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### Adv 1

#### Advantage 1 Norms

#### Drone use is inevitable, but lack of norms on offensive use causes deterrence breakdowns that escalate to global war

Boyle, 13 [“The costs and consequences of drone warfare”, MICHAEL J. BOYLE, International Affairs 89: 1 (2013) 1–29, assistant professor of political science at LaSalle University]

The emergence of this arms race for drones raises at least five long-term strategic consequences, not all of which are favourable to the United States over the long term. First, it is now obvious that other states will use drones in ways that are inconsistent with US interests. One reason why the US has been so keen to use drone technology in Pakistan and Yemen is that at present it retains a substantial advantage in high-quality attack drones. Many of the other states now capable of employing drones of near-equivalent technology—for example, the UK and Israel—are considered allies. But this situation is quickly changing as other leading geopolitical players, **such as Russia and China**, are beginning rapidly **to develop and deploy drones** for their own purposes. While its own technology still lags behind that of the US, Russia has spent huge sums on purchasing drones and has recently sought to buy the Israeli-made Eitan drone capable of surveillance and firing air-to-surface missiles.132 China has begun to develop UAVs for reconnaissance and combat and has several new drones capable of long-range surveillance and attack under development.133 China is also planning to use unmanned surveillance drones to allow it to monitor the disputed East China Sea Islands, which are currently under dispute with Japan and Taiwan.134 Both Russia and China will pursue this technology and develop their own drone suppliers which will sell to the highest bidder, presumably with fewer export controls than those imposed by the US Congress. Once both governments have equivalent or near-equivalent levels of drone technology to the United States, they will be similarly tempted to use it for surveillance or attack in the way the US has done. Thus, through its own over-reliance on drones in places such as Pakistan and Yemen, the US may be hastening the arrival of a world where its qualitative advantages in drone technology are eclipsed and where this technology will be used and sold by rival Great Powers whose interests do not mirror its own. A second consequence of the spread of drones is that many of the traditional concepts which have underwritten stability in the international system will be radically reshaped by drone technology. For example, much of the stability among the Great Powers in the international system is driven by deterrence, specifically nuclear deterrence.135 Deterrence operates with informal rules of the game and tacit bargains that govern what states, particularly those holding nuclear weapons, may and may not do to one another.136 While it is widely understood that nuclear-capable states will conduct aerial surveillance and spy on one another, overt military confrontations between nuclear powers are rare because they are assumed to be costly and prone to escalation. One open question is whether these states will exercise the same level of restraint with drone surveillance, which is unmanned, low cost, and possibly deniable. States may be more willing to engage in drone overflights which test the resolve of their rivals, or engage in ‘salami tactics’ to see what kind of drone-led incursion, if any, will motivate a response.137 This may have been Hezbollah’s logic in sending a drone into Israeli airspace in October 2012, possibly to relay information on Israel’s nuclear capabilities.138 After the incursion, both Hezbollah and Iran boasted that the drone incident demonstrated their military capabilities.139 One could imagine two rival states—for example, India and Pakistan—deploying drones to test each other’s capability and resolve, with **untold consequences** if such a probe were misinterpreted by the other as an attack. As drones get physically smaller and more precise, and as they develop a greater flying range, the temptation to use them to spy on a rival’s nuclear programme or military installations might prove too strong to resist. If this were to happen, drones might gradually erode the deterrent relationships that exist between nuclear powers, thus magnifying the risks of a spiral of conflict between them. Another dimension of this problem has to do with the risk of accident. Drones are prone to accidents and crashes. By July 2010, the US Air Force had identified approximately 79 drone accidents.140 Recently released documents have revealed that there have been a number of drone accidents and crashes in the Seychelles and Djibouti, some of which happened in close proximity to civilian airports.141 The rapid proliferation of drones worldwide will involve a risk of accident to civilian aircraft, possibly producing an international incident if such an accident were to involve an aircraft affiliated to a state hostile to the owner of the drone. Most of the drone accidents may be innocuous, but some will carry strategic risks. In December 2011, a CIA drone designed for nuclear surveillance crashed in Iran, revealing the existence of the spying programme and leaving sensitive technology in the hands of the Iranian government.142 The expansion of drone technology raises the possibility that some of these surveillance drones will be interpreted as attack drones, or that an accident or crash will spiral out