated from a facility well removed from where the fighting takes place –arguably **eliminates the threat to our soldiers** and allows drone operators to make better targeting decisions because they do not fear for their own safety. All of this adds up to considerably diminished number of civilian casualties. According to one scholar, **these advantages lead to an “ethical obligation” to employ drones** instead of other more risky tactics. [8] These advantages have, thus far, dictated the use of drones by the United States. Despite a UN Special Committee Review on drones in 2009, and two hearings hosted by the U.S. House of Representatives in 2010 to discuss the moral and legal implications of drones, they have been the weapon of choice in Obama’s “war on Al Qaeda.” Yet, it is important to remember that this success in fighting terrorism should not be taken as evidence of drone effectiveness in all situations.

#### That prevents great power war, economic collapse, and global governance failures

**Thayer 13**—PhD U Chicago, former research fellow at Harvard Kennedy School’s Belfer Center, political science professor at Baylor (Bradley, professor in the political science department at Baylor University, “Humans, Not Angels: Reasons to Doubt the Decline of War Thesis”, International Studies Review Volume 15, Issue 3, pages 396–419, September 2013, dml)

Accordingly, while Pinker is sensitive to the importance of power in a domestic context—the Leviathan is good for safety and the decline of violence—he neglects the role of power in the international context, specifically he neglects US power as a force for stability. So, if a liberal Leviathan is good for domestic politics, a liberal Leviathan should be as well for international politics. The primacy of the United States provides the world with that liberal Leviathan and has four major positive consequences for international politics (Thayer 2006). In addition to ensuring the security of the United States and its allies, American primacy within the international system causes many positive outcomes for the world. The first has been a more peaceful world. During the Cold War, US leadership reduced friction among many states that were historical antagonists, most notably France and West Germany. Today, American primacy and the security blanket it provides reduce nuclear proliferation incentives and help keep a number of complicated relationships stable such as between Greece and Turkey, Israel and Egypt, South Korea and Japan, India and Pakistan, Indonesia and Australia. Wars still occur where Washington's interests are not seriously threatened, such as in Darfur, but a Pax Americana does reduce war's likelihood—**particularly the worst form—great power wars.** Second, American power gives the United States the ability to spread democracy and many of the other positive forces Pinker identifies. Doing so is a source of much good for the countries concerned as well as the United States because liberal democracies are more likely to align with the United States and be sympathetic to the American worldview. In addition, once states are governed democratically, the likelihood of any type of conflict is significantly reduced. This is not because democracies do not have clashing interests. Rather, it is because they are more transparent, more likely to want to resolve things amicably in concurrence with US leadership. Third, along with the growth of the number of democratic states around the world has been the growth of the global economy. With its allies, the United States has labored to create an economically liberal worldwide network characterized by free trade and commerce, respect for international property rights, mobility of capital, and labor markets. The economic stability and prosperity that stems from this economic order is a global public good. Fourth, and finally, the United States has been willing to use its power not only to advance its interests but to also promote the welfare of people all over the globe. The United States is the earth's leading source of positive externalities for the world. The US military has participated in over 50 operations since the end of the Cold War—and most of those missions have been humanitarian in nature. Indeed, the US military is the earth's “911 force”—it serves, de facto, as the world's police, the global paramedic, and the planet's fire department. There is no other state, group of states, or international organizations that can provide these global benefits. Without US power, the liberal order created by the United States will end just as assuredly. But, the waning of US power, at least in relative terms, introduces additional problems for Pinker concerning the decline of violence in the international realm. Given the importance of the distribution of power in international politics, and specifically US power for stability, there is reason to be concerned about the future as the distribution of relative power changes and not to the benefit of the United States.

### Adv 2

#### Advantage 2: Norms

#### A Subpoint --- CIA Fails

#### Drone jurisdiction shapes global norms—CIA control sets a precedent that collapses accountability and influence

Alston, 11 [Harvard National Security Journal, 2 Harv. Nat'l Sec. J. 283, “The CIA and Targeted Killings beyond Borders,” Philip Alston, John Norton Pomeroy Professor of Law, New York University School of Law, p. lexis]

3. Self-interest: Setting Prudent Precedents for Others Because the United States inevitably **contributes disproportionately** to the shaping of global regime rules, and because it is making more extensive overt use of targeted killings than other states, its approach will heavily influence emerging global norms. This is of particular relevance in relation to the use of drones. There are strong reasons to believe that a permissive policy on drone-fired targeted killings will come back to haunt the United States in a wide range of potential situations in the not too distant future. In 2011, a senior official noted that while for the past two decades the United States and its allies had enjoyed “relatively exclusive access to sophisticated precision-strike technologies,” that monopoly will soon come to an end.605 In fact, in the case of drones, some 40 countries already possess the basic technology. Many of them, including Israel, Russia, Turkey, China, India, Iran, the United Kingdom, and France either have or are seeking drones that also have the capability to shoot laser-guided missiles. Overall, the United States accounts for less than one-third of worldwide investment in UAVs.606 On “Defense Industry Day,” August 22, 2010, the Iranian President unveiled a new drone with a range of 1,000 kilometers (620 miles) and capable of carrying four cruise missiles.607 He referred to the drones as a “messenger of honor and human generosity and a saviour of mankind,” but warned ominously that it can also be “a messenger of death for enemies of mankind.”608 To date, the United States has opted to maintain a relatively flexible and open-ended legal regime in relation to drones, in large part to avoid setting precedents and restricting its own freedom of action.609 But this policy seems to assume that other states will not acquire lethal drone technology, will not use it, or will not be able to rely upon the justifications invoked by the United States. These assumptions seem questionable. American commentators favoring a permissive approach to targeted killings abroad are generally very careful to add that such killings would under no circumstances be permitted within the United States.610 Thus when the United States argues that targeted killings are legitimate when used in response to a transnational campaign of terror directed at it, it needs to bear in mind that other states can also claim to be so afflicted, even if the breadth of the respective terrorist threats is not comparable. Take Russia, for example, in relation to terrorists from the Caucasus. It has characterized its military operations in Chechnya since 1999 as a counter-terrorism operation and has deployed “seek and destroy” groups of army commandoes to “hunt down groups of insurgents.”611 It has been argued that the targeted killings that have resulted are justified because they are necessary to Russia’s fight against terrorism.612 Althoughallowing the use of military and special forces outside the country’s borders against external threats.”618 China is another case in point. It has consistently characterized unrest among its Uighur population as being driven by terrorist separatists. But Uighur activists living outside China are not so classified by other states. That means that China could invoke American policies on targeted killing to carry out a lethal attack against a Uighur activist living in Europe or the United States. The Chinese Foreign Ministry welcomed the killing of Osama bin Laden as “a milestone and a positive development for the international anti-terrorism efforts,” adding ominously in reference to the Uighur situation that, “China has also been a victim of terrorism.”619 When a journalist asked how American practice in Pakistan compared to possible Chinese external action against a Uighur to a senior United States counterterrorism official, the latter distinguished the situations from one another on the unconvincing grounds of Pakistan’s special relationship with the United States.620 A more realistic note was struck by Anne-Marie Slaughter after bin Laden’s killing when she observed that “having a list of leaders that you are going to take out is very troubling morally, legally and in terms of precedent. If other countries decide to apply that principle to us, we’re in trouble.”621 The conclusion to be drawn is that the United States might, in the not too distant future, need to rely on **international legal norms** to delegitimize the behavior of other states using lethal drone strikes. For that reason alone, it would seem prudent today to be contributing to the construction of a regime that strictly limits the circumstances in which one state can seek to kill an individual in another state without the latter’s consent and without complying with the applicable rules of international law. To the extent that the United States genuinely believes it is currently acting within the scope of those rules it needs to provide the evidence. IX. Conclusion This Article has not sought to spell out the options open to the United States in order to bring its conduct within the law. The bottom line is that intelligence agencies—particularly those that are effectively unaccountable—should not be conducting lethal operations abroad. Beyond that proposition, there is a great deal that the CIA could do if it so wished, including making public its commitment to comply with both IHL and IHRL, disclosing the legal basis on which it is operating in different situations involving potential killings, providing information on when, where, and against whom drone strikes can be authorized, and publishing its estimates on the number and rate of civilian casualties. Full transparency is neither sought nor expected, but basic compliance with the standards applied by the U.S. military, and both consistently and insistently demanded of other countries by the United States, is indispensable. Examining the CIA’s transparency and accountability in relation to targeted killings also sheds light on a range of other issues that international human rights law needs to tackle in a more systematic and convincing manner. They include the approach adopted by international law to the activities of intelligence agencies, the (in)effectiveness of existing monitoring mechanisms in relation to killings governed by a mixed IHL/IHRL regime, and the techniques needed to monitor effectively human rights violations associated with new technologies such as unmanned drones and robotics. International human rights institutions need to respond more robustly to the growing chorus of proposals that targeted killings be liberated from the hard-fought legal restraints that apply to them. There is a great deal at stake and these crucial issues have been avoided for too long. The principal focus of this Article has been on the question of CIA accountability for targeted killings, under both U.S. law and international law. As the CIA, often in conjunction with DOD Special Operations Forces, becomes ever more deeply involved in carrying out extraterritorial targeted killings both through kill/capture missions and drone-based missile strikes in a range of countries, the question of its compliance with the relevant legal standards becomes even more urgent. Assertions by Obama administration officials, as well as by many scholars, that these operations comply with international standards are undermined by the total absence of any forms of credible transparency or verifiable accountability. The CIA’s internal control mechanisms, including its Inspector General, have had no discernible impact; executive control mechanisms have either not been activated at all or have ignored the issue; congressional oversight has given a “free pass” to the CIA in this area; judicial review has been effectively precluded; and external oversight has been reduced to media coverage which is all too often dependent on information leaked by the CIA itself. As a result, there is no meaningful domestic accountability for a burgeoning program of international killing. This in turn means that the United States cannot possibly satisfy its obligations under international law to ensure accountability for its use of lethal force, either under IHRL or IHL. The result is the steady undermining of the international rule of law, and the setting of legal precedents which will inevitably come back to haunt the United States before long when invoked by other states with highly problematic agendas.

#### That signal matters—reserving the act for military members demonstrates US compliance

Nauman 12 [Joshua, JD, LLM, Commander, Judge Advocate General’s Corps, U.S. Navy, “Civilians on the Battlefield: By Using U.S. Civilians in the War on Terror, Is the Pot Calling the Kettle Black?” 91 Neb. L. Rev., google scholar]

Similarly, the prosecution of enemy belligerents by military commission for, among other things, using lethal force against an enemy uniformed combatant, runs the risk of creating a mixed message. Specifically, the United States asserts it is per se unlawful for an enemy civilian to take up arms against a lawful combatant, but it is not unlawful for a U.S. civilian to take up arms against an enemy belligerent. 258 There remains a very important moral distinction: the United States deliberately targets those who, either through current action, or through membership in al-Qaeda, pose a direct threat to the United States, whereas the enemy deliberately targets innocent civilians. Nonetheless, we are a nation bound by the rule of law, and therefore legal distinctions matter. So long as we are able to successfully defend ourselves, we should do all that is within our power to preserve the rule of law and maintain a consistent position or message with regard to who may, or may not, properly engage in warfare. The United States should draw and maintain clear distinctions between its service member combatants and its civilian support personnel. Using the broad definitions of DPH as discussed supra, the United States should honor those definitions by ensuring that its civilian employees and contractors do not, themselves, directly participate in hostilities. While instances of DPH on the part of civilians by the United States are not per se LOAC violations, they nonetheless weaken the necessary LOAC wall between civilian and combatant and provide critics with support for the argument that the United States exhibits a limited respect for international law. The use of CIA operatives in the War on Terror is not likely to abate. As numerous U.S. government officials have stated, we are “at war” with terrorists and the United States will continue to use every means at its disposal in the prosecution of this war.259 In this author’s view, however, there is a better path. The United States can still bring to bear all of the vast resources of the U.S. Government, including the CIA, but can insist that only military members apply the ultimate application of lethal force.260 DPH is clearly more broad than simply “pulling the trigger,” so this proposal does not necessarily obviate the risk that other activities engaged in by the CIA or other civilians are, themselves, also DPH. However, reserving the distinct act of applying lethal force to uniformed members of the military will serve the important purpose of showing that the United States reserves the most extreme, overt form of direct participation to those in uniform. **Some may say this is form over substance, but appearance matters**, particularly when the United States is often setting the tone in the conduct of modern warfare, and the world is watching. One of the defining and most beneficial aspects of modern democracies is their state monopoly on the use of lethal force. Generally speaking, the United States, like other industrialized democracies, limits the official, sanctioned use of deadly force to the judicial system, law enforcement, and the military. This state monopoly on the use of lethal force does not eliminate murder, but murder is investigated and punished and there does not exist widespread use of vigilante justice or extra-judicial killings. The United States does not rely on tribal justice or gang warfare to mete out justice or control the population. Because of this feature of our democracy, we can employ lethal force in ways and at times of our choosing, all according to the rule of law. Accordingly, to more fully and perfectly respect the LOAC built up over the past 150 years, the United States should insist that in the “war” on terror, where the use of deadly force is concerned, uniformed service members should apply the force. While some may label this as overly idealistic, idealism is precisely the point. The rule of law, and in particular, the LOAC, is all about ideals. These ideals, and especially the ideal of distinguishing between combatants and civilians, have dramatically reduced the suffering and carnage imposed on civilian populations over the last 150 years. War is still horrific and inevitably leads to death, but limiting the application of this force by and against combatants helps to minimize the carnage and make war arguably more humane. We now return to the opening hypothetical . . . Applying Professor Corn’s functional discretion test, the UAV technician would not exercise discretion that implicates LOAC principles, nor would the MWR employee. However, the intelligence analyst that provides targeting advice to the commander, even if through a military member, may in fact be making decisions that directly implicate the LOAC principles of distinction and proportionality. Therefore, the intelligence analyst is taking a DPH. Similarly, if the drone strike is a CIA operation, the CIA officers would certainly be exercising discretionary functions that directly implicate the LOAC. Additionally, if the enemy were to apply a MCA-type legal regime to U.S. civilian actions, then the CIA officers, the UAV technical support contractor, and the intelligence analyst would likely all be guilty of taking a direct part in the killing of either a protected person or a privileged combatant, all while acting as an unprivileged belligerent. By changing how it employs civilians in the War on Terror, the United States can continue to comply with and remain a leading champion of the LOAC, while at the same time maintain a more consistent approach to civilian participation in war, regardless of whose side they are on. As a world leader, we owe nothing less.

#### B Subpoint --- Convergence

#### Bifurcated drone authority causes functional convergence

Alston, 11 [Harvard National Security Journal, 2 Harv. Nat'l Sec. J. 283, “The CIA and Targeted Killings beyond Borders,” Philip Alston, John Norton Pomeroy Professor of Law, New York University School of Law, p. lexis]

B. Transparency as to Legal Authority and Operational Responsibility: The Old “Double-Hatting” Trick

A degree of transparency in relation to operational responsibility is essential both in terms of facilitating public or political accountability and establishing whether operations are being conducted with the necessary legal authority under domestic law. If one does not know which agency is responsible, it is impossible to know to whom questions should be directed. The division of labor between the DOD and the CIA, both in relation to drone killings and night-raid killings, is thus central to the present inquiry. In the earlier section examining “who is doing what” in relation to night raids, we saw that there is now extensive fluidity between the JSOC (DOD) special forces and their CIA counterparts, to the point where it is virtually impossible for anyone outside the two agencies to know who is in fact responsible in a given context.232 Many terms have been used to describe the resulting situation—leveraging, comingling, fungibility, doublehatting— but there has been almost no sustained analysis of the legal implications of this intentional blurring of what were once generally considered to be legally mandated hard and fast distinctions.

#### The convergence trend wrecks accountability by sowing ambiguity about what constraints actually apply to targeted killing

Chesney, 12 [Charles I. Francis Professor in Law at the University of Texas School of Law (Robert Chesney, “Military-Intelligence Convergence and the Law of the Title 10/Title 50 Debate,” http://jnslp.com/wp-content/uploads/2012/01/Military-Intelligence-Convergence-and-the-Law-of-the-Title-10Title-50-Debate.pdf]

Leon Panetta appeared on PBS Newshour not long after the raid that killed Osama bin Laden.1 He was the Director of the Central Intelligence Agency at that time, and during the course of the interview he took up the question of the CIA’s role in the attack. It had been “a ‘title 50’ operation,” he explained, invoking the section of the U.S. Code that authorizes theactivities of the CIA.2 As a result, Panetta added, he had exercised overall “command.”3 This surely confused at least some observers. The mission had been executed by U.S. Navy SEALs from Joint Special Operations Command (JSOC) after all, and both operational and tactical command seemed to have resided at all times with JSOC personnel.4 But for those who had been following the evolution of the CIA and JSOC during the post-9/11 period, Panetta’s account would not have been surprising. The bin Laden raid was, from this perspective, merely the latest example of an ongoing process of convergence among military and intelligence activities, institutions, and authorities. The convergence trend is not a post-9/11 novelty. It has much deeper roots than that. The trend has accelerated considerably over the past decade, however, thanks to an array of policy, budgetary, institutional, and technological developments. And as the trend accelerates, it is becoming increasingly clear that it has **profoundly important implications** for the domestic law architecture governing military and intelligence activities. That architecture is a complex affair, including what might be described as “framework” statutes and executive branch directives generated in fits and starts over the past forty years. Ideally, it serves to mediate the tension between the desire for flexibility, speed, and secrecy in pursuit of national defense and foreign policy aims, on one hand, and the desire to preserve a meaningful degree of democratic accountability and adherence to the rule of law, on the other. Of course, the legal architecture has never been perfect on this score, or even particularly close to perfection. But the convergence trend has made the current architecture considerably less suited towards these ends. First, it reduces the capacity of the existing rules to promote Accountability. The existing rules attempt to promote accountability in two ways. They promote it within the executive branch by requiring explicit presidential authorization for certain activities, and they promote accountability between the executive branch and Congress by requiring notification to the legislature in a broader set of circumstances Convergence undermines these rules by exposing (and exacerbating) the incoherence of key categorical distinctions upon which the rules depend, including the notion that there are crisp delineations separating intelligence collection, covert action, and military activity. As a result, it is possible, if not probable, that a growing set of exceptionally sensitive operations – up to and including the use of lethal force on an unacknowledged basis on the territory of an unwitting and non-consenting state – may be beyond the reach of these rules. Second, the convergence trend undermines the existing legal architecture along the rule-of-law dimension by exposing latent confusion and disagreement regarding which substantive constraints apply to military and intelligence operations. Is international law equally applicable to all such operations? Is an agency operating under color of “Title 50” at liberty to act in locations or circumstances in which the armed forces ordinarily cannot? These questions are not in fact new, but thanks to convergence they are increasingly pressing. Government lawyers are well aware of these issues, and in fact have been grappling with them for much of the past decade, if not longer.5 For many years, however, public reference to them was quite limited. The most important early post-9/11 example came in 2003, when The Washington Times reported that the Senate Select Committee on Intelligence was quietly attempting to expand its oversight authority in order to encompass certain clandestine military operations in response to concern about the expanding role of special operations units in the war on terrorism.6 That effort failed in the face of fierce pushback from the Pentagon and the Senate and House Armed Services Committees,7 but not before drawing at least some attention to the disruptive impact convergence even then was having on the accountability system.8 In more recent years, the media has begun to pay more sustained attention, frequently noting that the complications associated with convergence impact question of substantive authority as well as accountability. In 2010, for example, The Washington Post reported that a fierce interagency debate was underway in connection with “which agency should be responsible for carrying out attacks” online, with the CIA categorizing certain attacks as covert actions which are “traditionally its turf” and the military taking the position that such operations are “part of its mission to counter terrorism, especially when, as one official put it, ‘al- Qaeda is everywhere.’”9 And the same Washington Post story indicated that the Justice Department’s Office of Legal Counsel had produced a draft opinion in spring 2010 “that avoided a conclusive determination on whether computer network attacks outside battle zones were covert or not,” but that nonetheless concluded that “[o]perations outside a war zone would require the permission of countries whose servers or networks might be implicated.”10 Subsequent stories about the use of lethal force in Yemen have also raised the issue of host-state permission, suggesting that JSOC but not the CIA would be obliged to act only with such permission, and that as a result JSOC units might at times prefer to operate under color of the CIA’s authority11 (as happened in Pakistan with Osama bin Laden, and again in Yemen with Anwar al-Awlaki).12 These accounts give a sense of the range of legal questions that convergence generates, as well as the debates that surround them within the government. And that in turn is enough to frame the investigation that follows. I proceed in two parts, beginning in Part I with a descriptive account of the convergence trend itself. Part I opens with a focus on events in the 1980s and 1990s that presaged the accelerated convergence of the post-9/11 period. Attempts by the military to develop within the special forces community capacities quite similar to those of the CIA are described in Part I.A, and CIA flirtations with the use of deadly force against terrorists are described in Part I.B. Against that backdrop, Part I.C. then explores how convergence has manifested over the past decade, with an emphasis on the CIA’s kinetic turn, JSOC’s parallel expansion, the development of hybrid CIA-JSOC operations, and the emergence of cyberspace as an operational domain. Readers already familiar with the convergence phenomenon may wish to skip ahead to Part II, which examines the impact of convergence on the domestic legal architecture relevant to such activities.13 Part II.A. clarifies what I have in mind when I refer to a domestic legal architecture, as it traces the emergence and growth of standing rules relating to (i) the internal executive branch decisionmaking process, (ii) information-sharing between the executive branch and Congress, and (iii) substantive authorizations and prohibitions relating to certain types of activity. The remainder of Part II analyzes the impact of convergence on each of these rules, demonstrating the manner in which convergence creates new problems for (and exacerbates existing problems in) the existing legal architecture. The **key issues** include: the increasingly large and significant set of military operations that are not subject to either presidential authorization or legislative notification; lingering suspicion with respect to **what law if any** restrains the CIA’s use of lethal force; confusion with respect to whether and why the CIA might be at greater liberty than JSOC to conduct operations without host-state consent; and the difficulty of mapping the existing architecture onto operations conducted in cyberspace. I embed my recommendations for reform within the analysis at each step along the way.