of control and lead to an armed confrontation.143 An accident would be even more dangerous if the US were to pursue its plans for nuclear-powered drones, which can spread radioactive material like a dirty bomb if they crash.144 Third, lethal drones create the possibility that the **norms on the use of force** will erode, creating a much more dangerous world and pushing the international system back towards the rule of the jungle. To some extent, this world is already being ushered in by the United States, which has set a dangerous precedent that a state may simply kill foreign citizens considered a threat without a declaration of war. Even John Brennan has recognized that the US is ‘establishing a precedent that other nations may follow’.145 **Given this precedent**, there is nothing to stop other states from following the American lead and using drone strikes to eliminate potential threats. Those ‘threats’ need not be terrorists, but could be others— dissidents, spies, even journalists—whose behaviour threatens a government. One danger is that drone use might undermine the normative prohibition on the assassination of leaders and government officials that most (but not all) states currently respect. A greater danger, however, is that the US will have normalized murder as a tool of statecraft and created a world where states can increasingly take vengeance on individuals outside their borders without the niceties of extradition, due process or trial.146 As some of its critics have noted, the Obama administration may have created a world where states will find it easier to kill terrorists rather than capture them and deal with all of the legal and evidentiary difficulties associated with giving them a fair trial.147 Fourth, there is a distinct danger that the world will divide into two camps: developed states in possession of drone technology, and weak states and rebel movements that lack them. States with recurring separatist or insurgent problems may begin to police their restive territories through drone strikes, essentially containing the problem in a fixed geographical region and engaging in a largely punitive policy against them. One could easily imagine that China, for example, might resort to drone strikes in Uighur provinces in order to keep potential threats from emerging, or that Russia could use drones to strike at separatist movements in Chechnya or elsewhere. Such behaviour would not necessarily be confined to authoritarian governments; it is equally possible that Israel might use drones to police Gaza and the West Bank, thus reducing the vulnerability of Israeli soldiers to Palestinian attacks on the ground. The extent to which Israel might be willing to use drones in combat and surveillance was revealed in its November 2012 attack on Gaza. Israel allegedly used a drone to assassinate the Hamas leader Ahmed Jabari and employed a number of armed drones for strikes in a way that was described as ‘unprecedented’ by senior Israeli officials.148 It is not hard to imagine Israel concluding that drones over Gaza were the best way to deal with the problem of Hamas, even if their use left the Palestinian population subject to constant, unnerving surveillance. All of the consequences of such a sharp division between the haves and have-nots with drone technology is hard to assess, but one possibility is that governments with secessionist movements might be less willing to negotiate and grant concessions if drones allowed them to police their internal enemies with ruthless efficiency and ‘manage’ the problem at low cost. The result might be a situation where such conflicts are contained but not resolved, while citizens in developed states grow increasingly indifferent to the suffering of those making secessionist or even national liberation claims, including just ones, upon them. Finally, drones have the capacity to strengthen the surveillance capacity of both democracies and authoritarian regimes, with significant consequences for civil liberties. In the UK, BAE Systems is adapting military-designed drones for a range of civilian policing tasks including ‘monitoring antisocial motorists, protesters, agricultural thieves and fly-tippers’.149 Such drones are also envisioned as monitoring Britain’s shores for illegal immigration and drug smuggling. In the United States, the Federal Aviation Administration (FAA) issued 61 permits for domestic drone use between November 2006 and June 2011, mainly to local and state police, but also to federal agencies and even universities.150 According to one FAA estimate, the US will have 30,000 drones patrolling the skies by 2022.151 Similarly, the European Commission will spend US$260 million on Eurosur, a new programme that will use drones to patrol the Mediterranean coast.152 The risk that drones will turn democracies into ‘surveillance states’ is well known, but the risks for authoritarian regimes may be even more severe. Authoritarian states, particularly those that face serious internal opposition, may tap into drone technology now available to monitor and ruthlessly punish their opponents. In semi-authoritarian Russia, for example, drones have already been employed to monitor pro-democracy protesters.153 One could only imagine what a truly murderous authoritarian regime—such as Bashar al-Assad’s Syria—would do with its own fleet of drones. The expansion of drone technology may make the strong even stronger, thus **tilting the balance of power in authoritarian regimes** **even more decisively towards** those who wield the coercive instruments of power and against those who dare to challenge them. Conclusion Even though it has now been confronted with blowback from drones in the failed Times Square bombing, the United States has yet to engage in a serious analysis of the strategic costs and consequences of its use of drones, both for its own security and for the rest of the world. Much of the debate over drones to date has focused on measuring body counts and carries the unspoken assumption that if drone strikes are efficient—that is, low cost and low risk for US personnel relative to the terrorists killed—then they must also be effective. This article has argued that such analyses are operating with an attenuated notion of effectiveness that discounts some of the other key dynamics—such as the corrosion of the perceived competence and legitimacy of governments where drone strikes take place, growing anti-Americanism and fresh recruitment to militant networks—that reveal the costs of drone warfare. In other words, the analysis of the effectiveness of drones takes into account only the ‘loss’ side of the ledger for the ‘bad guys’, without asking what America’s enemies gain by being subjected to a policy of constant surveillance and attack. In his second term, President Obama has an opportunity to reverse course and establish a new drones policy which mitigates these costs and avoids some of the long-term consequences that flow from them. A more sensible US approach would impose some limits on drone use in order to minimize the political costs and long-term strategic consequences. One step might be to limit the use of drones to HVTs, such as leading political and operational figures for terrorist networks, while reducing or eliminating the strikes against the ‘foot soldiers’ or other Islamist networks not related to Al-Qaeda. This approach would reduce the number of strikes and civilian deaths associated with drones while reserving their use for those targets that pose a direct or imminent threat to the security of the United States. Such a self-limiting approach to drones might also minimize the degree of political opposition that US drone strikes generate in states such as Pakistan and Yemen, as their leaders, and even the civilian population, often tolerate or even approve of strikes against HVTs. Another step might be to improve the levels of transparency of the drone programme. At present, there are no publicly articulated guidelines stipulating who can be killed by a drone and who cannot, and no data on drone strikes are released to the public.154 Even a Department of Justice memorandum which authorized the Obama administration to kill Anwar al-Awlaki, an American citizen, remains classified.155 Such non-transparency fuels suspicions that the US is indifferent to the civilian casualties caused by drone strikes, a perception which in turn magnifies the deleterious political consequences of the strikes. Letting some sunlight in on the drones programme would not eliminate all of the opposition to it, but it would go some way towards undercutting the worst conspiracy theories about drone use in these countries while also signalling that the US government holds itself legally and morally accountable for its behaviour.156 A final, and crucial, step towards mitigating the strategic consequences of drones would be to develop internationally recognized standards and norms for their use and sale. It is not realistic to suggest that the US stop using its drones altogether, or to assume that other countries will accept a moratorium on buying and using drones. **The genie is out of the bottle**: drones will be a fact of life for years to come. What **remains to be done** is to ensure that their use and sale are transparent, regulated and consistent with internationally recognized human rights standards. The Obama administration has already begun to show some awareness that drones are dangerous if placed in the wrong hands. A recent New York Times report revealed that the Obama administration began to develop a secret drones ‘rulebook’ to govern their use if Mitt Romney were to be elected president.157 The same logic operates on the international level. Lethal drones will eventually be in the hands of those who will use them with fewer scruples than President Obama has. Without a set of internationally recognized standards or norms governing their sale and use, drones will proliferate without control, be misused by governments and non-state actors, and become an instrument of repression for the strong. One remedy might be an international convention on the sale and use of drones which could establish guidelines and norms for their use, perhaps along the lines of the Convention on Certain Conventional Weapons (CCW) treaty, which attempted to spell out rules on the use of incendiary devices and fragment-based weapons.158 While enforcement of these guidelines and adherence to rules on their use will be imperfect and marked by derogations, exceptions and violations, the presence of a convention may reinforce norms against the flagrant misuse of drones and induce more restraint in their use than might otherwise be seen. Similarly, a UN investigatory body on drones would help to hold states accountable for their use of drones and begin to build a gradual consensus on the types of activities for which drones can, and cannot, be used.159 As the progenitor and leading user of drone technology, the US now has an opportunity to show leadership in developing an international legal architecture which might avert some of the worst consequences of their use.