#### It’s reverse causal—JSOC operations retain strategic advantages while satisfying oversight demands—uniquely boosts our influence on drone norms

Zenko, 13 [POLI CY INNOVATION MEMORANDUM NO. 31 Date: April 16, 2013 From: Micah Zenko Re: Transferring CIA Drone Strikes to the PentagonMicah Zenko is the Douglas Dillon fellow in the Center for Preventive Action at the Council on Foreign Relations]

The main obstacle to acknowledging the scope, legality, and oversight of U.S. targeted killings beyond traditional or “hot” battlefields is the division of lead executive authority between the Joint Special Operations Command (JSOC)—a subunit of the Department of Defense (DOD) Special Operations Command—and the Central Intelligence Agency (CIA). In particular, the U.S. government cannot legally acknowledge covert actions undertaken by the CIA. The failure to answer the growing demands for transparency increases the risk that U.S. drone strikes will be curtailed or eliminated due to mounting domestic or international pressure. To take a meaningful first step toward greater transparency, President Barack Obama should sign a directive that consolidates lead executive authority for planning and conducting nonbattlefield targeted killings under DOD. ONE MISSION, TWO PROGRAMS U.S. targeted killings are needlessly made complex and opaque by their division between two separate entities: JSOC and the CIA. Although drone strikes carried out by the two organizations presumably target the same people, the organizations have different authorities, policies, accountability mechanisms, and oversight. Splitting the drone program between the JSOC and CIA is apparently intended to allow the plausible deniability of CIA strikes. Strikes by the CIA are classified as Title 50 covert actions, defined as “activities of the United States Government . . . where it is intended that the role . . . will not be apparent or acknowledged publicly, but does not include traditional . . . military activities.” As covert operations, the government **cannot legally provide** any information about how the CIA conducts targeted killings, while JSOC operations are guided by Title 10 “armed forces” operations and a publicly available military doctrine. Joint Publication 3-60, Joint Targeting, details steps in the joint targeting cycle, including the processes, responsibilities, and collateral damage estimations intended to reduce the likelihood of civilian casualties. Unlike strikes carried out by the CIA, JSOC operations can be (and are) acknowledged by the U.S. government. 2 The different reporting requirements of JSOC and the CIA mean that congressional oversight of U.S. targeted killings is similarly murky. Sometimes oversight is duplicated among the committees; at other times, there is confusion over who is mandated to oversee which operations. CIA drone strikes are reported to the intelligence committees. Senator Dianne Feinstein (D-CA), chair of the Senate Select Committee on Intelligence (SSCI), has confirmed that the SSCI receives poststrike notifications, reviews video footage, and holds monthly meetings to “question every aspect of the program.” Representative Mike Rogers (R-MI), chair of the House Permanent Select Committee on Intelligence (HPSCI), has said that he reviews both CIA and JSOC counterterrorism airstrikes. JSOC does not report to the HPSCI. As of March 2012, all JSOC counterterrorism operations are reported quarterly to the armed services committees. Meanwhile, the foreign relations committees—tasked with overseeing all U.S. foreign policy and counterterrorism strategies—have formally requested briefings on drone strikes that have been repeatedly denied by the White House. However, oversight should not be limited to ensuring compliance with the law and preventing abuses, but rather expanded to ensure that policies are consistent with strategic objectives and aligned with other ongoing military and diplomatic activities. This can only be accomplished by DOD operations because the foreign relations committees cannot hold hearings on covert CIA drone strikes. CONSOLIDATING EXECUTIVE AUTHORITY In 2004, the 9/11 Commission recommended that the “lead responsibility for directing and executing paramilitary operations, whether clandestine or covert, should shift to the Defense Department” to avoid the “creation of redundant, overlapping capabilities and authorities in such sensitive work.” The recommendation was never seriously considered because the CIA wanted to retain its covert action authorities and, more important, it was generally believed such operations would remain a rarity. (At the time, there had been only one nonbattlefield targeted killing.) Nearly a decade later, there is increasing bipartisan consensus that consolidating lead executive authority for drone strikes would pave the way for broader strategic reforms, including declassifying the relevant legal memoranda, explicitly stating which international legal principles apply, and providing information to the public on existing procedures that prevent harm to civilians. During his February 2013 nomination hearing, CIA director John O. Brennan welcomed the transfer of targeted killings to the DOD: “The CIA should not be doing traditional military activities and operations.” The main objection to consolidating lead executive authority in DOD is that it would eliminate the possibility of deniability for U.S. covert operations. However, any diplomatic or public relations advantages from deniability that once existed are minimal or even nonexistent given the widely reported targeted killings in Pakistan and Yemen. For instance, because CIA drone strikes cannot be acknowledged, the United States has effectively **ceded its strategic communications** efforts to the Pakistani army and intelligence service, nongovernmental organizations, and the Taliban. Moreover, Pakistani and Yemeni militaries have often taken advantage of this communications vacuum by shifting the blame of civilian casualties **caused by their own** airstrikes (or others, like those reportedly conducted by Saudi Arabia in Yemen) to the U.S. government. This perpetuates and exacerbates animosity in civilian populations toward the United States. If the United States acknowledged its drone strikes and collateral damage—only possible under DOD Title 10 authorities—then it would not be held responsible for airstrikes conducted by other countries. The CIA should, however, retain the ability it has had since 9/11 to conduct lethal covert actions in extremely **rare circumstances**, such as against immediate threats to the U.S. homeland or diplomatic outposts. Each would require a separate presidential finding, and should be fully and currently informed to the intelligence committees. Of the roughly 420 nonbattlefield targeted killings that the United States has conducted, very few would have met this criteria. The president should direct that U.S. drone strikes be conducted as DOD Title 10 operations. That decision would enhance U.S. national security in the following ways: 3  Improve the transparency and legitimacy of targeted killings, including what methods are used to prevent civilian harm.  Focus the finite resources of the CIA on its original core missions of intelligence collection, analysis, and early warning. (There is no reason for the CIA to maintain a redundant fleet of armed drones, or to conduct military operations that are inherently better suited to JSOC, the premier specialized military organization. As “traditional military activities” under U.S. law, these belong under Title 10 operations.)  Place all drone strikes under a single international legal framework, which would be clearly delineated for military operations and can therefore be articulated publicly.  Unify congressional oversight of specific operations under the armed services committee, which would end the current situation whereby there is confusion over who has oversight responsibility.  Allow U.S. government officials to counter myths and misinformation about targeted killings at home and abroad by acknowledging responsibility for its own strikes.  Increase pressure on other states to be more transparent in their own conduct of military and paramilitary operations in nonbattlefield settings by establishing the precedent that the Obama administration claims can have a normative influence on how others use drones. A FIRST STEP FORWARD In an interview, President Obama revealed, “I think creating a legal structure, processes, with oversight checks on how we use unmanned weapons is going to be a challenge for me and for my successors for some time to come—partly because technology may evolve fairly rapidly for other countries as well.” The Obama administration has two central objectives for its targeted killing reforms: preventing constraints on its ability to conduct lethal operations and setting precedents for the use of armed drones by other states. By law, institutional culture, and customary practice, drone strikes conducted by the CIA cannot reach the minimum thresholds of transparency and accountability required to achieve either objective. JSOC is also a highly secretive organization, but the United States could provide a much clearer and more detailed explanation of the outstanding issues regarding targeted killing **without compromising** the military’s **sources and methods**—should the president prioritize such change. Moreover, according to a February 2013 poll, U.S. public support for military drone strikes (75 percent) was higher than for those conducted by the CIA (65 percent). Without ending CIA targeted killings, the Obama administration cannot undertake any of the reforms that it has stated are necessary both to ensure drone strikes do not go the way of third-country renditions and enhanced interrogation techniques, but also to establish the precedents of greater openness in how such operations are conducted by others.

#### C Subpoint ---- Oversight

#### Congress key to accountability – solves inflated assertions in a legal vacuum

Schiff, 3/12/14 [Op-Ed Contributor Let the Military Run Drone Warfare By ADAM B. SCHIFF March 12, 2014, Adam B. Schiff, Democrat of California, is a member of the House Permanent Select Committee on Intelligence.’]

It has been widely reported that the C.I.A. has been responsible for unmanned drone attacks. Last May, President Obama spoke at the National Defense University to articulate the legal and policy basis of the government’s drone program, promising transparency and reform. But the single biggest reform — ensuring that only the Department of Defense carries out lethal strikes — remains stalled by Congressional opposition and bureaucratic inertia. Those roadblocks must no longer stand in the way of reforms to increase the transparency, accountability and legitimacy of our drone program. First, Congress needs to get out of the way and allow the president to move the drone program to the Joint Special Operations Command (J.S.O.C.) at the Pentagon. **Though it may appear that we’d just be shuffling the chairs**, this change would have two benefits: It would allow our other agencies to focus on their core mission of intelligence gathering, rather than paramilitary activities, and it would enable us to be more public about the successes and failures of the drone program, since such operations would no longer be covert. Some Republicans and Democrats on both the House and Senate intelligence committees argue that the J.S.O.C. lacks expertise in targeting and may cause more collateral damage. But these claims are more anecdotal than evidentiary, and the intelligence committees have yet to be presented with the facts to back them up. They also ignore the joint role that Defense Department and intelligence agency personnel play in identifying and locating targets. These combined efforts would continue, even if the agency pulling the trigger changed. Second, we must hold **ourselves** accountable by being more open about the effect of our drone strikes. While there may still be a need for covert drone operations in some parts of the world, greater disclosure would be in our interest. In the absence of official accounts, inflated and often wildly inaccurate assertions of the number of civilian casualties — generally advanced by our enemies — fill the informational vacuum. I’ve proposed legislation, along with my fellow California Democrat Senator Dianne Feinstein, to require an annual report of the number of civilian and combatant casualties caused by drone strikes, including an explanation of how we define those terms. Finally, with regard to the uniquely difficult situation of an American citizen who has taken up arms against his own nation and who cannot feasibly be arrested, the Obama administration must go further to explain what protections are in place to ensure due process for any American who may be targeted. A 2011 strike targeted and killed Anwar al-Awlaki, an American-born cleric and top operative of Al Qaeda’s branch in Yemen, and other Americans may be targeted in the future. I’ve put forward a proposal to require an independent review of any decision to target an American with lethal force. These reports should be declassified after 10 years. Knowing that they’ll be made public will help ensure that the task is approached with the appropriate rigor. The United States is the only country with a significant armed drone capability, but that distinction will not last forever. As other nations develop and deploy these technologies, we will be better positioned to urge their responsible and transparent use if we have set an example ourselves. We must hold ourselves to a high standard and do it in public, not behind closed doors. That is the commitment the president has made, and it’s a promise worth keeping.

#### Congressional action builds confidence—key to global dialogue and norm development

Kreps and Zenko, 14 [“The Next Drone Wars Preparing for Proliferation”, SARAH KREPS is Stanton Nuclear Security Fellow at the Council on Foreign Relations and Assistant Professor of Government at Cornell University. MICAH ZENKO is Douglas Dillon Fellow in the Center for Preventive Action at the Council on Foreign Relations, Foreign Affairs, http://www.foreignaffairs.com/articles/140746/sarah-kreps-and-micah-zenko/the-next-drone-wars]

As the only country to have used drones extensively, the United States must take the lead in regulating their use and export. So far, the United States has kept its exports of armed drones to a minimum (much to the chagrin of the defense industry), sending them only to the United Kingdom. Washington should maintain such restraint. It should also revisit its own targeted-killing policies, lest other countries follow the United States’ example. The U.S. government has articulated its drone policy to the public only in an ad hoc manner. Behind closed doors, the White House reportedly oversees targeting decisions in a regular review process that includes the Pentagon, the State Department, and other agencies, but it ignores bigger strategic questions about the impact that **unilateral measures** on the part of the United States to restrain its own drone use could have on other states. A separate, independent review panel should be formed to answer these questions, and an unclassified version of the findings should be made available to the public. It could be modeled on the Guantanamo Review Task Force, which was charged with determining which detainees could be released or prosecuted and brought together the Departments of Justice, Defense, State, and Homeland Security; the director of national intelligence; and the Joint Chiefs of Staff. Or it could be modeled on the panel set up by the White House last summer to review the National Security Agency’s surveillance operations. Those two panels are good precedents for how to deal with the U.S. drone program since they brought together both outside experts and experts from across various government agencies to review sensitive U.S. national security policies -- and they recommended meaningful reforms. Congress, which has deferred to the executive branch on drone policy, should take a more active role by holding extensive hearings on drones’ unique use in counterterrorism and other strikes. These hearings should continue to scrutinize the Authorization for the Use of Military Force, which the Obama administration has cited as its legal justification for drone strikes on suspected terrorists, including the U.S. citizen Anwar al-Awlaki in Yemen. But they should also focus on how drones are used in disputed areas and across borders and against publicly undefined targets, such as militants and criminals -- the most common and the most dangerous scenarios. The United States should also come clean about how it has used armed drones, which could prompt Israel and the United Kingdom to do the same. The United States and the United Kingdom have released some overall strike data, but little regarding civilian casualties, with the British military claiming it cannot collect such data “because of the immense difficulty and risks that would be involved.” Last summer, the Obama administration responded to a Freedom of Information Act request by declaring that there is “no information that can be provided at the unclassified level.” Israel has been even more reticent, refusing to acknowledge that it has conducted any drone strikes. More transparency could correct some misconceptions about drones, such as that the United States violates sovereign airspace and does not take precautions to mitigate civilian harm. Greater openness would generate public confidence in the legitimacy of drone use and could shape how other states conducted and justified their own lethal missions. REINING IN THE ROBOTS The United States, however, cannot go it alone; if the regulation of the proliferation and use of armed drones is going to work, it must be a multilateral effort. Some drone exports are currently covered by the Missile Technology Control Regime (MTCR), created in 1987 to regulate nuclear-capable missiles and related technologies. The voluntary arrangement does cover armed drones but mentions them only as an afterthought. The regime’s guidelines lump them in with cruise missiles. And they deal only with armed and unarmed unmanned systems with ranges of at least 300 kilometers and payloads of over 500 kilograms. Those limits are arbitrary and outdated; the defense contractor General Atomics has developed a version of the Predator for export designed precisely to get around them. The MTCR also has enforcement and membership problems. Its 34 participating states are free to interpret and implement its provisions at their own discretion. But more important, China, India, Iran, Israel, and Pakistan, which either have or aspire to develop drones, are not even members. Some nonmember states, such as Israel, which is nominally a “unilateral adherent” to the regime, act as they please and are dominating the drone export market. According to the consulting firm Frost & Sullivan, between 2005 and 2012, Israel exported $4.6 billion worth of drone systems to countries in Asia, Europe, and Latin America. Washington should take the lead in creating better and more appropriate international regulations, building on proven initiatives. A new and enhanced drone regime would be drone-specific, covering all exports and uses of armed-capable drones, including those that fall outside the purview of the MTCR. Moreover, its membership would go beyond that of the MTCR, which is largely limited to industrialized countries, and include all states that have or could soon acquire armed drones. Although surveillance drones make strikes by other weapons platforms more likely, given their wide availability on the commercial market, it is unrealistic to try to further limit their spread by including them in this new drone regime. To win international support to either update the MTCR or create such a new regime, Washington will have to be more forthcoming about its own use of drones. It could offer more transparency in order to garner the consensus vote that is required to modify the MTCR or to guarantee broad, credible participation in a new control regime. This kind of bargaining strategy might mirror the way nuclear-armed states have compelled nonnuclear weapons states to agree to nonproliferation. Commitments by the United States and Russia to make aggressive progress on their own disarmament after the fall of the Soviet Union convinced nonnuclear weapons states to agree in 1995 to an indefinite extension of the Nuclear Nonproliferation Treaty. Of course, even if the United States revealed some elements of its own closely guarded drone program, including that it uses drones in such places as Yemen, countries such as China might not agree to join a new regime. But given that the Obama administration has shown little inclination to stop using drones in areas in which the United States is not engaged in traditional combat, greater disclosure is the only concession it could realistically offer.

#### The impact is Asian conflict

Brimley, et al 13 [\*vice president \*\*AND director of the Technology and National Security Program \*\*\*AND deputy director of the Asia Program at the Center for a New American Security (Shawn Brimley, Ben Fitzgerald, and Ely Ratner, 17 September 2013, “The Drone War Comes to Asia,” <http://www.foreignpolicy.com/articles/2013/09/17/the_drone_war_comes_to_asia?page=0,1>]

It's now been a year since Japan's previously ruling liberal government purchased three of the Senkaku Islands to prevent a nationalist and provocative Tokyo mayor from doing so himself. The move was designed to dodge a potential crisis with China, which claims "indisputable sovereignty" over the islands it calls the Diaoyus. Disregarding the Japanese government's intent, Beijing has reacted to the "nationalization" of the islands by flooding the surrounding waters and airspace with Chinese vessels in an effort to undermine Japan's de facto administration, which has persisted since the reversion of Okinawa from American control in 1971. Chinese incursions have become so frequent that the Japanese Air Self-Defense Forces (JASDF) are now scrambling jet fighters on a near-daily basis in response. In the midst of this heightened tension, you could be forgiven for overlooking the news early in September that Japanese F-15s had again taken flight after Beijing graciously commemorated the one-year anniversary of Tokyo's purchase by sending an unmanned aerial vehicle (UAV) toward the islands. But this wasn't just another day at the office in the contested East China Sea: this was the first known case of a Chinese drone approaching the Senkakus. Without a doubt, China's drone adventure 100-miles north of the Senkakus was significant because it aggravated already abysmal relations between Tokyo and Beijing. Japanese officials responded to the incident by suggesting that Japan might have to place government personnel on the islands, a red line for Beijing that would have been unthinkable prior to the past few years of Chinese assertiveness. But there's a much bigger and more pernicious cycle in motion. The introduction of indigenous drones into Asia's strategic environment -- now made official by China's maiden unmanned provocation -- will bring with it additional sources of instability and escalation to the fiercely contested South and East China Seas. Even though no government in the region wants to participate in major power war, there is widespread and growing concern that military conflict could result from a minor incident that spirals out of control. Unmanned systems could be just this trigger. They are less costly to produce and operate than their manned counterparts, meaning that we're likely to see more crowded skies and seas in the years ahead. UAVs also tend to encourage greater risk-taking, given that a pilot's life is not at risk. But being unmanned has its dangers: any number of software or communications failures could lead a mission awry. Combine all that with inexperienced operators and you have a perfect recipe for a mistake or miscalculation in an already tense strategic environment. The underlying problem is not just the drones themselves. Asia is in the midst of transitioning to a new warfighting regime with serious escalatory potential. China's military modernization is designed to deny adversaries freedom of maneuver over, on, and under the East and South China Seas. Although China argues that its strategy is primarily defensive, the capabilities it is choosing to acquire to create a "defensive" perimeter -- long-range ballistic and cruise missiles, aircraft carriers, submarines -- are acutely offensive in nature. During a serious crisis when tensions are high, China would have powerful incentives to use these capabilities, particularly missiles, before they were targeted by the United States or another adversary. The problem is that U.S. military plans and posture have the potential to be equally escalatory, as they would reportedly aim to "blind" an adversary -- disrupting or destroying command and control nodes at the beginning of a conflict. At the same time, the increasingly unstable balance of military power in the Pacific is exacerbated by the (re)emergence of other regional actors with their own advanced military capabilities. Countries that have the ability and resources to embark on rapid modernization campaigns (e.g., Japan, South Korea, Indonesia) are well on the way. This means that in addition to two great powers vying for military advantage, the region features an increasingly complex set of overlapping military-technical competitions that are accelerating tensions, adding to uncertainty and undermining stability. This dangerous military dynamic will only get worse as more disruptive military technologies appear, including the rapid diffusion of unmanned and increasingly autonomous aerial and submersible vehicles coupled with increasingly effective offensive cyberspace capabilities. Of particular concern is not only the novelty of these new technologies, but the lack of well-established norms for their use in conflict. Thankfully, the first interaction between a Chinese UAV and manned Japanese fighters passed without major incident. But it did raise serious questions that neither nation has likely considered in detail. What will constrain China's UAV incursions from becoming increasingly assertive and provocative? How will either nation respond in a scenario where an adversary downs a UAV? And what happens politically when a drone invariably falls out of the sky or "drifts off course" with both sides pointing fingers at one another? Of most concern, how would these matters be addressed during a crisis, with no precedents, in the context of a regional military regime in which actors have powerful incentives to strike first? These are not just theoretical questions: Japan's Defense Ministry is reportedly looking into options for shooting down any unmanned drones that enter its territorial airspace. Resolving these issues in a fraught strategic environment between two potential adversaries is difficult enough; the United States and China remain at loggerheads about U.S. Sensitive Reconnaissance Operations along China's periphery. But the problem is multiplying rapidly. The Chinese are running one of the most significant UAV programs in the world, a program that includes Reaper- style UAVs and Unmanned Combat Aerial Vehicles (UCAVs); Japan is seeking to acquire Global Hawks; the Republic of Korea is acquiring Global Hawks while also building their own indigenous UAV capabilities; Taiwan is choosing to develop indigenous UAVs instead of importing from abroad; Indonesia is seeking to build a UAV squadron; and Vietnam is planning to build an entire UAV factory. One could take solace in Asia's ability to manage these gnarly sources of insecurity if the region had demonstrated similar competencies elsewhere. But nothing could be further from the case. It has now been more than a decade since the Association of Southeast Asian Nations (ASEAN) and China signed a declaration "to promote a peaceful, friendly and harmonious environment in the South China Sea," which was meant to be a precursor to a code of conduct for managing potential incidents, accidents, and crises at sea. But the parties are as far apart as ever, and that's on well-trodden issues of maritime security with decades of legal and operational precedent to build upon. It's hard to be optimistic that the region will do better in an unmanned domain in which governments and militaries have little experience and where there remains a dearth of international norms, rules, and institutions from which to draw. The rapid diffusion of advanced military technology is not a future trend. These capabilities are being fielded -- right now -- in perhaps the most geopolitically dangerous area in the world, over (and soon under) the contested seas of East and Southeast Asia. These risks will only increase with time as more disruptive capabilities emerge. In the absence of political leadership, these technologies could very well lead the region into war.

#### Incidents escalate—drone crisis triggers US battle plans

Walker, 14 [1/9/14, Richard, Former NY News Producer, “U.S. Interventionism in Asia Could Spark War With China”, <https://americanfreepress.net/?p=14557>]

A war with China is a real possibility. All it might take is the kind of near collision between United States and Chinese naval vessels that happened recently in the East China Sea or a dog fight between Japanese and Chinese fighter planes in the skies over the disputed Senkaku Islands in the East China Sea. It could also start with a confrontation between Philippine and Chinese vessels in energy-rich parts of the South China Sea now claimed by Beijing. There have been many close calls lately as China begins to assert itself around the world, and most experts admit that once the genie is out of the bottle it will be impossible to put it back in. This may have already occurred. In December 2012, Japan scrambled fighters after Chinese surveillance planes were spotted over the Senkaku Islands, territory China has since declared a Chinese air defense zone. Japan has been concerned by China’s use of drones close to its airspace and has vowed to retaliate by deploying U.S. made drones like the Global Kitty Hawk it hopes to buy from Washington. China has been developing its own drones, most likely with stolen U.S. technology. Some experts have forecast there will be a drone war in the region before long. Since his inauguration, President Barack Obama, like his predecessor, George W. Bush, has paid little heed to China’s growing naval ambitions. He has ignored repeated warnings from allies like India, Japan, Australia, Vietnam, the Philippines and South Korea that the Chinese have been building a formidable military that has been shaped specifically to dominate the Western Pacific. Hard Assets Alliance Neocons, who want America to continue to meddle around the world, issued warnings as far back as 2005 when Robert D. Kaplan wrote in The Atlantic Monthly that if China moved into the Pacific it would encounter a “U.S. Navy and Air Force unwilling to budge from the coastal shelf of the Asian mainland,” resulting in a “replay of the decades-long Cold War, with a center of gravity not in the heart of Europe but among Pacific atolls.” In AMERICAN FREE PRESS in 2007, this reporter wrote that China was not many years away from challenging U.S. dominance in Asia. At the time, a Council on Foreign Relations (CFR) task force had recommended the U.S. needed to “defeat China swiftly and decisively in any military conflict.” The CFR recommended expanding U.S. forces into Asia and shifting the balance of its naval and maritime power from the Atlantic to the Pacific. Globalists also wanted the U.S. to “invest heavily in new technologies appropriate for a naval and air battle with the Chinese.” Since 2007, with an eye to defeating the U.S. in a war in the region, China has greatly expanded its short-and medium-range ballistic missile arsenal, giving it the capability to target all U.S. bases in Japan, Taiwan, South Korea and the Philippines. It has also new anti-ship missiles capable of destroying U.S. aircraft carriers. By using an overwhelming number of short-and medium-range missiles, the Chinese could destroy U.S. bases and make resupply difficult in a future conflict. As the National Air Space Intelligence Center has pointed out, “China has the most active and diverse ballistic missile development program in the world.” A sign of how the U.S. might react in the opening exchanges of a conflict was contained in a Pentagon document leaked to The Washington Post in 2012. It talked of a plan that envisioned the U.S. destroying China’s surveillance and missile targeting capabilities “deep inside the country.” The plan talked of a “blinding campaign” followed by a massive naval and air assault—the same “shock and awe” tactic used against Iraq, which resulted in scores of dead civilians. The assumption here is that China would not go nuclear once the missiles started flying. The bottom line is this could be the defining war of the 20th century if Washington refuses to bring U.S. troops and ships home and let Asia sort out its own troubles.

#### Spills over internationally

Mustin and Rishikof, 11 [BS, JD, MBA, MA in International Affairs AND BA, MA, JD, Chair of the ABA Standing Committee on Law and National Security, Professor of law and chair of the Department of National Security Strategy at the National War College, Jeff Mustin and Harvey Rishikof, Summer 2011, “Projecting Force in the 21st Century – Legitimacy and the Rule of Law,” 63 Rutgers L. Rev. Iss. 4]

V. POLICY IMPLICATIONS If these definitions are accepted as true, the result is that it has become legally easier for the executive branch to order covert action than to order conventional armed conflict. To commit military troops for a traditional military action, a president must have a casus belli and subsequently seek jus ad bellum justification and (typically) international support. This would usually involve the political and diplomatic gyrations involved in garnering both domestic legal support from Congress and international legal support from the United Nations Security Council. Alternatively, to authorize a covert action, a president may forgo these diplomatic and political gyrations and merely issue a classified finding to conduct a covert action. While the president must report this action to Congress,34 the president may restrict disclosure to the ―Gang of Eight‖ when ―it is essential to limit access to the finding to meet extraordinary circumstances affecting vital interests of the United States . . . .‖35 Thus, while covert action is not without legal accountability, it is a much more direct way for the president to commit forces. Additionally, forces conducting covert action operate by stealth. By their nature, they will have much lower visibility in the public eye. This provides the executive a lawful option to commit force while theoretically lessening the media accountability for those actions. As a result, covert action also vests an immense amount of authority in the executive and the "Gang of Eight" to conduct operations without the accountability to their constituents typically found in a democratic society.36 Covert action also enables unilateral action. The stealthy nature of covert action means that an executive would be discouraged from seeking international cooperation. Any international support would likely be limited to notifying host nations of the presence of troops, and those notifications, as a tactical matter, would likely be last minute and very directive in nature.37 This type of unilateral action contrasts the cooperative intent for international law,38 and, in the words of one legal scholar, ―[u]nilateral action- covert or overt - generates particularly high emotions, because many view it as a litmus test for one‘s commitment to international law.‖39 Excessive use of covert action might be deemed by some nations as a rebuke of international law or evidence of a hubristic foreign policy. The continued and constant use of this instrument when lethality is the goal raises issues of international legitimacy. Despite these reservations, covert action can be a useful policy tool. It is much more flexible and rapid than a traditional military activity, meaning it is much more suited to countering an adaptive enemy.40 Covert operations are generally more acute in their scope and objectives, which provides policymakers a scalpel to apply instead of the massive hammer of the U.S. military. Also, there are times when foreign policy maneuvers require stealth. One might imagine the need to retrieve unsecured nuclear material as a mission requiring immediacy and discreetness inappropriate for a large military unit. A textbook case of covert action as a useful policy tool was the May 2011 raid on the compound of Osama bin Laden. The direct action strike was a Title 50 action conducted by DoD special operations assets.41 The likely legal scenario for this operation was that President Obama issued his finding, which authorized the CIA to ―own‖ the operation and, under subsequent Title 50 authorities, allowed Joint Special Operations Command to conduct the raid because the President determined ―that another agency is more likely to achieve a particular objective . . . .‖42 The need for stealth, even from the host nation, was obvious, and the covert action provided the acute desired result. While the bin Laden raid demonstrates a positive result and the operation shows a clear need to maintain an ability to conduct covert action, it is important to emphasize that covert action is not without policy hazards. The danger in **blurring the line** between covert action and traditional military activities is that policymakers will choose to authorize what might normally be characterized as a traditional military activity under the guise of a covert action in order to circumvent the need for accountability or international support. Applying traditional military force without transparency is not the raison d’etre for a covert capability.

# 2ac

### AT: No Expertise

**Yes technical capacity---intel assessments prove and it’s not that hard**

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\*\*\*elipses in orig

If terrorists could obtain the HEU or plutonium that are the essential ingredients of a nuclear bomb, making at least a crude nuclear bomb might well be within the capabilities of a sophisticated group.17 One study by the now-defunct congressional Office of Technology Assessment summarized the threat: “A small group of people, none of whom have ever had access to the classified literature, could possibly design and build a crude nuclear explosive device... Only modest machine-shop facilities that could be contracted for without arousing suspicion would be required.”18 The simplest type of nuclear bomb for terrorists to build would be a so-called “gun-type” bomb, which involves little more than slamming two pieces of HEU together at high speed. The bomb that incinerated the Japanese city of Hiroshima, for example, was a cannon that fired a shell of HEU into rings of HEU. In most cases, building such a bomb would require some ability to cast and machine uranium, a reasonable knowledge of the nuclear physics involved, and a good understanding of cannons and ballistics. In many cases, an ability to do some chemical processing might also be needed (for example, to dissolve research reactor fuel containing HEU in acid, separate the HEU, and reduce the HEU to metal); but the chemical processing required is less sophisticated than some of the processing criminals routinely do in the illegal drug industry.20 It is impossible, however, to get a substantial nuclear yield from a gun-type bomb made from plutonium, because the neutrons always being emitted by the plutonium will set off the nuclear chain reaction prematurely, causing the bomb to blow itself apart. Hence, if the terrorists only had plutonium available (or did not have enough HEU for a gun-type bomb, which requires a large amount of material), terrorists who wanted a substantial nuclear yield would have to attempt the more difficult job of making an “implosion-type” device, in which explosives arranged around nuclear material compress it to a much higher density, setting off the nuclear chain reaction. While the terrorists’ likelihood of success in making such a bomb would be lower, the danger cannot by any means be ruled out. Hence, plutonium separated from spent nuclear fuel, like HEU, must be protected from theft and transfer to terrorists.21 Even before the Afghan war, U.S. intelligence concluded that “fabrication of at least a ‘crude’ nuclear device was within al-Qa’ida’s capabilities, if it could obtain fissile material.”22 **Documents** later **seized** in Afghanistan provided “detailed and revealing” information about the progress of al Qaeda’s nuclear efforts that had not been available before the war.23 As al-Muhajir’s statement calling for nuclear experts to join the jihad suggests, al Qaeda has **consistently attempted** to recruit people with nuclear weapons expertise. Former CIA chief Tenet, in his memoir, recounts his conversation with Pervez Musharraf, in which the Pakistani presi- dent assured Tenet that Pakistani nuclear experts had dismissed the possibility that “men hiding in caves” could build a nuclear bomb. “Mr. President, your experts are wrong,” Tenet says he replied, recounting the relative ease of making a crude “gun-type” nuclear bomb, and al Qaeda’s efforts to get help from Pakistani nuclear scientists associated with Ummah Tameer-i-Nau (UTN), a group led by Mahmood, the lead scientist who sat down with bin Laden and Zawahiri to discuss nuclear weapons.24 The overthrow of the Taliban and the disruption of al Qaeda’s old central com- mand structure reduced the probability that al Qaeda would be able to pull off an operation as large and complex as acquir- ing nuclear bomb material and putting together a nuclear weapon. Unfortunately, however, the latest intelligence assessments suggest that al Qaeda’s central command is reconstituting its ability to direct complex operations, from the border areas of Pakistan.25 As then- Director of National Intelligence John Negroponte put it in his annual threat assessment in January 2007, al Qaeda’s “core leadership… continue to plot attacks against our Homeland and other targets with the objective of inflicting mass casualties. And they continue to maintain active connections and relationships that radiate outward from their leaders’ secure hideout in Pakistan to affiliates through- out the Middle East, northern Africa, and Europe.” Negroponte specifically warned that while use of conventional explosives continues to be “the most probable” kind of al Qaeda attack, **U.S. intelligence continues to “receive reports** indicating that al Qaeda and other terrorist groups are attempting to acquire chemical, biological, radiological and nuclear weapons or material.”26 Unfortunately, the physics of the problem suggests that a terrorist cell of relatively modest size, with no large fixed facilities that would draw attention, might well be able to make a crude nuclear bomb—and the world might never know until it was too late.27

### Caucuses (2ac)

#### Unrestricted drone use causes nuclear war in the Caucuses

Clayton 12 (Nick Clayton, Worked in several publications, including the Washington Times the Asia Times and Washington Diplomat. He is currently the senior editor of Kanal PIK TV's English Service (a Russian-language channel), lived in the Caucuses for several years,10/23/2012, "Drone violence along Armenian-Azerbaijani border could lead to war", www.globalpost.com/dispatch/news/regions/europe/121022/drone-violence-along-armenian-azerbaijani-border-could-lead-war)

Armenia and Azerbaijan could soon be at war if drone proliferation on both sides of the border continues. In a region where a fragile peace holds over three frozen conflicts, the nations of the South Caucasus are buzzing with drones they use to probe one another’s defenses and spy on disputed territories. The region is also host to strategic oil and gas pipelines and a tangled web of alliances and precious resources that observers say threaten to quickly escalate the border skirmishes and airspace violations to a wider regional conflict triggered by Armenia and Azerbaijan that could potentially pull in Israel, Russia and Iran. To some extent, these countries are already being pulled towards conflict. Last September, Armenia shot down an Israeli-made Azerbaijani drone over Nagorno-Karabakh and the government claims that drones have been spotted ahead of recent incursions by Azerbaijani troops into Armenian-held territory. Richard Giragosian, director of the Regional Studies Center in Yerevan, said in a briefing that attacks this summer showed that Azerbaijan is eager to “play with its new toys” and its forces showed “impressive tactical and operational improvement.” The International Crisis Group warned that as the tit-for-tat incidents become more deadly, “there is a growing risk that the increasing frontline tensions could lead to an accidental war.” “Everyone is now saying that the war is coming. We know that it could start at any moment.” ~Grush Agbaryan, mayor of Voskepar With this in mind, the UN and the Organization for Security and Co-operation in Europe (OSCE) have long imposed a non-binding arms embargo on both countries, and both are under a de facto arms ban from the United States. But, according to the Stockholm International Peace Research Institute (SIPRI), this has not stopped Israel and Russia from selling to them. After fighting a bloody war in the early 1990s over the disputed territory of Nagorno-Karabakh, Armenia and Azerbaijan have been locked in a stalemate with an oft-violated ceasefire holding a tenuous peace between them. And drones are the latest addition to the battlefield. In March, Azerbaijan signed a $1.6 billion arms deal with Israel, which consisted largely of advanced drones and an air defense system. Through this and other deals, Azerbaijan is currently amassing a squadron of over 100 drones from all three of Israel’s top defense manufacturers. Armenia, meanwhile, employs only a small number of domestically produced models. Intelligence gathering is just one use for drones, which are also used to spot targets for artillery, and, if armed, strike targets themselves. Armenian and Azerbaijani forces routinely snipe and engage one another along the front, each typically blaming the other for violating the ceasefire. At least 60 people have been killed in ceasefire violations in the last two years, and the Brussels-based International Crisis Group claimed in a report published in February 2011 that the sporadic violence has claimed hundreds of lives. “Each (Armenia and Azerbaijan) is apparently using the clashes and the threat of a new war to pressure its opponent at the negotiations table, while also preparing for the possibility of a full-scale conflict in the event of a complete breakdown in the peace talks,” the report said. Alexander Iskandaryan, director of the Caucasus Institute in the Armenian capital, Yerevan, said that the arms buildup on both sides makes the situation more dangerous but also said that the clashes are calculated actions, with higher death tolls becoming a negotiating tactic. “This isn’t Somalia or Afghanistan. These aren’t independent units. The Armenian, Azerbaijani and Karabakh armed forces have a rigid chain of command so it’s not a question of a sergeant or a lieutenant randomly giving the order to open fire. These are absolutely synchronized political attacks,” Iskandaryan said. The deadliest recent uptick in violence along the Armenian-Azerbaijani border and the line of contact around Karabakh came in early June as US Secretary of State Hillary Clinton was on a visit to the region. While death tolls varied, at least two dozen soldiers were killed or wounded in a series of shootouts along the front. The year before, at least four Armenian soldiers were killed in an alleged border incursion by Azerbaijani troops one day after a peace summit between the Armenian, Azerbaijani and Russian presidents in St. Petersburg, Russia. “No one slept for two or three days [during the June skirmishes],” said Grush Agbaryan, the mayor of the border village of Voskepar for a total of 27 years off and on over the past three decades. “Everyone is now saying that the war is coming. We know that it could start at any moment." Azerbaijan refused to issue accreditation to GlobalPost’s correspondent to enter the country to report on the shootings and Azerbaijan’s military modernization. Flush with cash from energy exports, Azerbaijan has increased its annual defense budget from an estimated $160 million in 2003 to $3.6 billion in 2012. SIPRI said in a report that largely as a result of its blockbuster drone deal with Israel, Azerbaijan’s defense budget jumped 88 percent this year — the biggest military spending increase in the world. Israel has long used arms deals to gain strategic leverage over its rivals in the region. Although difficult to confirm, many security analysts believe Israel’s deals with Russia have played heavily into Moscow’s suspension of a series of contracts with Iran and Syria that would have provided them with more advanced air defense systems and fighter jets. Stephen Blank, a research professor at the United States Army War College, said that preventing arms supplies to Syria and Iran — particularly Russian S-300 air defense systems — has been among Israel’s top goals with the deals. “There’s always a quid pro quo,” Blank said. “Nobody sells arms just for cash.” In Azerbaijan in particular, Israel has traded its highly demanded drone technology for intelligence arrangements and covert footholds against Iran. In a January 2009 US diplomatic cable released by WikiLeaks, a US diplomat reported that in a closed-door conversation, Azerbaijani President Ilham Aliyev compared his country’s relationship with Israel to an iceberg — nine-tenths of it is below the surface. Although the Jewish state and Azerbaijan, a conservative Muslim country, may seem like an odd couple, the cable asserts, “Each country finds it easy to identify with the other’s geopolitical difficulties, and both rank Iran as an existential security threat.” Quarrels between Azerbaijan and Iran run the gamut of territorial, religious and geo-political disputes and Tehran has repeatedly threatened to “destroy” the country over its support for secular governance and NATO integration. In the end, “Israel’s main goal is to preserve Azerbaijan as an ally against Iran, a platform for reconnaissance of that country and as a market for military hardware,” the diplomatic cable reads. But, while these ties had indeed remained below the surface for most of the past decade, a series of leaks this year exposed the extent of their cooperation as Israel ramped up its covert war with the Islamic Republic. In February, the Times of London quoted a source the publication said was an active Mossad agent in Azerbaijan as saying the country was “ground zero for intelligence work.” This came amid accusations from Tehran that Azerbaijan had aided Israeli agents in assassinating an Iranian nuclear scientist in January. Then, just as Baku had begun to cool tensions with the Islamic Republic, Foreign Policy magazine published an article citing Washington intelligence officials who claimed that Israel had signed agreements to use Azerbaijani airfields as a part of a potential bombing campaign against Iran’s nuclear sites. Baku strongly denied the claims, but in September, Azerbaijani officials and military sources told Reuters that the country would figure in Israel’s contingencies for a potential attack against Iran. "Israel has a problem in that if it is going to bomb Iran, its nuclear sites, it lacks refueling," Rasim Musabayov, a member of the Azerbiajani parliamentary foreign relations committee told Reuters. “I think their plan includes some use of Azerbaijan access. We have (bases) fully equipped with modern navigation, anti-aircraft defenses and personnel trained by Americans and if necessary they can be used without any preparations." He went on to say that the drones Israel sold to Azerbaijan allow it to “indirectly watch what's happening in Iran.” According to SIPRI, Azerbaijan had acquired about 30 drones from Israeli firms Aeronautics Ltd. and Elbit Systems by the end of 2011, including at least 25 medium-sized Hermes-450 and Aerostar drones. In October 2011, Azerbaijan signed a deal to license and domestically produce an additional 60 Aerostar and Orbiter 2M drones. Its most recent purchase from Israel Aeronautics Industries (IAI) in March reportedly included 10 high altitude Heron-TP drones — the most advanced Israeli drone in service — according to Oxford Analytica. Collectively, these purchases have netted Azerbaijan 50 or more drones that are similar in class, size and capabilities to American Predator and Reaper-type drones, which are the workhorses of the United States’ campaign of drone strikes in Pakistan and Yemen. Although Israel may have sold the drones to Azerbaijan with Iran in mind, Baku has said publicly that it intends to use its new hardware to retake territory it lost to Armenia. So far, Azerbaijan’s drone fleet is not armed, but industry experts say the models it employs could carry munitions and be programmed to strike targets. Drones are a tempting tool to use in frozen conflicts, because, while their presence raises tensions, international law remains vague at best on the legality of using them. In 2008, several Georgian drones were shot down over its rebel region of Abkhazia. A UN investigation found that at least one of the drones was downed by a fighter jet from Russia, which maintained a peacekeeping presence in the territory. While it was ruled that Russia violated the terms of the ceasefire by entering aircraft into the conflict zone, Georgia also violated the ceasefire for sending the drone on a “military operation” into the conflict zone. The incident spiked tensions between Russia and Georgia, both of which saw it as evidence the other was preparing to attack. Three months later, they fought a brief, but destructive war that killed hundreds. The legality of drones in Nagorno-Karabakh is even less clear because the conflict was stopped in 1994 by a simple ceasefire that halted hostilities but did not stipulate a withdrawal of military forces from the area. Furthermore, analysts believe that all-out war between Armenia and Azerbaijan would be longer and more difficult to contain than the five-day Russian-Georgian conflict. While Russia was able to quickly rout the Georgian army with a much superior force, analysts say that Armenia and Azerbaijan are much more evenly matched and therefore the conflict would be prolonged and costly in lives and resources. Blank said that renewed war would be “a very catastrophic event” with “a recipe for a very quick escalation to the international level.” Armenia is militarily allied with Russia and hosts a base of 5,000 Russian troops on its territory. After the summer’s border clashes, Russia announced it was stepping up its patrols of Armenian airspace by 20 percent. Iran also supports Armenia and has important business ties in the country, which analysts say Tehran uses as a “proxy” to circumvent international sanctions. Blank said Israel has made a risky move by supplying Azerbaijan with drones and other high tech equipment, given the tenuous balance of power between the heavily fortified Armenian positions and the more numerous and technologically superior Azerbaijani forces. If ignited, he said, “[an Armenian-Azerbaijani war] will not be small. That’s the one thing I’m sure of.”