#### Specifically, US-promulgated drone norms are key to prevent escalation in Asia

Stein, 13 [12/19/Setting Rules For Unmanned Aerial Vehicles, Aaron, Foreign Affairs, Drone Decreeshttp://www.foreignaffairs.com/articles/140584/aaron-stein/drone-decrees?cid=soc-twitter-in-snapshots-drone\_decrees-122013]

Drone technology and drone use have also proliferated in other countries. And even more are seeking to develop their own systems. These systems are likely to be more local affairs than those of the United States. Most of the emerging drone states -- including China -- lack the United States’ worldwide network of military bases and satellites, which allow it to operate drones far from its own borders. And, like the United States, emerging drones states are eager to develop armed drones for counterterrorism operations and surveillance. With more drones in more places come more security and policy challenges for the United States. To deal with them, it will have to come up with a new drone policy. The tensions between China and Japan over the Senkaku (Diaoyu) Islands are a good example of how drones introduce new diplomatic questions. Chinese manned and unmanned surveillance flights routinely violate Japan’s 12-nautical-mile zone around the islands. Japan has dispatched fighter jets to intercept a Chinese manned surveillance plane and is reported to have even contemplated shooting down Chinese drones. In response, Wang Hongguang, the former deputy commander of China’s Nanjing Military Region, wrote in early November that China should attack Japanese manned planes should Japan shoot down Chinese surveillance drones. Things have become even tenser since China declared a so-called Air Defense Identification Zone over part of the East China Sea. Japan’s Nikkei reports that the United States plans to use Global Hawk drones for surveillance in the area in conjunction with increased Japanese manned E-2C Hawkeye early-warning aircraft. Although there has always been a risk of unintended escalation in the East China Sea, the emergence of [unpiloted] unmanned systems adds a new twist. For example, the 2001 aerial collision near Hainan Island in the South China Sea involved manned aircraft operating in international airspace. The American plane was flying a surveillance mission when two Chinese fighter jets began to tail it. One of the Chinese fighter jets accidently bumped the U.S. plane, prompting an emergency landing at a Chinese military facility on Hainan Island. China then detained the U.S. crew and inspected the plane, despite warnings that the aircraft was U.S. sovereign territory. The incident touched off a diplomatic row between two great world powers and was an early diplomatic test for the recently elected George W. Bush administration. The rules of engagement are relatively clear for the intentional downing of a [piloted] manned aircraft, but the potential response to the shooting down of an unmanned system -- as Japan seems ready to do -- is far murkier. On the one hand, such an act could escalate and lead to a conflict. On the other, since downing a drone would pose no danger to human life, China or Japan could conclude that the provocative use of drones -- or the intentional targeting of U.S. drones -- carries less risk of retaliation and is therefore a low-stakes means of coercion. That idea is not so far off base: In the Persian Gulf, Iran has fired on U.S. drones and was even successful in spoofing the Global Positioning System (GPS) signal of the advanced RQ-170 drone flying over its territory. An Iranian engineer told The Christian Science Monitor, “By putting noise [jamming] on the communications, you force the bird into autopilot. This is where the bird loses its brain.” The U.S. Government Accountability Office has acknowledged the risk of GPS spoofing and recommends the introduction of spoof-resistant navigation systems on drones. In the Gulf, the United States has sporadically opted to escort its surveillance drones with manned fighter jets, which raises the cost of such operations as well as the risk of escalation. Absent a clear norm on the response to shooting down an unmanned system, incidents involving drones could **snowball quickly**. And that is why the United States should develop a clear policy about the targeting of drones. It should be designed to prevent unintended escalation by defining the cost of provocatively using or targeting unmanned systems. These rules would need to apply to all parties, including the United States. First, the United States should signal that it would hold the operator responsible for the actions of unmanned systems. Any retaliation need not target the actual operator, given the complexity of locating the pilot, but could include the air base from which the drone was launched. The goal would be to reintroduce the prospect of casualties and escalation into the drone equation by clearly laying out the potential American response if an adversary considers using unmanned systems in a coercive way against the United States or its allies and partners. In short, U.S. policy should be to treat drones like their manned cousins. Similarly, in the cases where a potential adversary targets a U.S. drone, Washington should make clear that it regards such an act as akin to the downing of a manned aircraft. The response, therefore, could include the use of force or strong diplomatic action. In setting out this policy, the United States would tacitly accept that its own drone program could invite retaliation and that bases from which it flies drones could be targeted. Yet in most cases, the United States receives overflight rights for its drone operations, which should thereby protect the United States from potential retaliation from the countries in which it currently uses drones. The policy would, therefore, weigh more heavily on new drone-operating nations while keeping in place many of the United States’ own drone programs. Holding drone bases responsible could help minimize the ways in which emerging drone states use drones coercively against U.S. interests, as well as push them to reach similar overflight arrangements to those that the United States keeps with its partners. The new policy would not address the legality of targeted killings, but such legal questions can be dealt with separately. The United States should begin to prepare for a world in which it no longer has a monopoly on drone technology. Still, it should do so knowing that, for now, it will retain the unique capability to use military force on a global scale. For the foreseeable future, potential adversaries will mostly use unmanned systems locally and in ways that affect the security of U.S. allies. As the United States increases its own use of drones, it should be taking steps to map out a strategy to respond to provocations. Doing so would help establish new norms for everyone.

#### Drone incidents snowball and trigger 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.

#### Goes nuclear

**Goldstein, 13** – Avery, David M. Knott Professor of Global Politics and International Relations, Director of the Center for the Study of Contemporary China, and Associate Director of the Christopher H. Browne Center for International Politics at the University of Pennsylvania (“First Things First: The Pressing Danger of Crisis Instability in U.S.-China Relations,” International Security, vol. 37, no. 4, Spring 2013, Muse //Red)

Two concerns have driven much of the debate about international security in the post-Cold War era. The first is the potentially deadly mix of nuclear proliferation, rogue states, and international terrorists, a worry that became dominant after the terrorist attacks against the United States on September 11, 2001.1 The second concern, one whose prominence has waxed and waned since the mid-1990s, is the potentially disruptive impact that China will have if it emerges as a peer competitor of the United States, challenging an international order established during the era of U.S. preponderance.2 Reflecting this second concern, some analysts have expressed reservations about the dominant post-September 11 security agenda, arguing that China could challenge U.S. global interests in ways that terrorists and rogue states cannot. In this article, I raise a more pressing issue, one to which not enough attention has been paid. For at least the next decade, while China remains relatively weak, the gravest danger in Sino-American relations is the possibility the two countries will find themselves in **a crisis** that **could escalate to open military conflict.** In contrast to the long-term prospect of a new great power rivalry between the United States and China, which ultimately rests on debatable claims about the intentions of the two countries and uncertain forecasts about big shifts in their national capabilities, the danger of instability in a crisis involving these two nuclear-armed states is a tangible, near-term concern.3 Even if the probability of such a war-threatening crisis and its escalation to the use of significant military force is low, the potentially catastrophic consequences of this scenario provide good reason for analysts to better understand its dynamics and for policymakers to fully consider its implications. Moreover, events since 2010—especially those relevant to disputes in the East and South China Seas—suggest that **the danger of a military confrontation** in the Western Pacific **that could lead to a U.S.-China standoff may be on the rise.** In what follows, I identify not just pressures to use force preemptively that pose the most serious risk should a Sino-American confrontation unfold, but also related, if slightly less dramatic, incentives to initiate the limited use of force to gain bargaining leverage—a second trigger for potentially devastating instability during a crisis.4 My discussion proceeds in three sections. The first section explains why, during the next decade or two, a serious U.S.-China crisis may be more likely than is currently recognized. The second section examines the features of plausible Sino-American crises that may make them so dangerous. The third section considers general features of crisis stability in asymmetric dyads such as the one in which a U.S. superpower would confront an increasingly capable but still thoroughly overmatched China—the asymmetry that will prevail for at least the next decade. This more stylized discussion clarifies the inadequacy of focusing one-sidedly on conventional forces, as has much of the current commentary about the modernization of China's military and the implications this has for potential conflicts with the United States in the Western Pacific,5 or of focusing one-sidedly on China's nuclear forces, as a smaller slice of the commentary has.6 An assessment considering the interaction of conventional and nuclear forces indicates why **escalation resulting from crisis instability remains a devastating possibility.** Before proceeding, however, I would like to clarify my use of the terms "crisis" and "instability." For the purposes of this article, I define a crisis as a confrontation between states involving a serious threat to vital national interests for both sides, in which there is the expectation of a short time for resolution, and in which there is understood to be a sharply increased risk of war.7 This definition distinguishes crises from many situations to which the label is sometimes applied, such as more protracted confrontations; sharp disagreements over important matters that are not vital interests and in which military force seems irrelevant; and political disputes involving vital interests, even those with military components, that present little immediate risk of war.8 I define instability as the temptation to resort to force in a crisis.9 Crisis stability is greatest when both sides strongly prefer to continue bargaining; instability is greatest when they are strongly tempted to resort to the use of military force. Stability, then, describes a spectrum—from one extreme in which neither side sees much advantage to using force, through a range of situations in which the balance of costs and benefits of using force varies for each side, to the other extreme in which the benefits of using force so greatly exceed the costs that striking first looks nearly irresistible to both sides. Although the incentives to initiate the use of force may not reach this extreme level in a U.S. China crisis, the capabilities that the two countries possess raise concerns that escalation pressures will exist and that they may be highest **early in a crisis**, compressing the time frame for diplomacy to avert military conflict.