#### Drone restrictions thump

Bennett, 14 [John T, Defense News, “McCain Vows New Fight Over Control of US Armed Drone Program”, http://www.defensenews.com/article/20140219/DEFREG02/302190025/McCain-Vows-New-Fight-Over-Control-US-Armed-Drone-Program

WASHINGTON — A senior US lawmaker intends to renew his fight to require the Obama administration to fully shift its armed drone program from the CIA to the Defense Department. Sen. John McCain, R-Ariz., a senior Armed Services Committee member, told Defense News on Wednesday, just before Congress left for a weeklong recess, that he will push the issue when the panel crafts its 2015 Pentagon policy bill in coming months. “We’re going to have that debate,” McCain said in a brief interview. “There is no doubt about it.” McCain’s comments come weeks after he expressed disgust with language reportedly inserted into the classified portion of a Pentagon-funding section of an omnibus spending bill blocking the shift of the drone program from the CIA to the military. The administration of President Barack Obama last year signaled it wanted to move most — or all — of the program from the spy agency to the military. But that plan hit a number of legal and operational snags, and was not fully completed before Congress passed the omnibus. But McCain says the fight isn’t over. “I would like to make sure they are cooperating with other countries,” McCain said, referring to concerns among some lawmakers and analysts that the Obama administration avoids getting clearance from leaders of countries before flying drones into their airspace. “Mostly, I want to see it moved over to DoD. That’s my primary goal,” McCain said. Many analysts say that other than possibly taking up a new immigration reform measure, Congress likely is finished with major legislation this year. The mid-term election cycle is in full swing, and both parties seem content to battle it out back home after five years of bitter partisan fights here. But Congress is expected, as it has for 52 consecutive years, to pass a defense authorization bill. And McCain’s intentions will revivea battle between two powerful camps on Capitol Hill. Lawmakers on both sides of the debate have strong opinions about whether it is the job of the military or intelligence community to kill al-Qaida leaders and operatives. And behind the issue of whether the CIA should be firing missiles from remotely piloted aircraft is a simmering congressional turf war between the chambers’ Armed Services and Intelligence committees. If the Defense Department is handed control of the CIA’s armed drone fleet and strike missions against al-Qaida targets, it would also gain what intelligence analysts say is the program’s sizable budget and control over one of the White House’s primary tactics for combating the terrorist group. On one side are pro-military lawmakers like McCain. They believe the military should be the US entity charged with killing America’s foes, and that the CIA should get back to collecting and analyzing intelligence. On the other side are members like Senate Intelligence Committee Chairwoman Sen. Dianne Feinstein, D-Calif. These members, largely Democrats**,** are skeptical of the military’s ability to use what they see as the CIA’s rigorous decision process before carrying out armed strikes.

### Afghanistan (2ac)

#### Targeted killings are key to Afghan stability post-withdrawal

Byman 13 (Daniel, Professor in the Security Studies Program at the Edmund A. Walsh School of Foreign Service at Georgetown University and a Senior Fellow at the Saban Center for Middle East Policy at the Brookings Institution, July/August 2013, “Why Drones Work,” Foreign Affairs, Vol. 92, No. 4)

In places where terrorists are actively plotting against the United States, however, drones give Washington the ability to limit its military commitments abroad while keeping Americans safe. Afghanistan, for example, could again become a Taliban-run haven for terrorists after U.S. forces depart next year. Drones can greatly reduce the risk of this happening. Hovering in the skies above, they can keep Taliban leaders on the run and hinder al Qaeda's ability to plot another 9/11.

#### Extinction

Carafano 10 (James Jay is a senior research fellow for national security at The Heritage Foundation and directs its Allison Center for Foreign Policy Studies, “Con: Obama must win fast in Afghanistan or risk new wars across the globe,” Jan 2 http://gazettextra.com/news/2010/jan/02/con-obama-must-win-fast-afghanistan-or-risk-new-wa/)

We can expect similar results if Obama’s Afghan strategy fails and he opts to cut and run. Most forget that throwing South Vietnam to the wolves made the world a far more dangerous place. The Soviets saw it as an unmistakable sign that America was in decline. They abetted military incursions in Africa, the Middle East, southern Asia and Latin America. They went on a conventional- and nuclear-arms spending spree. They stockpiled enough smallpox and anthrax to kill the world several times over. State-sponsorship of terrorism came into fashion. Osama bin Laden called America a “paper tiger.” If we live down to that moniker in Afghanistan, odds are the world will get a lot less safe. Al-Qaida would be back in the game. Regional terrorists would go after both Pakistan and India—potentially triggering a nuclear war between the two countries. Sensing a Washington in retreat, Iran and North Korea could shift their nuclear programs into overdrive, hoping to save their failing economies by selling their nuclear weapons and technologies to all comers. Their nervous neighbors would want nuclear arms of their own. The resulting nuclear arms race could be far more dangerous than the Cold War’s two-bloc standoff. With multiple, independent, nuclear powers cautiously eyeing one another, the world would look a lot more like Europe in 1914, when precarious shifting alliances snowballed into a very big, tragic war. The list goes on. There is no question that countries such as Russia, China and Venezuela would rethink their strategic calculus as well. That could produce all kinds of serious regional challenges for the United States. Our allies might rethink things as well. Australia has already hiked its defense spending because it can’t be sure the United States will remain a responsible security partner. NATO might well fall apart. Europe could be left with only a puny EU military force incapable of defending the interests of its nations.

### AT: Circumvention

#### Public costs check

Waxman, 13 [Proff Columbia, Observations About Targeting and Congressional Intelligence Oversight By Matthew Waxman Sunday, February 17, 2013 at 5:06 PM http://www.lawfareblog.com/2013/02/observations-about-targeting-and-congressional-intelligence-oversight/]

It’s true that congressional intelligence oversight is often weaker than it is in other areas of public policy, and it’s difficult and rare for Congress to pass binding legislation that restricts intelligence operations. The DoJ document controversy and the sometimes-testy Brennan confirmation process and delayed vote show, however, that members of Congress can exact political costs on executive branch intelligence programs, ceeven if they have little chan or interest in formally legislating. In theory intelligence committee oversight is supposed to operate as a substitute for public accountability (because of the secrecy of intelligence programs), but the combination of investigative journalism and congressional scrutiny in this case also demonstrates how some of the many-dimensional constraints on presidential action that Jack discusses in his recent book sometimes operate best in tandem. As Zegart notes in this New Republic article critical of congressional oversight of targeting programs: “The juice the committees get is from public support. To the extent that the committees are focusing public attention on intelligence issues, they have a lever in negotiations with the executive branch.”

#### No risk of circumvention -- Obama’s proposed transfer was blocked by Congress – Congressional action dictates the outcome of the transfer

Bellinger, 14 [“Congressional Control of Intelligence Programs”, John B. Bellinger III is a partner in the international and national security law practices at Arnold & Porter LLP in Washington, DC. He is also Adjunct Senior Fellow in International and National Security Law at the Council on Foreign Relations. He served as The Legal Adviser for the Department of State from 2005–2009, as Senior Associate Counsel to the President and Legal Adviser to the National Security Council at the White House from 2001–2005, and as Counsel for National Security Matters in the Criminal Division of the Department of Justice from 1997–2001, <http://www.lawfareblog.com/2014/01/congressional-control-of-intelligence-programs-sometimes/#.UwOei85ngrg>]

In the last ten days, an interesting controversy has bubbled up over congressional control of the drone program. The quarrel, which **has been** both internal to the Senate and between the Congress and the Executive, raises some important issues regarding Congress’s ability to control controversial but classified programs (such as the current drone program and CIA’s previous interrogation program). The latest controversy became public when the Washington Post’s Greg Miller reported earlier this month that House and Senate appropriators had inserted a provision into the classified annex accompanying the FY14 omnibus appropriations bill restricting the use of funds to **transfer the** drone **program from the CIA to the Pentagon**. The provision angered Senator McCain, who complained on the Senate floor that Senate appropriators had no business inserting a substantive policy restriction on the drone program into the classified annex of an appropriations bill, and certainly not without consulting the Senate authorizing committees. (Senate Intelligence Committee Chair Dianne Feinstein is a member of the Appropriations Committee and was presumably aware of and supported the provision, but the Armed Services Committee was apparently kept in the dark.) Greg Miller reports further in today’s Post that the drone restriction has put Senator Feinstein at odds with President Obama’s desire to move more drone operations to DoD. But Miller quotes our own Steve Vladeck as saying that the real issue: is not the daylight between the President and Senator Feinstein. It’s the lack of daylight between Senator Feinstein and the intelligence community….[T]o my mind the larger concern over the last six months is a lack of any evidence that there’s ever been a significant pushback from either of the intelligence committees on any of the more controversial initiatives. Steve might not have limited his comment about the lack of congressional pushback on controversial intelligence programs to the last six months. Congress has been reluctant to raise concerns about many intelligence counter-terrorism programs after 9-11, presumably because they believe the American people would support the programs or perhaps out of fear of being blamed in the event of another terrorist attack. But the current public disagreement demonstrates that Congress can — when it chooses to do so — stop or significantly restrict intelligence programs of which it disapproves, and it can do so in secret. This might lead human rights groups and other critics of the CIA interrogation program to ask why Congressional authorizers and appropriators (Democrats controlled both the House and Senate in 2007 and 2008 and chaired the intelligence and appropriations committees in both houses) chose not to place any specific restrictions on the CIA interrogation program (even if only to ask how it complied with international law) and instead continued to authorize and fund the program, even as they distance themselves from the program now. Clarification: An SSCI staffer has reminded me that the Intelligence Authorization Act of 2008 included a public provision that prohibited the intelligence community from using any interrogation technique not permitted by the Army Field Manual. President Bush vetoed the bill over this provision in March 2008 (a decision I opposed). My point in this post is that Congressional authorizers or appropriators could have used the classified annexes of the authorization or appropriations bills in 2007 or 2008 to refuse to fund or otherwise restrict the interrogation program, just as they have apparently done with the drone program. Although it is possible that the President would have vetoed an authorization act over a restriction in a classified annex, I doubt the President would have vetoed an approprations bill. As a footnote, I would add that some Executive branch lawyers have quietly questioned whether legislative language in classified annexes is actually legally binding (I have never seen a legal analysis of this question myself and do not have a view), but **the White House** and, more important, the intelligence agencies have long been loath to ignore restrictions in classified annexes for fear of angering Congressional intelligence overseers.

#### Ethical obligations are tautological—the only coherent rubric is to maximize number of lives saved

**Greene 2010** – Associate Professor of the Social Sciences Department of Psychology Harvard University (Joshua, Moral Psychology: Historical and Contemporary Readings, “The Secret Joke of Kant’s Soul”, [www.fed.cuhk.edu.hk/~lchang/material/Evolutionary/Developmental/Greene-KantSoul.pdf](http://www.fed.cuhk.edu.hk/~lchang/material/Evolutionary/Developmental/Greene-KantSoul.pdf), WEA)

What turn-of-the-millennium science is telling us is that human moral judgment is not a pristine rational enterprise, that our moral judgments are driven by a hodgepodge of emotional dispositions, which themselves were shaped by a hodgepodge of evolutionary forces, both biological and cultural. Because of this, it is exceedingly unlikely that there is anyrationallycoherentnormativemoral theory that can accommodateourmoral intuitions. Moreover, anyone who claims to have such a theory, or even part of one, almost certainly doesn't. Instead, what that person probably has is a moral rationalization.

It seems then, that we have somehow crossed the infamous "is"-"ought" divide.  How did this happen? Didn't Hume (Hume, 1978) and Moore (Moore, 1966) warn us against trying to derive an "ought" from and "is?" How did we go from descriptive scientific theories concerning moral psychology to skepticism about a whole class of normative moral theories? The answer is that we did not, as Hume and Moore anticipated, attempt to derive an "ought" from and "is." That is, our method has been inductive rather than deductive. We have inferred on the basis of the available evidence that the phenomenon of rationalist deontological philosophy is best explained as a rationalization of evolved emotional intuition (Harman, 1977).

Missing the Deontological Point  
I suspect that rationalist deontologists will remain unmoved by the arguments presented here. Instead, I suspect, they will insist that I have simply misunderstoodwhatKant and like-minded deontologistsare all about. Deontology, they will say, isn't about this intuition or that intuition. It's not defined by its normative differences with consequentialism. Rather, deontology is about taking humanity seriously. Above all else, it's about respect for persons. It's about treating others as fellow rational creatures rather than as mere objects, about acting for reasons rational beings can share. And so on (Korsgaard, 1996a; Korsgaard, 1996b).This is, no doubt, how many deontologists see deontology. But this insider's view, as I've suggested, may be misleading. The problem, more specifically, is that it defines deontology in terms of values that are notdistinctivelydeontological, though they may appear to be from the inside. Consider the following analogy with religion. When one asks a religious person to explain the essence of his religion, one often gets an answer like this: "It's about love, really. It's about looking out for other people, looking beyond oneself. It's about community, being part of something larger than oneself." This sort of answer accurately captures the phenomenology of many people's religion, but it's nevertheless inadequate for distinguishing religion from other things. This is because many, if not most, non-religious people aspire to love deeply, look out for other people, avoid self-absorption, have a sense of a community, and be connected to things larger than themselves. In other words, secular humanists and atheists can assent to most of what many religious people think religion is all about. From a secular humanist's point of view, in contrast, what's distinctive about religion is its commitment to the existence of supernatural entities as well as formal religious institutions and doctrines. And they're right. These things really do distinguish religious from non-religious practices, though they may appear to be secondary to many people operating from within a religious point of view.  
In the same way, I believe that most of the standard deontological/Kantian self-characterizatons fail to distinguish deontology from other approaches to ethics. (See also Kagan (Kagan, 1997, pp. 70-78.) on the difficulty of defining deontology.) It seems to me that consequentialists, as much as anyone else, have respect for persons, are against treating people asmereobjects, wish to act for reasons that rational creatures can share, etc. A consequentialist respects other persons, and refrains from treating them as mere objects, by counting every person's well-beingin the decision-making process. Likewise, a consequentialist attempts to act according to reasons that rational creatures can share by acting according to principles that give equal weight to everyone's interests, i.e. that are impartial. This is not to say that consequentialists and deontologists don't differ. They do. It's just that the real differences may not be what deontologists often take them to be.  
What, then, distinguishes deontology from other kinds of moral thought? A good strategy for answering this question is to start with concrete disagreements between deontologists and others (such as consequentialists) and then work backward in search of deeper principles. This is what I've attempted to do with the trolley and footbridge cases, and other instances in which deontologists and consequentialists disagree. If you ask a deontologically-minded person why it's wrong to push someone in front of speeding trolley in order to save five others, you will getcharacteristically deontological answers. Some will betautological: "Because it's murder!"Others will be more sophisticated: "The ends don't justify the means." "You have to respect people's rights." But, as we know, these answers don't really explain anything, because if you give the same people (on different occasions) the trolley case or the loop case (See above), they'll make the opposite judgment, even though their initial explanation concerning the footbridge case applies equally well to one or both of these cases. Talk about rights, respect for persons, and reasons we can share are natural attempts to explain, in "cognitive" terms, what we feel when we find ourselves having emotionally driven intuitions that are odds with the cold calculus of consequentialism. Although these explanations are inevitably incomplete, there seems to be "something deeply right" about thembecause they give voice to powerful moral emotions. But, as with many religious people's accounts of what's essential to religion, they don't really explain what's distinctive about the philosophy in question.

### 2ac solvency

#### Despite secrecy, JSOC is subject to greater oversight through committees and FOIA

Mulrine, 13 [Does it matter who runs US drone program? Pentagon could supplant CIA, A news report suggests that authority for the US drone program could shift from the CIA to the Pentagon. Critic’s hope that would open it to more oversight from Congress and citizens. By Anna Mulrine, Staff writer / March 20, 2013, <http://www.csmonitor.com/USA/Military/2013/0320/Does-it-matter-who-runs-US-drone-program-Pentagon-could-supplant-CIA>]

The growing speculation that the White House is preparing to shift its secretive drone program from the Central Intelligence Agency to the Pentagon is raising new questions about just how much more transparency this move would portend. The hope among critics is that this change would allow greater oversight by Congress – and, by extension, the American public – of America’s targeted killing program. That could be true, experts say. Congress is generally more successful in bringing the Pentagon to heel through budget threats thanis the CIA. Moreover, the Pentagon is subject to citizen Freedom of Information Act (FOIA) requests. But elements within the Pentagon are just as secretive – if not more so – than the CIA, meaning critics might not get the degree of openness they might want. “Whether transparency increases really depends on who at the DoD [Department of Defense] the program goes to,” says Jennifer Rowland, program associate with the National Security Studies program at the New America Foundation. Sen. John McCain (R) of Arizona, a longtime member of the Senate Armed Services Committee, is pushing for the drone program to change addresses. “Since when is the intelligence agency supposed to be an Air Force of drones that goes around killing people? I believe that’s a job for the Department of Defense,” he said on FOX News recently. “What we really need to do is take this whole program out of the hands of the Central Intelligence Agency and put it into the Department of Defense, where you have adequate oversight, you have committee oversight, you have all the things that are built in as our oversight of the Department of Defense.” But some analysts question whether the move to the Pentagon would truly increase oversight. “That shift in-and-of-itself does not necessarily create more transparency,” says Benjamin Friedman, a research fellow in defense and homeland security studies at the CATO Institute, a libertarian think thank. In his article for the Daily Beast that broke the news of the reported shift Wednesday, Daniel Klaidman points out that the Pentagon may choose to place responsibility for the drone program with Joint Special Operations Command (JSOC), which is responsible for the Navy’s SEAL Team 6, Delta Force, and other equally secretive US military strike forces. JSOC may be less willing to share information about these strikes than is the CIA. And while the CIA is obligated to report certain actions it takes – including targeted killings – to Congress, JSOC is not. “JSOC really has different rules than the rest of the Pentagon,” says Ms. Rowland of the New America Foundation. That said, it is far easier for American citizens to compel the Pentagon to share data through FOIAs, Rowland points out. “The DoD may not be legally bound to provide certain data to Congress, but they are legally bound to provide it to the American public.” And should the program shift to the Pentagon, the congressional committees that oversee it could have more points of leverage. In particular, the armed services committee controls the purse strings for the DoD. This means that the House and Senate Armed Services Committees could strong-arm the Pentagon to share information. The intelligence committees, by contrast, could compel the CIA to do relatively little, Friedman argues. “In the end, where these formal powers reside may be less important than the fact that the armed services committee authorizers make budget decisions, so they have more pull to get what they want,” says Mr. Friedman of CATO. Most vital is that this potential move could spark a deeper conversation among lawmakers and the American public about secretive programs that warrant far more oversight than they have been getting, analysts say. “To me, the main thing is less whether the drone program is run by the CIA or JSOC, but rather whether Congress is asserting its power to contain and check the executive branch when it comes strikes overseas,” Friedman says. “Rand Paul said it pretty well in his 13-hour filibuster: ‘We shouldn’t be asking the president for memos on drone strikes, we should be giving him memos,’ ” referring to congressional demands for a legal justification of the Obama administration’s targeted killing program. The “murky” process for managing the program, Friedman adds, has proven “woefully insufficient and has been abused massively by the executive branch to do what they want to as long as they say the magic word ‘terrorism.’ ”

#### Military key – four reasons

Alston, 11 [Harvard National Security Journal, 2 Harv. Nat'l Sec. J. 283, “The CIA and Targeted Killings beyond Borders,” Philip Alston, John Norton Pomeroy Professor of Law, New York University School of Law, p. lexis]

I turn now to exploring what is publicly known about the actual usage of drone strikes to date. Both the military and the CIA have made use of them for targeted killings in the armed conflicts in Afghanistan and Iraq. While the United States military does not provide any systematic information as to the operations undertaken and the results achieved, it has demonstrated at least some degree of transparency and given clear indications that it seeks to comply with the central requirements of IHL. The partial transparency results from the combination of several factors. First, the formal aspects of the targeting process for military operations are generally governed by publicly available military documents, such as the U.S. Air Force’s manual on targeting doctrine, which include an emphasis on adherence to IHL requirements.137 But the substantive criteria for who is actually targeted remains largely secret. Second, the evolution of the military’s counterinsurgency policy has placed a strong emphasis on approaches that do not rely entirely on killing the enemy to attain the declared objectives138 and that recognize that killing will sometimes be counter-productive.139 Policies to minimize civilian casualties have also been given far greater prominence by the military leadership in the past year or so. Third, the military has been compelled by public opinion, both Afghan and international, as well as by its understanding of the strategic importance of reducing civilian casualties, to engage in a process of review and evaluation of operations in relation to which significant numbers of civilian deaths have been alleged. And the fourth factor is the extent of external scrutiny provided both by civil society groups on the ground, such as the Afghanistan Independent Human Rights Commission,140 and by the reporting of the human rights component of the UN field mission, the UN Assistance Mission in Afghanistan (UNAMA).141 But despite the military’s responsiveness in certain settings, it specifically affirmed in December 2010 that it does not compile statistics on civilian casualties caused by drone strikes.142

#### Perception is key – military control would assuage public fears.

Khan, 13 [Citing Jeh Johnson, JD, former General Counsel for the Defense Department, Taimur, “CIA should not control drone strikes, says former Pentagon legal chief,” http://www.thenational.ae/news/world/americas/cia-should-not-control-drone-strikes-says-former-pentagon-legal-chief]

The remarks from Jeh Johnson come five weeks after John Brennan, who oversaw the CIA's expansion of the targeted killing, was forced to defend the drone programme during his confirmation hearings to become CIA director. With the legal process around targeted killings, especially of Americans, "shrouded in secrecy ... **many in the public fill the void by envisioning the worst**", Mr Johnson said in a speech at a national security conference at New York's Fordham University on Monday. He said the public saw "dark images" of officials "in the basement of the White House acting … as prosecutor, judge, jury and executioner". Instead, **he proposed that the military should take control of all drone and targeted-killing operations**, rather than the CIA, because this would make the process more transparent and address legal concerns. As the Department of Defence general counsel until the end of last year, Mr Johnson signed off on every targeted killing by the military throughout president Barack Obama's first term. As a supporter of the use of drone strikes under the framework of Congress-approved war powers, his speech offered a rare window into the thinking among those in the administration's inner circles. There is growing consensus across the political spectrum, among civil liberties groups as well as conservatives in Washington, that something must be done to **assuage fears about unchecked executive** killing power.