#### Drone court key

Chow, 13 [Droning On: The Need to Establish a New Norm, Eugene K. Chow Former Executive Editor, Homeland Security NewsWire, http://www.huffingtonpost.com/eugene-k-chow/establish-new-constitutional-norm\_b\_2683131.html]

Contrary to what some have argued that the president requires full and unadjudicated control of the CIA's drone program for the swift execution of military operations to safeguard the nation, the proposed drone court or some form of Congressional oversight would not necessarily slow down the government's ability to wage war. Before that fateful button is pressed and Hellfire missiles go streaking toward an enemy combatant, thousands of [hu]man-hours are poured into gathering intelligence, assessing threats, and monitoring their movements. In all that time building up to that final moment, why can we not spare a few extra minutes for a Congressional committee, a judge, or a panel to determine if an American ought to be killed or not? Let us remember that the measure of a democratic society is not how it treats its best, but its worst. In the war against violent extremism, our government has already established a precedent for additional oversight. Following the Hamdi v. Rumsfeld decision, the Pentagon created Combatant Status Review Tribunals to determine if captured enemies on the battlefield had been properly designated as "enemy combatants." So it is not a question of whether the government can establish additional layers of oversight to ensure transparency, accountability, and the protection of Constitutional rights, but rather do we have the will. Now that a perpetual war, waged on an omnipresent battlefield, and drones capable of automatically monitoring every single moving object within 65 square miles and firing death-dealing missiles with a click of the button have become commonplace - **it is high time we put into place laws and parameters that clearly define this new norm.**

#### Transparency and accountability measures are key to international drone norms

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 plan results in effective international pressure against the PRC, prevents cascading violence

Whibley, 13 [“The Proliferation of Drone Warfare: The Weakening of Norms and International Precedent”, <http://journal.georgetown.edu/2013/02/06/the-proliferation-of-drone-warfare-the-weakening-of-norms-and-international-precedent-by-james-whibley/>]

In a recent article, David Wood expresses concern over the start of a drone arms race, with China’s People’s Liberation Army beginning to adopt drone technology and Iran possibly supplying drones to Hezbollah in Lebanon. Other reports show that Pakistan has also developed its own set of drones, with offers of assistance from China to help improve their technological sophistication. The proliferation of drone technology is in many ways unsurprising, as technology always spreads across the globe. Yet, the economic and organizational peculiarities of drones may mean their adoption is more likely than other high-tech weapons. Michael C. Horowitz, in his widely praised book The Diffusion of Military Power, notes that states and non-state actors face a number of possible strategic choices when considering military innovations, with the adoption of innovative technology not a foregone conclusion. States will consider both the financial cost of adopting new technology and the organizational capacity required to adopt new technologies — that is, the need to make large-scale changes to recruitment, training, or strategic doctrine. From a financial perspective, drones are an attractive option for state and non-state actors alike, as they are vastly cheaper to build and operate than other forms of aerial technology, with the high level of commercial applications for drone technology helping drive down their cost. Organizationally, drones still require a significant level of training to operate in a combat setting, inhibiting their immediate adoption. Yet, as strategic doctrine in nearly every state prioritizes combating terrorism, drone programs will be easier to integrate into military structures as Horowitz notes that how a military organization defines its critical tasks determines the ease of adopting innovations. Even if the level of organizational capacity needed to operate drones eludes most terrorist organizations, the apparent willingness of states such as Iran to supply militant groups with drones raises the possibility of terrorist groups acquiring tacit knowledge about operating them by networking with sympathising states. If drones are destined to proliferate, the more important issue may become whether American drone doctrine is setting a precedent for other states over how drones are used, and if so, is American drone use weakening the long-standing international norm against assassination? Current US practices include the use of drones in countries without a declaration of war, the routine targeting of rescuers at the scene of drone attacks and the funerals of victims, and the killing of US citizens. The existence of such practices lends legitimacy to illiberal actions and significantly diminishes the moral authority of the US to condemn similar tactics used by other states, whether against rebellious populations in their own territory or enemies abroad. While drone advocates such as Max Boot argue that other countries are unlikely to follow any precedents about drone use established by America, power has an undeniable effect in establishing which norms are respected or enforced. America used its power in the international system after World War 2 to embed norms about human rights and liberal political organization, **not only in allies, but in former adversaries** and the international system as a whole. Likewise, the literature on rule-oriented constructivism presents a powerful case that norms have set precedents on the appropriate war-fighting and deterrence policies when using weapons of mass destruction and the practices of colonialism and human intervention. Therefore, drones advocates must consider the possible unintended consequences of lending legitimacy to the unrestricted use of drones. However, with the Obama administration only now beginning to formulate rules about using drones and seemingly uninterested in restraining its current practices, the US may miss an opportunity to entrench international norms about drone operations. If countries begin to follow the precedent set by the US, there is also the risk of weakening pre-existing international norms about the use of violence. In the summer 2000 issue of International Security, Ward Thomas warned that, while the long-standing norm against assassination has always been less applicable to terrorist groups, the targeting of terrorists is, “likely to undermine the norm as a whole and erode the barriers to the use of assassination in other circumstances.” Such an occurrence would represent a deleterious unintended consequence to an already inhumane international system, justifying greater scrutiny of the drone program. Realism cautions scholars not to expect ethical behaviour in international politics. Yet, the widespread use of drones by recent administrations with little accountability and the lack of any normative framework about their deployment on the battlefield could come to be seen as a serious strategic error and moral failing. If the Obama administration was nervous about leaving an amorphous drone policy to a possible Romney Presidency, then surely China or Russia possessing such a program would be terrifying.

### Adv 2

#### Advantage 2 Accountability

#### Ex ante review key to accountable and legitimate targeted killing

Adelsberg 12 (Samuel, J.D. – Yale Law School, “Bouncing the Executive's Blank Check: Judicial Review and the Targeting of Citizens,” Harvard Law & Policy Review, Summer, 6 Harv. L. & Pol'y Rev. 437, Lexis)

The relevance of these precedents to the targeting of citizens is clear: the constitutional right to due process is alive and well--regardless of geographic location. We now turn to what type of process is due.

III. BRING IN THE COURTS: BRINGING JUDICIAL LEGITIMACY TO TARGETED KILLINGS

The function of this Article is not to argue that targeted killing should be removed from the toolbox of American military options. Targeted killing as a military tactic is here to stay. n34 Targeting strikes have robust bipartisan political support and have become an increasingly relied upon weapon as the United States decreases its presence in Iraq and Afghanistan. n35 The argument being asserted here, therefore, is that in light of the protections the Constitution affords U.S. citizens, there must be a degree of inter-branch process when the government targets such individuals.