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#### The 1ac’s approach is pedagogically sound – inculcating skills linked explicitly to normative political adoption creates the potential for effective political contestation

Donohue, 13 [2013 Nation al Security Pedagogy: The Role of Simulations, Associate Professor of Law, Georgetown Law, <http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2172&context=facpub>]

Student Organizations and Journals Mirroring law schools’ growing institutional focus on national security law is increased student interest in the field, manifest through student organizations and student - run journals. Of the top 100 ranked law schools, nearly three dozen have student organizations relating to national security law. 94 Sixteen of these have military law societies. 95 In the law review realm, not only have mainstream journals increasingly published articles in this area, but eight journals have adopted a strong focus on this area, with three solely dedicated to nat ional security law: the Georgetown Law - Syracuse Law Journal of National Security Law and Policy , the annual William Mitchell College of Law Journal of the National Security Forum , and the Harvard Law’s National Security Journal (initiated in Spring 2010). 96 These institutional developments suggest that law schools, as a structural matter, are responding to the growing demand for well - trained students. Thus far, theapproach has been an organic process of responding on a case - by - case basis. **The problem is that**, for the most part, **these** programs and institutions **are situated within traditional models**, thus **reflecting** the **dominant divisions** and pedagogical aims of the broader institutions. Yet many of these approaches were adopted with a view towards the pra ctice of law generally, and not with specific focus on the challenges facing lawyers that want to move into national security law. III. L EGAL P EDAGOGY The practice of law , as suggested above, is deeply political in nature, with lawyers not merely providing a service to the community, but exercising government power and seeking to limit the same. This makes the profession susceptible to political shifts. It is thus perhaps unsurprising that the compromise forged between conflicting aims ( the practical realities of the practice of law, paired with the aspirations of critical distance and debate) r epeatedly surface s in the wake of military conflict. It was , after all, following the Civil War t hat Harvard confronted the outmoded, receptive nature of legal education. Subjected to recitation of treatises prepared years in advance, students had little to no agency in the classroom. 97 Harvard Law Dean Christopher Columbus Langdell sent shock waves through the system when he introduced three fundamental innovations, the aim of which was to inculcate academic achievement in students: he began sequencing courses, he created the case method of teaching, and he invented the (now infamous) issue - spotter examination, requiring students to respond in writing to complex hypothetical problems. 98 At the time, Oxford and Cambridge considered a liberal education to be sufficient preparation for the professions; the study of common law and other professional educ ation was left to the apprenticeship process. Students would be asked merely to present clients’ complaints in the appropriate legal form (i.e., the correct “writ” or “form of action”, as appropriate to the facts of the case) to gain access to the courts. Students would be asked merely to present c lients’ complaints in the appropriate legal form (i.e., the correct “writ” or “form of action”, as appropriate to the facts of the case) to gain access to the courts. Moskovitz explains, “Students listened to lectures (some by professors, but many by judge s and practicing lawyers) and read textbooks that distilled the rules from the cases. Both activities were essentially passive: the student absorbed information but did not interact much with the teacher.” innovations thus flew in the face of both U.S. norms and those adopted across the Atlantic. 99 They at once recognized the importance of the practice of law, while providing to the legal academy the distinction of critical scholarly analysis. The decision to expand into the practice of law subsequently created divisions within the research university. Scholars saw their role as ensuring that students obtained a certain distance from the law and, as s uch, could subject it to more rigorous critique. The goal of practitioners in many ways proved the opposite: to immerse students so directly in the law as to give them fluency in the practice of the same. In the ensuing years, new evaluations of legal pedagogy have accompanied the country’s engagement in military hostilities. World War I , for instance, gave way to the Reed Report, which considered how those returning from war would seek to re - shape the existing institutions. Jerome Frank’s work, calling for greater engagement of the academy in the practice of law, bookended World War II. The close of Vietnam witnessed the first ABA Task Force Report on the role of legal education. The Cramton Report was soon followed by the MacCrate Report — coinc ident with the ending of the Cold War. A crucial weakness in many of these studies is that they have assumed the practice of law writ large to be the object of the inquiry — obfuscating, in the process, the practice of law in discreet contexts. Simultaneo usly, much of the discussion assumes as a given the division between doctrinal and clinical education, missing in the process the potential for developing a new framework for legal education. Perhaps most importantly, these inquiries, like many that mark the current pedagogical debate, have failed to appreciate the importance of the goals most appropriate to national security law. A . Limitations of the Current Pedagogical Debate One problem with the current pedagogical debate in the legal academy is th at it is almost entirely grounded in a general understanding of the practice of law. There is very little new about this approach. In 1978, for instance, t he ABA’s Task Force on Lawyer Competency: The Role of Law Schools , chaired by Dean Roger Cramton, i dentified three competencies required for the practice of law writ large : (1) knowledge about law and legal institutions; (2) fundamental skills; and (3) professional attributes and values. 100 Instead of considering any of the sub - fields in depth, the repor t focused on general legal education. It identified fundamental skills as legal analysis, legal research, fact investigation, written and oral communication, interviewing, counseling, negotiation, and organization. 101 Professional values, in turn, centered on discipline, integrity, 99 A LFRED Z ANTZINGER R EED , T RAINING FOR THE P UBLIC P ROFESSION OF THE L AW (1921), p. 23 (“In accordance with this tradition of the ultimate responsibility of lawyers for their own educational qualifications, the English universities have not only been denied any control over the admission of a law student to practice. They have not even been made directly responsible for providing any portion of his education, in whi ch they participate only as volunteer agencies. In the field of general education they offer much more than the practitioners demand. [...]The conception...of institutional instruction in technical law as an essential part of a lawyer’s education, whether giv en in a university or whether given elsewhere, has never thoroughly reestablished itself in England sinc the decay of the original Inns of Courts. The pedagogical doctrine that this should constitute a distinct intermediate phase of his preparation, to be entered upon after he had completed his general education but before his practical training begins, is still more foreign to English thought. As a rule, an English student, having secured such general education as he thinks worth while or can afford, pro ceeds directly into a lawyer’s office.”) See also B RUCE A. K IMBALL , T HE I NCEPTION OF M ODERN P ROFESSIONAL E DUCATION : C. C. L ANGDELL , 1826 - 1906 (2009), p. 161. 100 A MERICAN B AR A SSOCIATION , S ECTION OF L EGAL E DUCATION AND A DMISSIONS TO THE B AR , R EPORT AND R EC OMMENDATIONS ON THE T ASK F ORCE ON L AWYER C OMPETENCY : THE R OLE OF L AW S CHOOLS (1979), at 9 - 10 [Hereinafter Cramton Report]. 101 Id. 21 conscientiousness, continued professional development, critical self - assessment, and hard work. 102 The report was not uncritical of the current state of play: w hile legal education did a r elatively good job of providing students with the knowledge of law, and legal analytical skills, as well as legal research and writing, it failed in three essential respects: (a) developing some of the fundamental skills underemphasized by traditional le gal education; (b) shaping attitudes, values, and work habits critical to the individual’s ability to translate knowledge and relevant skills into adequate professional performance; and (c) providing integrated learning experiences focused on particular fi elds of lawyer practice. 103 The Report offered dozens of recommendations to address the gap. 104 Ten years later, following the end of the Cold War, the American Bar Association’s Section of Legal E ducation and Admissions to the Bar appointed yet another task force to look at the role of legal education in preparing attorneys for practice. Once again, it took a cookie - cutter approach to the subject, assuming legal education prepared students for a uniform fi eld. Chaired by Robert MacCrate, the resulting 414 - page report included within it a “Statement of Fundamental Lawyering Skills and Professional Values”, in which it highlighted ten fundamental skills and four values to guide those seeking to enter the pr ofession. 105 The goal of legal education was and ought to be developing students’ skills with regard to problem - solving, legal analysis and reasoning, legal research, factual investigation, communication, counseling, negotiation, litigation and ADR, organiz ation and management of legal work, and recognizing and resolving legal dilemmas . 106 With the aim of legal education thus defined, the report went on to note the fundamental values of the profession: the provision of competent representation, striving to p romote justice, fairness, and morality, working to improve the profession, and professional development. 107 Cognizant of the critiques that would inevitably follow, the Report noted that the skills and values thus presented was not definitive; instead, the y provided a starting point for further discussion of different areas of the profession. The aim was not to lock schools into a specific curriculum, to create criteria for accreditation, or to cement bar examiners into one approach. In achieving these goa ls, the Report emphasized the importance of clinical education: Clinics have made, and continue to make, an invaluable contribution to the entire legal education enterprise. They are a key component in the development and advancement of skills and values throughout the profession. . . . clinics provide students with the opportunity to integrate, in an actual practice setting, all of the fundamental lawyering skills. In clinic courses, students sharpen their understanding of professional responsibility an d deepen their appreciation for their own values as well as those of the profession as a whole. 108 102 Id., at 10. 103 Id., at 14. 104 Id., at 3 - 7, recommendations 3 - 5. 105 A MERICAN B AR A SSOCIATION S ECTION OF L EGAL E DUCATION AND A DMI SSION TO THE B AR , L EGAL E DUCATION AND P ROFESSIONAL D EVELOPMENT : A N E DUCATIONAL C ONTINUUM , R EPORT OF THE T ASK F ORCE ON L AW S CHOOLS AND THE P ROFESSION : N ARROWING THE G AP (1992) [hereinafter, MacCrate Report]. 106 MacCrate Report, supra , at 121 - 22. 107 MacCrate Report, supra , at 140 - 41. 108 MacCrate Report, supra ,at 238. 25 la wyer. Not only must students understand these processes, Baker argues, but they must take into account the way in which processes unique to national security law influence lawyers’ ability to engage in traditional legal analysis and recommendation. The opportunity, for instance, for lawyers to engage in considered debate about legal interpretations or to have their work cross - checked by other attorneys, perhaps even more steeped in these fields, may be limited. Baker explains, Lawyers tend to focus on t he formal aspects of constitutional government – legislation, the oversight hearing, the Justice Department opinion, and presidential statements. For sure, these legal events dominate constitutional history and precedent. However, much of constitutional practice within each branch, and between each branch, is informal in nature, outside public view, and without documentation. 126 Beyond the informal nature of such processes is the classified context within which government attorneys operate. Two salient p oints here stand out: first is the difficulty of working collaboratively in a classified context when time is of the essence . That is, even where a number of legal experts may be privy to the information, the abbreviated timeline under which national security attorneys must work **limits** the extent to which collaboration may occur. The second point centers on limitations on the number of individuals with whom a lawyer can discuss the specific matter in question. There may be very few legal experts with whom an attorney can consult. Nevertheless, **decisions** reached **in these contexts** may have **significant implications**: they may shift the U.S. legal posture on domestic and international instruments, with formidable consequences for operations, U.S. policy, and safety and security. These characteristics of national security law mean that law schools must sharpen students’ analytical skills, as well as their substantive knowledge. That is, schools must not just teach students how to think about the law, but they must convey a significant amount of what the law actually is so that students have some idea of the current authorities and the framing and the groundwork on which future initiatives are built. Simultaneously, they must make students aware of the way in which formal and informal process influences the quality of their legal analysis and understanding, and help them to develop different tools to manage such processes to ensure better performance. With the black letter law in national security rapidly changing and growing, law schools must further look at what the emerging topics are and adjust existing courses and offer new top ics accordingly. This is a different model than the relative stasis marking much of the 20 th Century. Most schools have generally agreed over the course of decades that criminal law, criminal procedure, constitutional law, civil procedure, contracts, tor ts, and property, merit attention. Eventually schools began to offer courses in new areas, such as international law, and environmental law. But the sudden explosion in national security law here means two things: first, the re - evaluation of traditional classes to include new and emerging areas. Material support provisions, new surveillance authorities, and the difference between Title III orders and Foreign Intelligence Surveillance Court warrants may thus become an important part of Criminal Procedure . Regulatory courses, in turn, may need to expand to include new financial regulations unique to the national security world. Second, rapid changes suggest the construction of new courses, offering both novel combinations of subjects as well as new substa ntive areas, such as courses focused on international law and habeas corpus, pandemic disease and consequence management law, intelligence law, or cyber threats. 126 B AKER , supra note 5 , at 63. 26 As a pedagogical matter then, examination of new and emerging areas must be incorporated into the doctrinal study of legal authorities, even as the processes at work in the national security realm are featured. Active review of courses across the board wi ll further accomplish this aim — an approach somewhat antithetical to traditional approaches to teaching, where faculty members typically offer (relatively static) introductory courses, paired with upper level courses on matters of particular interest. New organization may therefore be required to bring national security law faculty and curriculum together, as an intellectual and structural enterprise, to consider the breadth and range of current course offerings. b. “ Washington Context ” While recognizing t he importance of legal authorities and processes, in the field of national security law, both may be overridden by considerations unique to what may be called the “ Washington context ” . The inherent political friction between the branches of government, the institutional frictions between Departments and Agencies, and the interpersonal components that accompany the exercise of power all influence the manner in which national security l aw evolves. To the extent that law schools ignore this aspect of the practice, they do students a great disservice. To take an example that arose in one of my course s , students may (correctly) read HSPD 5 and the Homeland Security Act of 2002 to mean th at the Secretary of Homeland Security has the authority to order an evacuation. To act on this authority, however, without direct communication with (and permission from) the White House, would be inappropriate. This type of Washington - based, p olitical a uthority is critical to the exercise of power. Herein lies the rub: national security instruments often incorporate power that has significant domestic and international political ramifications. The stakes are high. It is thus imperative that students **understand** the broader authorities and **processes** at work. Such processes extend beyond the executive branch to dealings with Congress — a branch often sidelined in law school curricula. Lawyers working in the field, from the executive branch and legislati ve branches to private industry, must understand the political processes in Congress in order to be more effective. The relative strength of different committees, the contours of legislative oversight, the range of policy documents applicable to the field (and required by Congress via statute), the formal and informal mechanisms to obtain information relating to executive branch national security matters, the role of party politics — all of this proves relevant. Understanding political authority extends to chain of command, as well as inter - agency processes. c. Policy Environment The “ Washington context” can be distinguished from a second way in which political considerations enter into national security law: namely, the broader policy environment. On e way to understand this is in terms of the push and pull of policymaking. In the former realm, law constitutes just one of many competing demands that policymakers take into account before deciding which actions to pursue. In the latter area, the impact of the actions taken is felt in both the domestic and international arena. Each constitutes an ex ante consideration for lawyers operating in this domain. Within government practice, in determining which course to set, the role that law plays may be just one of many competing demands on the policymaker’s decision - making strategy. In order to secure a place for legal considerations, lawyers must therefore be cognizant of the different pressures influencing the process. Part of this is 27 learning how to communicate clearly with those involved in making and implementing policy. It also entails developing a feel for when and how to initiate appropriate participa tion. That is, lawyers must insert themselves into the conversation, representing the interests of law itself. I n policy discussions, lawyers are often n ot seated at the table. T hey may be a “plus one” in the discussion, and, in this capacity, they mus t come to terms with the fact that the law is only one consideration at play. They may have to accept being relegated to a supporting role, with their recommendation overridden. In this context, they must grapple with not just personality management, but issues related to ego and subordination. They must then decide how to react to this situation, when and how to take the initiative, when to concede, and when to pr oceed through other channels. In brief, they must learn both how to insert legal considerations into what is essentially a policy debate , and how to treat the outcome of such efforts in the context of professional and personal goals . At the back end, legal recommendations carry with them strong policy implications. It is worth noting at the ou tset that t here is disagreement over whether national security lawyers need to take this into account. Professor John Yoo, for instance, argues that it is not the national security lawyer’s role to think about the policy impact of legal advice given — even when delivered at the highest levels of government . 127 The logic behind this is that separating law from policy is essential to good lawyering , and that to combine policy considerations with strict legal analysis undermines the strength of the intellectual endeavor, as well as the integrity of the advisory system itself. As an ex ante consideration, taking into account either competing interests or the resulting policy impact thus runs counter to the purpose of obtaining strict legal advice. Instead, it is for policymakers to balance competing concerns and to determine the most approp riate course of action. There is much to commend this strict adherence to the distinction between law and policy. The problem with this approach, however, is that it results in a sort of false silo, where lawyers ostensibly operate in a manner completely insulated from policy concerns. In national security law, this is simply not the case. Law and policy — for reasons discussed in Part I of this Article — often overlap. The result of attempting to ignore the policy side of the eq uation, moreover, may sidel ine law at the front end: i.e., when lawyers present not just a particular legal analysis, but act to insert considerations of law qua law into the policymaker’s decisionmaking process . Here, identifying and thinking about competing policy concerns provi des lawyers with important knowledge about how and when to insert legal considerations. Failure to take account of policy concerns may further entail a breach of professional responsibility and ethical obligations at the back end . It may be, for instanc e, that there is no legal bar to acting in a certain manner. ( It is precisely for this reason that criminal law continues to evolve. ) But absence of prohibition does not automatically translate into permission for action. A strict legal analysis may thu s suggest legality, where the actual implications of such actions would run contrary to legal or ethical norms. The role of national security law is here of great importance: as an exercise of power — indeed, at one extreme, the most coercive powers available to the state — failure to take into account the implications of the legal analysis may suggest a failure of professional responsibility. d . Adaptation and Evolution 127 John Yoo, Remarks , Debate on Guantanamo Bay Detainees, Oct. 12, 2005, Stanford Law School, Co - sponsored by the Federalist Society and the American Constitution Society. 28 Not only must students learn about legal and authorities and processes, the Washington context, and policy concerns, but they must learn how to adapt and evolve to deal with new and emerging bureaucratic and administrative structures. Innovation is the hallmark of this skill, and it is one that requires a different kind of learning than dominates in doctrinal settings. 128 In the national security world, p olitical leadership rapidly changes, with constant movement of personnel. Institutions themselves are in flux: the creation of the Department of Homeland Security, as aforemen tioned, placed twenty - two executive branch agencies — some of which were major and complex organs of the government, such as the U.S. Customs Service, the U.S. Coast Guard, the U.S. Secret Service, the Transportation Security Administration, and the Federal Emergency Management Agency — under one umbrella, growing by 2012 to some 216,000 people. 129 DHS agencies continue to evolve and morph as the mission of the Department steadily expands. The Department of Defense’s creation of NORTHCOM similarly generated two new domestic intelligence institutions and a substantial infrastructure to support the command. Treasury, the Department of Health and Human Services, the Department of State, and others have had to adapt to the new environment, in the process shifting i nstitutional structures. Collectively, what these characteristics mean is that those who take up positions within these entities need to be able to quickly adapt to new and changing legal and political authorities and processes. So, too, must **those outside of government**, who **need to respond** to new initiatives and rapidly changing institutional arrangements. The sheer size of the infrastructure and the number of new initiatives requires the ability to work in a fluctuating environment and to quickly iden tify changing power structures. 2 . Factual Chaos and Uncertainty One of the most important skills for students going into national security law is the ability to deal with factual chaos. This significantly differs from the traditional model of legal edu cation, which tends to provide students with a set of facts, which they must then analyze. In contrast, l awyers working in national security law must figure out what information they need, integrate enormous amounts of data from numerous sources, determin e which information is reliable and relevant, and proceed with analysis and recommendations. These recommendations, moreover, must be based on contingent conditions: facts may be classified and unavailable to the legal analyst, or facts may change as new information emerges. This is as true for government lawyers as it is for those outside of governmental structures. They must be aware of what is known, what is unsure, what is unknown, and the possibility of changing circumstances , and they must advise their clients, from the beginning, how the legal analysis might shift if the factual basis were to be altered. a. Chaos Concern about information overload in the national security environment is not new: in the 1970s scholars discussed and debated how to handle the sequential phases of 128 For rel ated discussion of innovation in the context of self - learning for corporate law, see Karl S. Okamoto, Learning and Learning - to - Learn by Doing: Simulating Corporate Practice in Law School , 45 J. OF L EGAL E D ., 495 (1995). 129 The Department of Homeland Security, the Executive Branch, available at http://www.whitehouse.gov/our - government/executive - branch (accessed Jan. 6, 2012). 29 intelligence gathering and analysis in a manner that yielded an optimal result. 130 But the digital revolution has exponentially transformed the quantitative terms of reference, the technical means of collection and analysis , and the volume of information available. At the same time, t he number of s ources of information — not least in the online world — is staggering. Added to this is the rapid expansion in national security law itself: myriad new Executive Orders, Presidentia l Directives, institutions, programs, statutes, regulations, lawsuits, and judicial decisions mean is that national security law itself is rapidly changing. What this means is that l awyers inside and outside of government must keep abreast of constantly e volving provisions. The international arena too is in flux, as global entities, such as the United Nations, the European Court of Human Rights, the G7/G8, and other countries introduce new instruments whose reach includes U.S. interests. Rapid geopoliti cal changes relating to critical national security concerns, such as worldwide financial flows, the Middle East, the Arab Spring, South American drug Cartels, North Korea, the former Soviet Union, China, and other issues increase the importance of keeping up on what is happening globally, as a way of understanding domestic concerns. Further expanding the information overload is the changing nature of what constitutes national security itself. 131 In sum, the sheer amount of information the national security l awyer needs to assimilate is significant. The basic skills required in the 1970s thus may be the same — such as the ability (a) to know where to look for relevant and reliable information; (b) to obtain the necessary information in the most efficient manner possible; (c) to quickly discern reliable from unreliable information; (d) to know what data is critical; and (e) to ascertain what is as yet unknown or contingent on other conditions. But the volume of information, the diversity of information sources, and the heavy reliance on technology requires lawyers to develop new skills . They must be able to obtain the right information and to ignore chaos to focus on the critical issues. These features point in opposite directions — i.e., to both a broadening of knowledge and a narrowing of focus. A law school system built on the gradual and incremental advance of law, bolstered or defeated by judicial decisions and solidified through the adhesive nature of stare decisis appea rs particularly inapp osite for this rapidly - changing environment. An important question that will thus confront students upon leaving the legal academy is how to keep abreast of rapidly changing national security and geopolitical concerns, in an information - rich world, in a m anner that allows for capture of relevant information, while retaining the ability to focus on the immediate task at hand. Part of staying ahead of the curve means developing a sense of timing — when to respond to important legal and factual shifts — and identifying the best means of doing so. Again, this applies to government and non - government employees. How should students prioritize certain information and then act upon it? This, too, is an aspect of information overloadNational security law proves an information - rich, factually - driven environment. The ability to deal with such chaos, however, may be further hampered by gaps in the information available and the difficulty of engaging i n complex fact - finding — a skill often under - taught in law school. Investigation of relevant information may need to reach far afield in order to generate more careful legal analysis. Uncertainty here plays a key role. In determining, for instance, the contours of quarantine authority, lawye rs may need to understand how the pandemic in question works, where there have been outbreaks, how it will spread, what treatments are available, which social distancing measures may prove most effective, what steps are being taken locally, at a state - leve l, and internationally, and the like. Lawyers in non - profit organizations, legal academics, in - house attorneys, and others, in turn, working in the field, must learn how to find out the relevant information before commenting on new programs and initiative s, agreeing to contractual terms, or advising clients on the best course of action. For both government and non - government lawyers, the secrecy inherent in the field here is of great consequence. The key here is learning to ask intelligentquestions to a ccommodate for chaos and uncertainty to generate the best legal analysis possible. It may be the case that national security lawyers are not aware of the facts they are missing — facts that would be central to legal analysis. This phenomenon front - loads the type of advice and discussions in which national security lawyers must engage. That is, it means that analysis must be given in a transparent manner, i.e., contingent on a set of facts as are then currently known, with indication given up front as to how that analysis might change, should the factual basis shift. This is particularly true of government attorneys, who may be advising policymakers — who may or may not have a background in the law and who may have access to more information than the attorney. Signaling the key facts on which the legal decision rests and indicating how such analysis might change if the facts change, provides for more robust consideration of critically important issues. c. Creative Problem Solving Part of dealing with factu al uncertainty in a rapidly changing environment is learning how to construct new ways to address emerging issues. Admit t edly, m uch has been made in the academy about the importance of problem - based learning as a method in developing students’ critical thinking skills. 132 Problem - solving, however, is not merely a method of teaching. It is itself a goal for the type of activities in which lawyers will be engaged. The means - ends distinction is an important one to make here, as problem - solving in a classro om environment may be merely a conduit for learning a specific area of the law or a limited set of skills. But problem - solving as an ends suggests the accumulation of a broader set of tools, such as familiarity with multidisciplinary approaches, creativit y and originality, sequencing, collaboration, identification of contributors’ expertise and how to leverage each skill set. This goal presents itself in the context of fact - finding, but it draws equally on strong understanding of legal authorities and pr actices , the Washington context, and policy considerations . Similarly, l ike the factors highlighted in the first pedagogical goal, adding to the tensions inherent in factual analysis is the abbreviated timeline in which national security attorneys must op erate. Time may not be a commodity in surplus. This context means that legal education must not only develop students’ complex fact - finding skills and the ability provide contingent analysis, but it must teach them how to swiftly and efficiently engage i n these activities. 3 . Critical Distance As was recognized more than a century ago, analytical skills by themselves are insufficient training for individuals moving into the legal profession. 133 Critical thinking **provides** the **necessary distance from the law that is required** in order **to move the legal system forward**. Critical thought, influenced by the Ancient Greek tradition, finds itself bound up in the Socratic method of dialogue that continues to define the legal academy. But it goes beyond such const ructs as well. Scholars and educators disagree, of course, on what exactly critical thinking entails. 134 For purposes of our present discussion, I understand it as the meta - conversation in the law. Whereas legal analysis and substantive knowledge focus o n the law as it is and how to work within the existing structures, critical thought provides distance and allows students to engage in purposeful discussion of theoretical constructs that deepen our understanding of both the actual and potential constructs of law. It is inherently reflective. For the purpose of practicing national security law, critical thought is paramount. Part of the reason for this is because of the unique conditions that tend to accompany the introduction of national security provisions: often **introduced in the midst of** an **emergency**, new powers frequently **have significant implications** for distribution of authority at a federal level, a diminished role for state and local government in the federalism realm, and a direct impact on individual rights. 135 Constitutional implications demand careful scrutiny. Yet at the time of an attack, enormous pressure is on officials and legislators to act and to be seen to act to respond. 136 With the impact on rights, in particular, foremost in legislators’ minds, the first recourse often is to make such powers temporary. However, they rarely turn out to be so, instead becoming embedded in the legislative framework and providing a baseline on which further measures are built. 137 In order to be withdrawn, legislators must demonstrate either that the provisions are not effective or that by withdrawing them, no violence will ensue Alternatively, legislators woul d have to acknowledge that some level of violence may be tolerated — a step no politician is willing to take. This steady ratcheting effect means that new powers, introduced in the heat of the moment, may become a permanent part of the statutory and re gulato ry regime. They may not operate the way in which they were intended. They may impact certain groups in a disparate manner . They may have unintended and detrimental consequences. For all of this, it is necessary for national security lawyers to be able to view such provisions, and related policy decisions, from a distance and to be able to think through such authorities outside of the contemporary regime. There are many other reasons such critical analysis matters that reflect in other areas of the law. The ability to recognize problems, articulate underlying assumptions and values, understand how language is being used, assess whether argument is logical, test conclusions, and determine and analyze pertinent information depends on critical thinking skills. Indeed, one could draw argue that it is the goal of higher education to build the capacity to engage in critical thought. Deeply humanistic theories underlie this approach. The ability to develop discerning judgment — the very meaning of the Greek ter m, κριτιχοσ , provides the basis for advancing the human condition through reason and intellectual engagement. There is yet another way in which critical thought presents in national security law which may seem somewhat antithetical to the legal enterprise: particularly for government lawyers and consultants, there may be times in which not providing legal advice, when asked for it, may be as important as providing legal analysis. That is, it may be important not to put certain options on the table, with a legal justification behind them. Such concerns are bound up in considerations of policy, professional respons ibility, and ethics. They may also relate to questions as to who one’s client is in the wo rld of national security law. 138 I t may be unclear whether and at what point one’s client is a supervisor, the legal (or political) head of an agency, a cross - agency organization, the White House, the Constitution, or the American public. Depending upon this determination, the national security lawyer may or may not want to provide legal advice to one of the potential clients. A lternatively, such a lawyer may want to call attention to certain analyses to other clients. Determining when and how to act in these circumstances requires critical distance. 4 . Nontraditional Written and Oral Communication Skills Law schools have long focused on written and oral communication skills that are central to the practice of law. Brief writing, scholarly analysis, criminal complaints, contractual agreements, trial advocacy, and appellate arguments constitute standard far e. What is perhaps unique about the way communication skills present in the national security world is the importance of modes of communication not traditionally recognized via formal models, such as concise (and precise) oral briefings, email exchanges, private and passing conversations, agenda setting, meeting injects, and communications built on swiftly evolving and uncertain information. For m any of these types of exchanges — and unlike the significant amounts of time that accompany preparation of leng thy legal documents (and the painstaking preparation for oral argument that marks moot court preparations) — speed may be of the essence. Much of the activity that goes on within the Executive Branch occurs within a hierarchical system, wherein those closes t to the issues have exceedingly short amounts 138 For a thoughtful discussion of who constitutes the client in national security law, see B AKER , supra note 5, chapter 10. 33 of time to deliver the key points to those with the authority to exercise government power. Unexpected events, shifting conditions on the ground, and deadlines require immediate input, without the opportunity for lengthy consideration of the different facets of the issue presented. This is a different type of activity from the preparation of an appellate brief, for instance, involving a fuller exposition of the issues involved. It is closer to a blend of Sup reme Court oral argument and witness cross - examination — although national security lawyers often may not have the luxury of the months, indeed, years, that cases take to evolve, to address the myriad legal questions involved. Facts on which the legal anal ysis rests, moreover, as discussed above, may not be known. This has substantive implications for written and oral communications. Tension between the level of legal analysis possible and the national security process itself may lead to a different norm than in other areas of the law. Chief Judge Baker explains, If lawyers insist on knowing all the facts all the time, before they are willing to render advice, or, if they insist on preparing a written legal opinion in response to every question, then na tional security process would become dysfunctional. The delay alone would cause the policymaker to avoid**,** and perhaps evade, legal review . 139 Simultaneously, lawyers cannot function without some opportunity to look carefully at the questions presented and to consult authoritative sources. “The art of lawyering in such context,” Baker explains, “lies in spotting the issue, accurately identifying the timeline for decision, and applying a meaningful degree of formal or informal review in r e s p o n s e . ” 140 The lawye r providing advice must resist the pressure of the moment and yet still be responsive to the demand for swift action. The resulting written and oral communications thus may be shaped in different ways. Unwilling to bind clients’ hands, particularly in li ght of rapidly - changing facts and conditions, the potential for nuance to be lost is considerable. The political and historical overlay of national security law here matters. In some circumstances, even where written advice is not formally required, it ma y be in the national security lawyer’s best interests to commit informal advice to paper in the form of an email, notation, or short memo. The process may serve to both provide an external check on the pressures that have been internalized, by allowing th e lawyer to separate from the material and read it. It may give the lawyer the opportunity to have someone subject it to scrutiny. Baker suggests that “on issues of importance, even where the law is clear, as well as situations where novel positions are taken, lawyers should record their informal advice in a formal manner so that they may be held accountable for what they say, and what they don’t s a y . ” 141 Written and oral communication, may occur at highly irregular moments — yet it is at these moments (in th e elevator, during an email exchange, at a meeting, in the course of a telephone call), that critical legal and constitutional decisions are made. This model departs from the formalized natur e of legal writing and research . Yet it is important that students are prepared for these types of written and oral communication as an ends in and of themselves. 5 . Leadership, Integrity and Good J udgment National security law often takes place in a high s takes environment. There is tremendous pressure on attorneys operating in the field — not least because of the coercive 139 B AKER , supra note 5 , at 65. 140 Id. 141 B AKER , supra note 5 , at 66. 34 nature of the authorities in question . The classified environment also plays a key role: m any of the decisions made will never be known publicly; nor will they be examined outside of a small group of individuals — much less in a court of law. In this context, leadership, integrity, and good judgment stand paramount. The types of powers at issue in national security law are among the most coercive authorities available to the government. Decisions may result in the death of one or many human beings, the abridgment of rights, and the bypassing of protections otherwise incorporated into the law. The amount of pressure under which attorneys are thus placed is of a different order of magnit ude than many other areas of the law. Overlaying this pressure is the highly political nature of national security law and the necessity of understanding the broader Washington context, within which individual decision - making , power relations and institut ional authorities compete . Policy concerns similarly dominate the landscape . It is not enough for national security attorneys to claim that they si mply deal in legal advice. T heir analyses carry consequences for those exercising power, for those who are the targets of such authorities , and for the public at large. The function of leadership in this context may be more about process than substantive authority. It may be a willingness to act on critical thought and to accept the impact of legal analysis. It is closely bound to integrity and professional responsibility and the ability to retain good judgment in extraordinary circumstances. Equally important in considerations of leadership and good judgment is the classified nature of so much of what is d one in national security law. All data , for instance, relating to the design, manufacture, or utilization of atomic weapons, the production of special nuclear material, or the use of nuclear material in the production of energy is classified from birth. 142 N ational security information (NSI), the bread and butter of the practice of national security law, is similarly classified. U.S. law defines NSI as “ ..information which pertains to the national defense and foreign relations (National Security) of the U nited States and is classified in acco rdance with an Executive Order.” Nine primary Executive Orders and two subsidiary ones have been issued in this realm . 143 The sheer amount of information incorporated within the classification scheme is here relevant. While original classification authorities have steadily decreased since 1980, and the number of original classification decisions is beginning to fall, the num bers are still high: in FY 2010, for instance, there were nearly 2,300 original classification authorities and almost 225,000 original classification d e c i s i o n s . 144 The classification realm , moreover, in which national security lawyers are most active , is e xpanding . Namely, d erivative classification decisions — i.e., classification resulting from the incorporation, paraphrasing, restating, or generation of classified information in some new form, is increasing . In FY 2010, there were more than 76 million such decisions made. 145 This number is tr ipple what it was in FY 2008. Legal decisions and advice tend to be based on information already classified relating to programs, initiatives, facts, intelligence, and previously classified legal opinions . The key issue here is that with so much of the essential information, decisionmaking, and executive branch jurisprudence necessarily secret, lawyers are limited in their opportunity for outside appraisal and review . Even w ithin the executive branch, stove - piping occurs. The use of secure compartmentalized information (SCI) further compounds this problem as only a limited number of individuals — much less lawyers — may be read into a program. This diminishes the opportunity to identify and correct errors or to engag e in debate and discussion over the law . O nce a legal opinion is drafted, the opportunity to expose it to other lawyers may be restricted . The effect may be felt for decades, as successive Administrations reference prior legal deci sions within certain ag encies. The Office of Legal Counsel, for instance, has an entire body of jurisprudence that has never been made public, which continues to inform the legal analysis provided to the President. Only a handful of people at OLC may be aware of the previous d ecisions. They are prevented by classification authorities from revealing these decisions, resulting in a sort of generational secret jurisprudence. Questions related to professional responsibility thus place the national security lawyer in a difficult position: not only may opportunit ies to check factual data or to consult with other attorneys be limited, but the impact of legal advice rendered may be felt for years to come. The problem extends beyond the executive branch . There are limited opportunities , for instance, for external ju dicial review. Two elements are here at work: first, v ery few cases relating to the many national security concerns that arise make it into court. Much of what is happening is simply not known. Even when it is known, it may be impossible to demonstrate standing — a persistent problem with regard to challenging, for instance, surveillance programs underway. Second , courts have historically proved particularly reluctant to intervene on national security matters. J udicially - created devices such as politica l question doctrine and state secrets underscore the reluctance of the judiciary to second - guess the executive in this realm. The exercise of these doctrines is increasing in the post - 9/11 environment. Consider state secrets. While much was made of some 5 - 7 state secrets cases that came to court during the Bush Administration, in more than 100 cases the executive branch formally invoked state secrets, which the courts a c c e p t e d . 146 Many times judges did not even bother to look at the evidence in question, before blocking evidence and/or dismissing the suit. In numerous additional cases, the courts treated the claims as though state secrets had been asserted — even where it had not been formally invoked. 147 In light of t he pressure put on national security lawy ers in the performance of their duties, the profound consequences of m any national security decisions, the existence of stovepiping even within the executive branch, and limited opportunity for external review , the practice of national security law depends upon a particularly rigorous and committed adherence to ethical standards an d professional responsibility. In other words, this is a unique world in which there are enormous pressures, with potentially few external consequences for not acting in accordan ce with high standards. It thus becomes particularly important, from a pedagogical perspective, to think through the types of situations that may present to national security attorneys, and to address the types of questions related to professional respons ibility that will confront them in the course of their careers . Closely related to this area is the necessity of exercising good judgment and leadership. This skill, like many of those discussed, may also be relevant to other areas of the law; however, th e type of leadership called f or in the world described above may 146 See Laura K. Donohue, The Shadow of State Secrets , U. P ENN . L. R EV . (2009). 147 Id. 36 be different in important ways. Good judgment, for instance, may mean any number of things, depending upon the attorney’s position within the political hierarchy. Policymaking positions, fo r instance, may be considerably different from the provision of legal advice to policymakers. Leadership , too , may mean something different in a field intimately tied to political circumstance. It may mean breaking ranks with the political hierarchy, visibly adopting unpopular public or private positions, creating new bureaucratic structures to more effectively r espond to threats, resigning when faced by unethical situations, or holding off clients until the attorneys within one’s group have the opportunity to look at issues while still being sensitive to the political needs of the institution. Recourse in such s ituations may be political, either through public statements and use of the media, or by going to different branches of government for a solution. 6 . Creating Opportunities for Learning In addition to the above skills, national security lawyers must be a ble to engage in continuous self - learning in order to improve their performance. In other words, they must be able to generate frameworks for identifying new and emerging legal and political authorities and processes, systems for handling factual chaos an d uncertainty, mechanisms to ensure critical distance, evaluating written and oral performance, and analyzing leadership skills. Law schools do not traditionally focus on how to teach students to continue their learning beyond the walls of academia. Yet it is vital for their future success to give students the wherewithal to create conditions of learning. Some of this learning may be generated by interpersonal feedback. Supervisors, law partners, and formal and informal mentors have traditionally perfor med a similar function. But in a highly political environment, where personnel frequently change, individuals repeatedly cross agencies in the course of their career, and classification limits cross - pollination, such opportunities may be limited. Thus, w hile feedback and growth may involve students’ ability to create and inculcate mentoring relationships, it may equally depend upon creating peer - to - peer learning opportunities, gaining feedback from colleagues, developing ex ante markers for reaching certa in goals, and following through with ex post analysis of one’s performance. In addition to the foregoing, n ational security lawyers need to be able to perform the six goals in tandem. That is, they need to be able to integrate these different skills into one experience. It is thus incumbent on law schools not just to emphasize these skills, but to give students the opportunity to layer their experiences. Students must learn to perform on all these fronts at once. Recognizing the importance of integrativ e learning, of course, is not new; however, for reasons discussed below, the structures that have been more broadly adopted within the legal academy to accomplish this aim are, on the whole, ill - suited to the substantive nature of the skills students need to develop as well as the task of performing such skills in near - simultaneous manner

The ballot should simulate the plans enactment

#### the plan is a valuable heuristic for thinking about uncertain futures

#### Vote aff despite prior questions—impact timeframe means you gotta act on the best info available

Kratochwil, professor of international relations – European University Institute, 2008 (Friedrich, “The Puzzles of Politics,” pg. 200-213)

The lesson seems clear. Even at the danger of “fuzzy boundaries”, when we deal with “practice” ( just as with the “pragmatic turn”), we would be well advised to rely on the use of the term rather than on its reference (pointing to some property of the object under study), in order to draw the bounds of sense and understand the meaning of the concept. My argument for the fruitful character of a pragmatic approach in IR, therefore, does not depend on a comprehensive mapping of the varieties of research in this area, nor on an arbitrary appropriation or exegesis of any specific and self-absorbed theoretical orientation. For this reason, in what follows, I will not provide a rigidly specified definition, nor will I refer exclusively to some prepackaged theoretical approach. Instead, I will sketch out the reasons for which a pragmatic orientation in social analysis seems to hold particular promise. These reasons pertain both to the more general area of knowledge appropriate for praxis and to the more specific types of investigation in the field. The follow- ing ten points are – without a claim to completeness – intended to engender some critical reflection on both areas. Firstly, a pragmatic approach does not begin with objects or “things” (ontology), or with reason and method (epistemology), but with “acting” (prattein), thereby preventing some false starts. Since, **as historical beings placed in a** specific situations**, we do not have the luxury** of deferring decisions **until we have** found the “truth”, **we have to act and must do so always under time pressures and in the face of incomplete information.** Pre- cisely because the social world is characterised by strategic interactions, what a situation “is”, is hardly ever clear ex ante, because it is being “produced” by the actors and their interactions, and the multiple possibilities are rife with incentives for (dis)information. This puts a premium on quick diagnostic and cognitive shortcuts informing actors about the relevant features of the situ- ation, and on leaving an alternative open (“plan B”) in case of unexpected difficulties. Instead of relying on certainty and universal validity gained through abstraction and controlled experiments, we know that completeness and attentiveness to detail, rather than to generality, matter. To that extent, likening practical choices to simple “discoveries” of an already independently existing “reality” which discloses itself to an “observer” – or relying on optimal strategies – is somewhat heroic. These points have been made vividly by “realists” such as Clausewitz in his controversy with von Bülow, in which he criticised the latter’s obsession with a strategic “science” (Paret et al. 1986). While Clausewitz has become an icon for realists, only a few of them (usually dubbed “old” realists) have taken seriously his warnings against the misplaced belief in the reliability and use- fulness of a “scientific” study of strategy. Instead, most of them, especially “neorealists” of various stripes, have embraced the “theory”-building based on the epistemological project as the via regia to the creation of knowledge. A pragmatist orientation would most certainly not endorse such a position. Secondly, since acting in the social world often involves acting “for” someone, special responsibilities arise that aggravate both the incompleteness of knowledge as well as its generality problem. Since we owe special care to those entrusted to us, for example, as teachers, doctors or lawyers, we cannot just rely on what is generally true, but have to pay special attention to the particular case. Aside from avoiding the foreclosure of options, we cannot refuse to act on the basis of incomplete information or insufficient know- ledge, and the necessary diagnostic will involve typification and comparison, reasoning by analogy rather than generalization or deduction. Leaving out the particularities of a case, be it a legal or medical one, in a mistaken effort to become “scientific” would be a fatal flaw. Moreover, **there still remains the crucial element of “timing” –** of knowing when to act. Students of crises have always pointed out the importance of this factor but, in attempts at building a general “theory” of international politics analogously to the natural sci- ences, such elements are neglected on the basis of the “continuity of nature” and the “large number” assumptions. Besides, “timing” seems to be quite recalcitrant to analytical treatment.

#### The K’s thesis is wrong – politics is a site of reform – that’s why people vote, care about the environment and live in communities – death is inevitable, but there is value in tangible improvements in the human condition

Brenkman ‘2 (John, Distinguished Professor of English and Comprative Literature at CUNY Graduate Center, Narrative, “Queer Post-Politics”, Volume 10, Issue 2, p. 174-180, Project Muse)

But Edelman interprets this nonrecognition in very different terms from those I have just used. When he asserts that "there are no queers in that future as there can be no future for queers," he is not making a mere statement of protest; rather, he is announcing the theoretical position that is the explicit stake of his entire argument. I [End Page 175] now want to turn to his theoretical project, which involves an argument in political theory and an argument from psychoanalysis and a link between the two. The Political Theory Argument For Edelman the image of the child-as-future is more than a powerful trope in the political discourse of the moment. It in effect defines the political realm: "For politics, however radical the means by which some of its practitioners seek to effect a more desirable social order, is conservative insofar as it necessarily works to affirm a social order, defining various strategies aimed at actualizing social reality and transmitting it into the future it aims to bequeath to its inner child" (19). The burden of this argument is that a genuinely critical discourse cannot arise via the marking or symbolizing of the gap between the present and the future. Such symbolizing has indeed been the defining feature of modern critical social discourse, whether among the Enlightenment's philosophes, French revolutionaries, Marxists, social democrats, or contemporary socialists and democrats. Jürgen Habermas, in The Philosophical Discourse of Modernity, defines modern time-consciousness itself as a taking of responsibility for the future. Edelman sees in such a time-consciousness an inescapable trap. For him any such political discourse or activity steps into "the logic by which political engagement serves always as **the medium for reproducing our** social **reality**" (26). Certainly the political realm—whether viewed from the perspective of the state, the political community and citizenship, or political movements—is a medium of social reproduction, in the sense that it serves the relative continuity of innumerable economic and non-economic institutions. But it is not simply a mechanism of social reproduction; it is also the site and instrument of social change. Nor is it simply the field of existing power relations; it is also the terrain of contestation and compromise. Edelman compounds his reductive concept of the political realm by in turn postulating an ironclad intermeshing of social reproduction and sexual reproduction. Here too he takes a **fundamental feature** of modern society, or any society, and absolutizes it. Sexual reproduction is a necessary dimension of social reproduction, almost by definition, in the sense that a society's survival depends upon, among many other things, the fact that its members reproduce. Kinship practices, customs, religious authorities, and civil and criminal law variously regulate sexual reproduction. However, that is not to say that the imperatives of social reproduction dictate or determine or fully functionalize the institutions and practices of sexual reproduction. The failure to recognize the relative autonomy of those institutions and practices underestimates how seriously feminism and the gay and lesbian movement have already challenged the norms and institutions of compulsory heterosexuality in our society. They have done so through creative transformations in civil society and everyday life and through cultural initiatives and political and legal reforms. The anti-abortion and anti-gay activism of the Christian Right arose, in response, to alter and reverse the fundamental achievements of these movements. How then to analyze or theorize this struggle? A motif in Edelman's analysis [End Page 176] takes the rhetoric and imagery of the Christian Right and traditional Catholicism to be a more insightful discourse than liberalism when it comes to understanding the underlying politics of sexuality today. I think this is extremely misguided. The Right does not have a truer sense of the social-symbolic order than liberals and radicals; it simply has more reactionary aims and has mobilized with significant effect to impose its phobic and repressive values on civil society and through the state. The Christian Right is itself a "new social movement" that contests the feminist and gay and lesbian social movements. To grant the Right the status of exemplary articulators of "the" social order strikes me as politically self-destructive and theoretically just plain wrong.

#### Embracing political change is important for altering the future and for queer scholarship -- Even if there's no future, the aff is key to make the present better

Duggan 94 – Lisa, Queering the State, Social Text, No. 39 (summer, 1994), pp. 1-14

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

#### Reducing the future to reproduction is reductionist – fantasies of immortality are inevitable – the case is a da to the alt

**Feit 2005** (Mario, “Extinction anxieties: same-sex marriage and modes of citizenship” theory and event, 8:3, projectmuse)

Warner is thus concerned with the purity of the queer alternative, which he sees under attack by virtue of the persistence of the reproductive narrative's extension to non-biological reproduction.101 Those "extrafamilial intimate cultures" should not be understood in the terms of that which they replace, namely biological reproduction. Those alternative spaces are to be pried loose from biological reproduction; their representations should also be freed from the metaphors of reproduction. Warner's demand for purity goes further  --  he hopes for a culture cleansed from the reproductive imaginary altogether. The reproductive narrative would become archaic. It would no longer be used to conceive of relations to mortality, cultural production and the building of a future. In other words, lesbians and gay men must not appropriate reproductive metaphors for their own relation to mortality, sexuality and world-making. Same-sex marriage must be avoided.102 It would link queer life to the kinship system's relation to mortality and immortality. It turns out to be, at least for Warner, a misguided response to mortality. Warner takes the heteronormative promise of immortality via reproduction too seriously  --  too seriously in the sense that he thinks that by resisting reproductive imaginations one resists fantasies of immortality. However, Bauman's point about strategies of immortality is precisely that **all aspects** of human culture are concerned with immortality. Indeed, Bauman's argument focuses on cultural production in the widest sense, whereas he considers sexual reproduction "unfit for the role of the vehicle of individual transcendence of death" because procreation secures species "immortality at the expense of the mortality of its individual members."103 In other words, fantasies of immortality may exist outside the reproductive paradigm  --  and Irving's attempt to find vicarious immortality may not be reducible to a heteronormative strategy of consolation. These juxtapositions of Bauman and Warner complicate the latter's sense that any attempt to imagine a future by definition implicates one in heteronormativity. Put more succinctly, giving up on reproductive relations to the future does not constitute the break with fantasies of immortality Warner makes it out to be. Indeed, there are other ways  --  nonheteronormative ways  --  in which we equate world-making, i.e. citizenship, with vicarious immortality. The queer dream of immortality may not rely on reproduction. But it, too, is a way of coping with mortality by leaving a mark on the world, by leaving something behind that transcends generations. In Warner's and Butler's critiques of marriage it is quite clear that a culture that they are invested in, that they helped to build, is one that they want to see continue. They take same-sex marriage so personally, because queer culture is so personally meaningful. If my argument is correct, this personal meaningfulness exceeds the meaning that Butler and Warner consciously attribute to it. That neither of them argues that the preservation of queer culture is about vicarious immortality is beside the point. As Zygmunt Bauman emphasizes, the immortalizing function of culture is highly successful insofar it remains opaque to those participating in the making of this culture.104 In raising the question of how much queer critics of marriage are themselves invested in strategies of immortality, of a nonheteronormative kind, I thus hope to contribute to a reflection on the anxieties driving the queer critique of marriage. Attending to anxieties about mortality, I believe, will help move the same-sex marriage debate among queer theorists away from concerns with transcending death and towards a more complex awareness of the challenges of political strategies for plural queer communities.

#### Futurism is key to human survival – internal link turns their impacts

Kurasawa 4(Professor of Sociology, York University of Toronto, Fuyuki, Constellations Volume 11, No 4, 2004).

In recent years, the rise of a dystopian imaginary has accompanied damning assessments and widespread recognition of the international community’s repeated failures to adequately intervene in a number of largely preventable disasters (from the genocides in the ex-Yugoslavia, Rwanda, and East Timor to climate change and the spiraling AIDS pandemics in parts of sub-Saharan Africa and Asia). Social movements, NGOs, diasporic groups, and concerned citizens are not mincing words in their criticisms of the United Nations system and its member-states, and thus beginning to shift the discursive and moral terrain in world affairs. As a result, the callousness implicit in **disregarding the future has been exposed as a threat to the survival of humanity** and its natural surroundings. The Realpolitik of national self-interest and the neoliberal logic of the market will undoubtedly continue to assert themselves, yet demands for farsightedness are increasingly reining them in. Though governments, multilateral institutions, and transnational corporations will probably never completely modify the presentist assumptions underlying their modes of operation, they are, at the very least, finding themselves compelled to account for egregious instances of short-sightedness and rhetorically commit themselves to taking corrective steps. What may seem like a modest development at first glance would have been unimaginable even a few decades ago, indicating the extent to which we have moved toward a culture of prevention. A new imperative has come into being, that of preventive foresight.

#### Zero empirical or logical basis for the psychoanalytic critique

Mootz, 2k [Francis J, Visiting Professor of Law, Pennsylvania State University, Dickinson School of Law; Professor of Law, Western New England College School of Law, Yale Journal of the Law & Humanities, 12 Yale J.L. & Human. 299, p. 319-320]

Freudian psychoanalysis increasingly is the target of blistering criticism from a wide variety of commentators. 54 In a recent review, Frederick Crews reports that   independent studies have begun to converge toward a verdict... that there is literally nothing to be said, scientifically or therapeutically, to the advantage of the entire Freudian system or any of its component dogmas Analysis as a whole remains powerless... and understandably so, because a thoroughgoing epistemological critique, based on commonly acknowledged standards of evidence and logic decertifies every distinctively psychoanalytic proposition. 55   The most telling criticism of Freud's psychoanalytic theory is that it has proven no more effective in producing therapeutic benefits than have other forms of psychotherapy. 56 Critics draw the obvious conclusion that the benefits (if any) of psychotherapy are neither explained nor facilitated by psychoanalytic theories. Although Freudian psychoanalytic theory purports to provide a truthful account of the operations of the psyche and the causes for mental disturbances, critics argue that psychoanalytic theory may prove in the end to be nothing more than fancy verbiage that tends to obscure whatever healing effects psychotherapeutic dialogue may have. 57

Freudian psychoanalysis failed because it could not make good on its claim to be a rigorous and empirical science. Although Freud's mystique is premised on a widespread belief that psychoanalysis was a profound innovation made possible by his genius, Freud claimed only that he was extending the scientific research of his day within the organizing context of a biological model of the human mind. 58  [\*320]  Freud's adherents created the embarrassing cult of personality and the myth of a self-validating psychoanalytic method only after Freud's empirical claims could not withstand critical scrutiny in accordance with the scientific methodology demanded by his metapsychology. 59 The record is clear that Freud believed that psychoanalysis would take its place among the sciences and that his clinical work provided empirical confirmation of his theories. This belief now appears to be completely **unfounded** and indefensible.

Freud's quest for a scientifically grounded psychotherapy was not amateurish or naive. Although Freud viewed his "metapsychology as a set of directives for constructing a scientific psychology," n60 Patricia Kitcher makes a persuasive case that he was not a blind dogmatist who refused to adjust his metapsychology in the face of contradictory evidence. n61 Freud's commitment to the scientific method, coupled with his creative vision, led him to construct a comprehensive and integrative metapsychology that drew from a number of scientific disciplines in an impressive and persuasive manner. n62 However, the natural and social sciences upon which he built his derivative and interdisciplinary approach developed too rapidly and unpredictably for him to respond. n63 As developments in biology quickly undermined Freud's theory, he "began to look to linguistics and especially to anthropology as more hopeful sources of support," n64 but this strategy later in his career proved equally [\*321] unsuccessful. n65 The scientific justification claimed by Freud literally eroded when the knowledge base underlying his theory collapsed, leaving his disciples with the impossible task of defending a theory whose presuppositions no longer were plausible according to their own criteria of validation. n66

#### Turn – radical individualism cedes the political and destroys movements

Edwards 98 (Tim, Senior Lecturer in Sociology at the University of Leicester, Sexualities, “Queer Fears: Against the Cultural Turn”, Vol 1, p471-484, November, <http://sex.sagepub.com.proxy.lib.umich.edu/cgi/reprint/1/4/471.pdf>)

A second factor in queer politics is the assertion of *diversity* in itself as a radical undercutting of the so-called new moral conservatism. There are several important points to make here. Firstly, on one level diversity is not a political strategy in itself, if it is anything at all politically it’s a recipe for radical individualism at the most and, more likely, fragmentation at the least. Secondly, diversity is an empirical reality and while societies are increasing in their complexity it is not as new as it seems. For example, single parenthood is not simply a phenomenon of the 1990s and most individuals still spend vast chunks of their lives in fairly traditional family networks if not entirely under the same roof (Weeks, 1996). Part of the difficulty here is the sense in which diversity is inherently contradictory as a weapon against the assumed normality of the majority and at the same time as a source of potential political collapse into individualism. If the lesson of diversity constitutes anything, then, it is the undermining of any form of communitarian politics.

#### Edelman’s overidentification with the culture of death cedes the political to elites

Balasopoulos, 2006 [Antonis, Journal of American Studies, v. 40, projectmuse]

No Future is a work whose argument cannot be divorced from the experience of disillusionment with the failure of liberal sexual politics to prevail in a political struggle that the author suspects to have been doomed from the start. For political discourse is inconceivable, Edelman argues, without prior agreement to invest in the fantasy of the symbolic intelligibility of the social tissue. Such agreement, however, always turns out to involve a pledge of allegiance to the figure that embodies the promise of a meaning-fulfilling future at the same time that it affirms the transcendental meaningfulness of heterosexual union–the child. What is therefore exacted as entrance fee to the political is the perennial othering and exclusion of those who embody all that is queerly meaning-negating and thereby child-threatening as well: those whose forms of pleasure register as narcissistically antisocial, those whose sexuality refuses to be etherealized into an anodyne expression of subjectivity, those whose very existence appears as a threat to the innocence of the child and to the future-serving ethics of its self-declared protectors. Edelman’s defiant response to this ideological circuit (one made unmistakably visible in the resounding tactical success of the anti-gay marriage ballot in last November’s US presidential elections) is to affirm precisely what liberal defenses of queerness must necessarily seek to deny: an uncompromising “embrace of queer negativity,” whose ethical value would reside in its “radical challenge to the value of the social itself.” The bulk of what follows Edelman’s main thesis consists of three chapters, each of which psychoanalytically examines the vexed relation between the narrative exigencies of “reproductive futurism” and the figure of a subject whose queerness registers as an antisocial pursuit of jouissance and an enthrallment in the meaningless compulsions of the death drive–a subject Edelman, evoking Lacan, dubs the “sinthomosexual.” The first chapter anatomizes this relation through a reading of Victorian prose fiction (focusing on the misanthropic bachelor misers of Charles Dickens’s A Christmas Carol and George Eliot’s Silas Marner and the children who providentially straighten them out), while the remaining two focus on twentieth-century narrative cinema and on the future-negating figures inhabiting Hitchcock’s North by Northwest and The Birds. Edelman’s book takes obvious pleasure in provocation, stylistically indulging in the ironic hermeneutics it methodologically advocates with at times infelicitous results (an excess of largely gratuitous verbal punning and a partiality for highly convoluted syntax are cases in point). More disconcertingly, No Future involves a vision of queer subjectivity that is so strongly invested in transvaluating the homophobic linkage of homosexuality with a “culture of death” that it ends up **ignoring** the complexity and diversity of what has historically constituted queer (lesbian and transgender as well as gay) politics. Missing, for instance, is a serious and sustained attempt to engage with the multiple transformations the concepts of reproduction and parenthood have undergone in the last two decades, partly as a result of the interventions of queer theory itself. Equally absent is any analytical concern with the cultural and representational resonances of the queer child–a figure that certainly complicates the book’s one-dimensional treatment of the image of besieged childhood, while making apparent the unreflectively eclectic and historically untheorized nature of Edelman’s choice of primary texts. The effect of such exclusions–a highly repetitive account of texts that are treated as virtually interchangeable–is particularly troubling from a theoretical standpoint. For though Edelman’s argument largely rests on a theoretical distinction between an ideologically normative and a radically destabilizing kind of repetition compulsion, his analytical practice makes the difference between them less than obvious. Paying the reader diminishing dividends with each page, No Future bulldozes its way from Plato to the Victorians and from Hitchcock to Judith Butler by unwaveringly locating the same Manichean conflict between reproductive ideology and its queer negation, a struggle to the death between monolithic and unchanging absolutes. To declare No Future a timely work is hence not an unambiguous compliment; for its timeliness comes at the cost of intellectual surrender to the increasingly polarized and disconcertingly fundamentalist climate of American politics in the present.

#### One speech act doesn’t cause securitization – it’s an ongoing process

**Ghughunishvili 10**

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

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

#### Legal reforms restrain the cycle of violence and prevent error replication

Colm O’Kennedy 8, Senior Lecturer in Law at University College London, “Strapped to the Mast: The Siren Song of Dreadful Necessity, the United Kingdom Human Rights Act and the Terrorist Threat,” Ch 15 in Fresh Perspectives on the ‘War on Terror,’ ed. Miriam Gani and Penelope Mathew, <http://epress.anu.edu.au/war_terror/mobile_devices/ch15s07.html>

This ‘symbiotic’ relationship between counter-terrorism measures and political violence, and the apparently inevitable negative impact of the use of emergency powers upon ‘target’ communities, would indicate that it makes sense to be very cautious in the use of such powers. However, the impact on individuals and ‘target’ communities can be too easily disregarded when set against the apparent demands of the greater good. Justice Jackson’s famous quote in Terminiello v Chicago [111] that the United States Bill of Rights should not be turned into a ‘suicide pact’ has considerable resonance in times of crisis, and often is used as a catch-all response to the ‘bleatings’ of civil libertarians.[112] The structural factors discussed above that appear to drive the response of successive UK governments to terrorist acts seem to invariably result in a depressing repetition of mistakes.¶ However, certain legal processes appear to have some capacity to slow down the excesses of the counter-terrorism cycle. What is becoming apparent in the UK context since 9/11 is that there are factors at play this time round that were not in play in the early years of the Northern Irish crisis. A series of parliamentary, judicial and transnational mechanisms are now in place that appear to have some moderate ‘dampening’ effect on the application of emergency powers.¶ This phrase ‘dampening’ is borrowed from Campbell and Connolly, who have recently suggested that law can play a ‘dampening’ role on the progression of the counter-terrorism cycle before it reaches its end. Legal processes can provide an avenue of political opportunity and mobilisation in their own right, whereby the ‘relatively autonomous’ framework of a legal system can be used to moderate the impact of the cycle of repression and backlash. They also suggest that this ‘dampening’ effect can ‘re-frame’ conflicts in a manner that shifts perceptions about the need for the use of violence or extreme state repression.[113] State responses that have been subject to this dampening effect may have more legitimacy and generate less repression: the need for mobilisation in response may therefore also be diluted.

#### Alt fails – cooption – political engagement key

McCormack, 10 [Tara, is Lecturer in International Politics at the University of Leicester and has a PhD in International Relations from the University of Westminster. 2010, (Critique, Security and Power: The political limits to emancipatory approaches, page 137-138]

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

Permutation do the plan and

#### **The plan gives security transformative potential --- alt alone fails and their impact is false**

Nunes, 12 [Reclaiming the political: Emancipation and critique in security studies, João Nunes, Security Dialogue 2012 43: 345,Politics and International Studies, University of Warwick, UK, p. sage publications]

In the works of these authors, one can identify a tendency to see security as inherently connected to exclusion, totalization and even violence. The idea of a ‘logic’ of security is now widely present in the critical security studies literature. Claudia Aradau (2008: 72), for example, writes of an ‘exclusionary logic of security’ underpinning and legitimizing ‘forms of domination’. Rens van Munster (2007: 239) assumes a ‘logic of security’, predicated upon a ‘political organization on the exclusionary basis of fear’. Laura Shepherd (2008: 70) also identifies a liberal and highly problematic ‘organizational logic’ in security. Although there would probably be disagreement over the degree to which this logic is inescapable, it is symptomatic of an overwhelmingly pessimistic outlook that a great number of critical scholars are now making the case for moving away from security. The normative preference for desecuritization has been picked up in attempts to contest, resist and ‘unmake’ security (Aradau, 2004; Huysmans, 2006; Bigo, 2007). For these contributions, security cannot be reconstructed and political transformation can only be brought about when security and its logic are removed from the equation (Aradau, 2008; Van Munster, 2009; Peoples, 2011). This tendency in the literature is problematic for the critique of security in at least three ways. First, it constitutes a blind spot in the effort of politicization. The assumption of an exclusionary, totalizing or violent logic of security can be seen as an essentialization and a moment of closure. To be faithful to itself, the politicization of security would need to recognize that there is nothing natural or necessary about security – and that security as a paradigm of thought or a register of meaning is also a construction that depends upon its reproduction and performance through practice. The exclusionary and violent meanings that have been attached to security are themselves the result of social and historical processes, and can thus be changed. Second, the institution of this apolitical realm runs counter to the purposes of critique by foreclosing an engagement with the different ways in which security may be constructed. As Matt McDonald (2012) has argued, because security means different things for different people, one must always understand it in context. Assuming from the start that security implies the narrowing of choice and the empowerment of an elite forecloses the acknowledgment of security claims that may seek to achieve exactly the opposite: alternative possibilities in an already narrow debate and the contestation of elite power.5 In connection to this, the claims to insecurity put forward by individuals and groups run the risk of being neglected if the desire to be more secure is identified with a compulsion towards totalization, and if aspirations to a life with a degree of predictability are identified with violence. Finally, this tendency blunts critical security studies as a resource for practical politics. By overlooking the possibility of reconsidering security from within – **opting instead for its replacement** with other ideals – the critical field weakens its capacity to confront head-on the exceptionalist connotations that security has acquired in policymaking circles. Critical scholars run the risk of playing into this agenda when they tie security to exclusionary and violent practices, thereby failing to question security actors as they take those views for granted and act as if they were inevitable. Overall, security is just too important – both as a concept and as a political instrument – to be simply abandoned by critical scholars. As McDonald (2012: 163) has put it, If security is politically powerful, is the foundation of political legitimacy for a range of actors, and involves the articulation of our core values and the means of their protection, we cannot afford to allow dominant discourses of security to be confused with the essence of security itself. In sum, the trajectory that critical security studies has taken in recent years has significant limitations. The politicization of security has made extraordinary progress in problematizing predominant security ideas and practices; however, it has paradoxically resulted in a depoliticization of the meaning of security itself. By foreclosing the possibility of alternative notions of security, this imbalanced politicization weakens the analytical capacity of critical security studies, undermines its ability to function as a political resource and runs the risk of being politically counterproductive. Seeking to address these limitations, the next section revisits emancipatory understandings of security.

#### No lash out – institutional safeguards check

Buchanan 7 [Allen, Professor of Philosophy and Public Policy at Duke, 2007, Preemption: military action and moral justification, pg. 128]

The intuitively plausible idea behind the 'irresponsible act' argument is that, other things being equal, the higher the stakes in acting and in particular the greater the moral risk, the higher are the epistemic requirements for justified action. The decision to go to war is generally a high stakes decision par excellence and the moral risks are especially great, for two reasons. First, unless one is justified in going to war, one's deliberate killing of enemy combatants will he murder, indeed mass murder. Secondly, at least in large-scale modem war, it is a virtual certainty that one will kill innocent people even if one is justified in going to war and conducts the war in such a way as to try to minimize harm to innocents. Given these grave moral risks of going to war, quite apart from often substantial prudential concerns, some types of justifications for going to war may simply be too subject to abuse and error to make it justifiable to invoke them. The 'irresponsible act' objection is not a consequentialist objection in any interesting sense. It does not depend upon the assumption that every particular act of going to war preventively has unacceptably bad consequences (whether in itself or by virtue of contributing lo the general acceptance of a principle allowing preventive war); nor does it assume that it is always wrong lo rely on a justification which, if generally accepted, would produce unacceptable consequences. Instead, the "irresponsible act' objection is more accurately described as an agent-centered argument and more particularly an argument from moral epistemic responsibility. The 'irresponsible act' objection to preventive war is highly plausible if— but only if—one assumes that the agents who would invoke the preventive-war justification are, as it were, on their own in making the decision to go to war preventively. In other words, the objection is incomplete unless the context of decision-making is further specified. Whether the special risks of relying on the preventive-war justification are unacceptably high will depend, inter alia, upon whether the decision-making process includes effective provisions for redu­cing those special risks. Because the special risks are at least in significant part epistemic—due to the inherently speculative character of the preventive war-justification—the epistemic context of the decision is crucial. Because institutions can improve the epistemic performance of agents, it is critical to know what the institutional context of the preventive-war decision is, before we can regard the 'irresponsible agent' objection as conclusive. Like the 'bad practice' argument, this second objection to preventive war is inconclusive because it does not consider— and rule out—the possibility that well-designed institutions for decision-making could address the problems that would otherwise make it irresponsible for a leader to invoke the preventive-war justification.

#### No risk of “endless warfare”- we should embrace pragmatism in security

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

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

#### And, communicating risk doesn’t result in alarmist overreaction -- cultivating deliberation about future scenarios avoids predictive failure and knee jerk reactions which are worse

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IV. Towards an Autonomous Future Up to this point, I have tried to demonstrate that transnational socio-political relations are nurturing a thriving culture and infrastructure of prevention from below, which challenges presumptions about the inscrutability of the future (II) and a stance of indifference toward it (III). Nonetheless, unless and until it is substantively ‘filled in,’ the argument is vulnerable to misappropriation since farsightedness does not in and of itself ensure emancipatory outcomes. Therefore, this section proposes to specify normative criteria and participatory procedures through which citizens can determine the ‘reasonableness,’ legitimacy, and effectiveness of competing dystopian visions in order to arrive at a socially self-instituting future. Foremost among the possible distortions of farsightedness is alarmism, the manufacturing of unwarranted and unfounded doomsday scenarios. State and market institutions may seek to produce a culture of fear by deliberately stretching interpretations of reality beyond the limits of the plausible so as to exaggerate the prospects of impending catastrophes, or yet again, by intentionally promoting certain prognoses over others for instrumental purposes. Accordingly, regressive dystopias can operate as Trojan horses advancing political agendas or commercial interests that would otherwise be susceptible to public scrutiny and opposition. Instances of this kind of manipulation of the dystopian imaginary are plentiful: the invasion of Iraq in the name of fighting terrorism and an imminent threat of use of ‘weapons of mass destruction’; the severe curtailing of American civil liberties amidst fears of a collapse of ‘homeland security’; the neoliberal dismantling of the welfare state as the only remedy for an ideologically constructed fiscal crisis; the conservative expansion of policing and incarceration due to supposedly spiraling crime waves; and so forth. Alarmism constructs and codes the future in particular ways, producing or reinforcing certain crisis narratives, belief structures, and rhetorical conventions. As much as alarmist ideas beget a culture of fear, the reverse is no less true. If fear-mongering is a misappropriation of preventive foresight, resignation about the future represents a problematic outgrowth of the popular acknowledgment of global perils. Some believe that the world to come is so uncertain and dangerous that we should not attempt to modify the course of history; the future will look after itself for better or worse, regardless of what we do or wish. One version of this argument consists in a complacent optimism perceiving the future as fated to be better than either the past or the present. Frequently accompanying it is a self-deluding denial of what is plausible (‘the world will not be so bad after all’), or a naively Panglossian pragmatism (‘things will work themselves out in spite of everything, because humankind always finds ways to survive’).37 Much more common, however, is the opposite reaction, a fatalistic pessimism reconciled to the idea that the future will be necessarily worse than what preceded it. This is sustained by a tragic chronological framework according to which humanity is doomed to decay, or a cyclical one of the endless repetition of the mistakes of the past. On top of their dubious assessments of what is to come, alarmism and resignation would, if widely accepted, undermine a viable practice of farsightedness. Indeed, both of them encourage public disengagement from deliberation about scenarios for the future, a process that appears to be dangerous, pointless, or unnecessary. The resulting ‘depublicization’ of debate leaves dominant groups and institutions (the state, the market, techno-science) in charge of sorting out the future for the rest of us, thus effectively producing a heteronomous social order. How, then, can we support a democratic process of prevention from below? The answer, I think, lies in cultivating the public capacity for critical judgment and deliberation, so that participants in global civil society subject all claims about potential catastrophes to examination, evaluation, and contestation. Two normative concepts are particularly well suited to grounding these tasks: the precautionary principle and global justice. Cautionary Tales: Fuyuki Kurasawa 467 © 2004 Blackwell Publishing Ltd. Salient in discussions of environmental and techno-scientific risks, the precautionary principle posits prudence and vigilance as deontological counterweights to the multiplication and intensification of sources of danger in the contemporary world. From a precautionary standpoint, the lack of absolute certainty about a serious danger should not deter us from erring on the side of caution and taking reasonable measures to address it.38 Consequently, the instrumental-strategic orientation to action must be balanced out by a two-part moral injunction: act prudently (in a manner that aims to avoid mass human suffering and ecological damage), and do no harm (in a manner that worsens the existing state of affairs or moves us closer to catastrophe). Kant’s bold cry of “Sapere aude!” comes faceto- face with Jonas’s humble pleas of “beware!” and “preserve!” Built into any precautionary stance is a participatory and reflexive concept of “measured action,” which stipulates that we should only decide on a particular course of action after extensive public input, deliberation, and informed consideration of the range of options and their probable effects.39 This kind of participatory reflexivity forthrightly acknowledges the fallibilism of decision-making processes about the future, notably because of the existence of unexpected and unintended consequences. As such, measured action is an intersubjective practice that is always subject to revision through decisional feedback loops incorporating factors that may emerge out of a subsequent broadening of collective horizons (better arguments, new evidence, unforeseen or inadvertent side-effects, shifting public opinion, etc.). Additionally, the norm of precaution’s self-limiting character allows us to advocate turning away from certain possibilities if they are likely to introduce large-scale risks without proper steering mechanisms to control or alleviate them – endangering human survival, potentially creating greater problems than the ones targeted by the original action, or risking mass human suffering and ecological destruction. The second normative concept that can assist the development of global civil society’s capacity for discussion of and discernment among rival dystopian scenarios is a comprehensive vision of a just world order. I would argue that this appeal to global justice should balance the injunction to precaution, to the extent that the pursuit of the latter must be consistent with the realization of the former. Indeed, they are mutually constitutive and complementary. Given that several thinkers have already detailed the different components of global justice, a short overview suffices for our purposes. One of the first steps would have to be a major overhaul of the existing institutions of transnational governance (ranging from the United Nations Security Council to the World Bank, the International Monetary Fund, and the World Trade Organization), or indeed the founding of a new institutional order committed to genuine multilateralism and popular representation (for instance, through a global peoples’ assembly). What would also need to be achieved is substantial progress in terms of socio-economic and risk redistribution across the North-South chasm (e.g., through debt forgiveness and a global resource tax), as well as a consistent application and promotion of human 468 Constellations Volume 11, Number 4, 2004 © 2004 Blackwell Publishing Ltd. rights standards in all parts of the world. Integral to global justice, too, is the goal of world peace through the elimination or minimization of occasions for international and domestic wars, and an ‘enforceable’ body of international humanitarian law capable of deterring mass atrocities.40 For their part, techno-scientific discoveries should be kept in the public domain and considered the property of humanity as a whole, while applications flowing from such discoveries should be subject to the aforementioned norms of precaution and participatory deliberation. Last but not least, a just world order requires an attitude of stewardship of nature. By articulating the norms of precaution and global justice, we can formulate a more general evaluative template to guide public deliberation about different dystopian narratives. Three sets of considerations, each combining intentionalist and consequentialist elements, are particularly appropriate for this task: 1. Analytical: Is a particular scenario plausible according to credible knowledge of the past, the present, and the future? What evidence substantiates it? 2. Ethical: What values and principles underpin it? Does it strengthen or erode the work of preventive foresight, and specifically the principles of precaution and global justice? 3. Political: By whom is it adopted or rejected, in whose interests, and through what frameworks and institutions? What effects does this have, notably to what kind of future is it likely to contribute?41 Notwithstanding the overlap between these three dimensions in practice, it remains useful to distinguish between them for heuristic purposes. Applying them to the critique of misuses of farsightedness allows us to demonstrate that alarmism**,** for one, thrives by demagogically appealing to societal fears that can neitherbe substantiated nor correlated with plausible representations of reality**.** Further, fear-mongering aims to conserve questionable aspects of the status quo (say, regarding the weakness of environmental regulations) or to dangerously reshape domestic and global socio-political orders (in the case of belligerant unilateralism), in effect consolidating the positions of dominant groups and institutions. Similarly, resignation does not fare well when subjected to these evaluative categories. The naively optimistic conceits according to which ‘the world will not be so bad after all’ and ‘it will all work itself out in the end’ beg the question: for whom? Although some privileged sections of future generations may experience fewer risks and suffer less from mass disasters, most will not be so fortunate. Moreover, keeping in mind the sobering lessons of the past century cannot but make us wary about humankind’s supposedly unlimited ability for problemsolving or discovering solutions in time to avert calamities. In fact, the historical track-record of last-minute, technical ‘quick-fixes’ is hardly reassuring. What’s more, most of the serious perils that we face today (e.g., nuclear waste, climate change, global terrorism, genocide and civil war) demand complex, sustained, long-term strategies of planning, coordination, and execution. On the other hand, Cautionary Tales: Fuyuki Kurasawa 469 © 2004 Blackwell Publishing Ltd. an examination of fatalism makes it readily apparent that the idea that humankind is doomed from the outset puts off any attempt to minimize risks for our successors, essentially condemning them to face cataclysms unprepared. An a priori pessimism is also unsustainable given the fact that long-term preventive action has had (and will continue to have) appreciable beneficial effects; the examples of medical research, the welfare state, international humanitarian law, as well as strict environmental regulations in some countries stand out among many others. The evaluative framework proposed above should not be restricted to the critique of misappropriations of farsightedness, since it can equally support public deliberation with a reconstructive intent, that is, democratic discussion and debate about a future that human beings would freely self-determine. Inverting Foucault’s Nietzschean metaphor, we can think of genealogies of the future that could perform a farsighted mapping out of the possible ways of organizing social life. They are, in other words, interventions into the present intended to facilitate global civil society’s participation in shaping the field of possibilities of what is to come. Once competing dystopian visions are filtered out on the basis of their analytical credibility, ethical commitments, and political underpinnings and consequences, groups and individuals can assess the remaining legitimate catastrophic scenarios through the lens of genealogical mappings of the future. Hence, our first duty consists in addressing the present-day causes of eventual perils, ensuring that the paths we decide upon do not contract the range of options available for our posterity.42 Just as importantly, the practice of genealogicallyinspired farsightedness nurtures the project of an autonomous future, one that is socially self-instituting. In so doing, we can acknowledge that the future is a human creation instead of the product of metaphysical and extra-social forces (god, nature, destiny, etc.), and begin to reflect upon and deliberate about the kind of legacy we want to leave for those who will follow us. Participants in global civil society can then take – and in many instances have already taken – a further step by committing themselves to socio-political struggles forging a world order that, aside from not jeopardizing human and environmental survival, is designed to rectify the sources of transnational injustice that will continue to inflict needless suffering upon future generations if left unchallenged. Conclusion In recent years, the rise of a dystopian imaginary has accompanied damning assessments and widespread recognition of the international community’s repeated failures to adequately intervene in a number of largely preventable disasters (from the genocides in the ex-Yugoslavia, Rwanda, and East Timor to climate change and the spiraling AIDS pandemics in parts of sub-Saharan Africa and Asia). Social movements, NGOs, diasporic groups, and concerned citizens are not mincing words in their criticisms of the United Nations system and its member-states, and thus beginning to shift the discursive and moral terrain in 470 Constellations Volume 11, Number 4, 2004 © 2004 Blackwell Publishing Ltd. world affairs. As a result, the callousness implicit in disregarding the future has been exposed as a threat to the survival of humanity and its natural surroundings. The Realpolitik of national self-interest and the neoliberal logic of the market will undoubtedly continue to assert themselves, yet demands for farsightedness are increasingly reining them in. Though governments, multilateral institutions, and transnational corporations will probably never completely modify the presentist assumptions underlying their modes of operation, they are, at the very least, finding themselves compelled to account for egregious instances of short-sightedness and rhetorically commit themselves to taking corrective steps. What may seem like a modest development at first glance would have been unimaginable even a few decades ago, indicating the extent to which we have moved toward a culture of prevention. A new imperative has come into being, that of preventive foresight. Does this mean that we can expect all impending disasters to be comprehensively addressed before long? Apart from the unabashed assertion of national and commercial interests, at least two other structural factors make such an outcome unlikely within the existing world order. In the first place, because of the decentralized institutional design of global civil society, there exist few coordination mechanisms between its different participants and no single clearing-house for the collection and analysis of information about possible cataclysms – information that could then be transmitted to the general public, governments, or international organizations. Warnings may not always reach these addressees, or may get lost in the clamor of multiple campaigns and messages. The second problem is the asymmetry between the official and unofficial spheres of world politics. Despite mounting evidence that states and multilateral institutions are responding to preventive claims and requests, global civil society remains a weak public deprived of direct decision-making power. It has made important advances in gaining lobbying influence over and access to decision-making bodies, yet its main tool continues to be the mobilization of public opinion to pressure or convince these bodies to act. Until global civil society can convert itself into a strong public, it is not in a position to ensure the translation of demands for prevention from below into prevention from above. We should acknowledge that these two limits pose serious obstacles to a more muscular culture of prevention without meaningful institutional reforms of the global system. At the same time, and in lieu of a major overhaul of the regime of international governance, it would be a mistake to underestimate or simply dismiss the impact of the web of treaties, summits, judicial innovations, and grassroots ‘naming and shaming’ tactics and protest movements that have come to form, in recent years, a vast preventive infrastructure. I have argued that this dynamic is itself constitutive of global civil society and can thus best be appreciated when observed from below. Civic associations are engaging in dialogical, public, transnational struggles to avert catastrophe, cultivating a farsighted and dystopian flavored form of social action that is ethically and politically oriented toward the future. Cautionary Tales: Fuyuki Kurasawa 471 © 2004 Blackwell Publishing Ltd. I further claimed that the work of preventive foresight is composed of three sets of practices striving to overcome difficulties constituent of the predicament of our times. Participants in global civil society are engaged in developing an early warning capacity about upcoming crises by collecting evidence, disseminating it, and laboring to have it publicly recognized. This sort of farsightedness responds to the contingent nature of the future without succumbing to the conviction that it is absolutely unknowable and indecipherable. Transnational associative groups are also nurturing intergenerational solidarity, a sense of care for those who will follow us. I suggested that, to adequately combat the presentist and shortsighted indifference toward the future that is typical in the contemporary world, a more explicitly farsighted cosmopolitanism needs to take root within global civil society. Normative thickening of this ideal could be accomplished via the long-term consequentialism of Jonas’s imperative of responsibility, a prospect whose basis we can already find in growing public appeals to the moral imagination and reason to activate our concern for later generations. Lastly, I contended that the work of preventive foresight can parry alarmist misappropriation or resignation by advocating a process of public deliberation that blends the principles of precaution and global justice. A farsighted politics can function through the public use of reason and the honing of the capacity for critical judgment, whereby citizens put themselves in a position to debate, evaluate, and challenge different dystopian narratives about the future and determine which ones are more analytically plausible, ethically desirable, and politically effective in bringing about a world order that is less perilous yet more just for our descendants. Many fora, ranging from local, face-to-face meetings to transnational, highly mediated discursive networks, are sowing the seeds of such a practice of participatory democracy. None of this is to disavow the international community’s rather patchy record of avoiding foreseeable calamities over the last decades, or to minimize the difficulties of implementing the kinds of global institutional reforms described above and the perils of historical contingency, presentist indifference toward the future, or alarmism and resignation. To my mind, however, this is all the more reason to pay attention to the work of preventive foresight in global civil society, through which civic associations can build up the latter’s coordination mechanisms and institutional leverage, cultivate and mobilize public opinion in distant parts of the world, and compel political leaders and national and transnational governance structures to implement certain policies. While seeking to prevent cataclysms from worsening or, better yet, from occurring in the first place, these sorts of initiatives can and must remain consistent with a vision of a just world order. Furthermore, the labor of farsightedness supports an autonomous view of the future, according to which we are the creators of the field of possibilities within which our successors will dwell**.** The current socio-political order, with all its short-term biases, is neither natural nor necessary. Accordingly, informed public participation in deliberative processes makes a socially self-instituting future possible, through the involvement of groups and individuals active in domestic and supranational public spaces; prevention is a public practice, and a public responsibility. To believe otherwise is, I would argue, to leave the path clear for a series of alternatives that heteronomously compromise the well-being of those who will come after us. We would thereby effectively abandon the future to the vagaries of history (‘let it unfold as it may’), the technocratic or instrumental will of official institutions (‘let others decide for us’), or to gambles about the time-lags of risks (‘let our progeny deal with their realization’). But, as I have tried to show here, this will not and cannot be accepted. Engaging in autonomous preventive struggles, then, remains our best hope. A farsighted cosmopolitanism that aims to avert crises while working toward the realization of precaution and global justice represents a compelling ethico-political project, for we will not inherit a better future. It must be made, starting with us, in the here and now.