The current intra-executive process afforded to U.S. citizens is not only unlawful, but also dangerous. n36 Justice O'Connor acknowledged the danger inherent in exclusively intra-branch process in Hamdi when she asserted that an interrogator is not a neutral decision-maker as the "even purportedly fair adjudicators are disqualified by their interest in the controversy." n37 In rejecting the government's argument that a "separation of powers" analysis mandates a heavily circumscribed role for the courts in these circumstances, Justice O'Connor contended that, in times of conflict, the Constitution "most assuredly envisions a role for all three branches when individual liberties are at stake." n38 Similarly, Justice Kennedy was unequivocal in Boumediene about the right of courts to enforce the Constitution even in times of war. Quoting Chief Justice Marshall in Marbury v. Madison, n39 Kennedy argued that holding "that the political branches may switch the constitution on or off at will would lead to a regime in which they, not this Court, say 'what the law is.'" n40 This sentiment is very relevant to our targeted killing analysis: in the realm of targeted killing, where the deprivation is of one's life, the absence of any "neutral decision-maker" outside the executive branch is a clear violation of due process guaranteed by the Constitution.

Justices O'Connor and Kennedy are pointing to a dangerous institutional tension inherent in any intra-executive process regime. Targeting decisions are no different; indeed, the goal of those charged with targeting citizens like al-Awlaki is not to strike a delicate balance between security [\*444] and liberty but rather, quite single-mindedly, to prevent attacks on the United States. n41 In describing the precarious nature of covert actions, James Baker, a distinguished military judge, noted, "the twin necessities of secrecy and speed may pull as they do against the competing interests of deliberate review, dissent, and informed accountable decision-making." n42 While Judge Baker concluded that these risks "magnify the importance of a meaningful process of ongoing executive appraisal," he overlooked the institutional tension, seized upon by Justices O'Connor and Kennedy, which would preclude the type of process that he was advocating. n43

Although there may be a role for Congress in such instances, a legislative warrant for specific cases would likely be cumbersome, carry significant security risks, and may violate the spirit of the Bill of Attainder Clause, which prohibits the legislature from performing judicial or executive functions. The current inter-branch process for covert actions, in which the President must make a finding and notify the leaders of Congress and the intelligence committees, is **entirely ex post** and also has not been proven to provide a meaningful check on executive power. n44 Moreover, most politicians are unqualified to make the necessary legal judgments that these situations require.

Solutions calling for the expatriation of citizens deemed to be terrorists are fraught with judicial complications and set very dangerous precedents for citizenship revocation. n45 **Any post-deprivation process**, such as a Bivens-style action, for a targeted attack would also be problematic. n46 Government officials charged with carrying out these attacks might be hesitant to do so if there were a threat of prosecution. Moreover, post-deprivation process for a target would be effectively meaningless in the wake of a **successful** attack.

[\*445] Rather, as recognized by the Founders in the Fourth Amendment, balancing the needs of security against the imperatives of liberty is a traditional role for judges to play. Two scholars of national security law recently highlighted the value of judicial inclusion in targeting decisions: "Judicial control of targeted killing could increase the accuracy of target selection, reducing the danger of mistaken or illegal destruction of lives, limbs, and property. Independent judges who double-check targeting decisions could catch errors and cause executive officials to **avoid making them** in the first place." n47 Judges are both knowledgeable in the law and accustomed to dealing with sensitive security considerations. These qualifications make them ideal candidates to ensure that the executive exercises constitutional restraint when targeting citizens.

Reforming the decision-making process for executing American citizens to allow for judicial oversight would restore the separation of powers framework envisioned by the Founders and increase democratic legitimacy by placing these determinations on **steadier constitutional ground**. For those fearful of judicial encroachment on executive war-making powers, there is a strong argument that this will actually strengthen the President and empower him to take decisive action without worrying about the judicial consequences. As Justice Kennedy put it, "the exercise of [executive] powers is vindicated, not eroded, when confirmed by the Judicial Branch." n48 Now, we will turn to what this judicial involvement would look like.

#### Drones key to legitimacy

Kennedy, 13 [“Drones: Legitimacy and Anti-Americanism”, Greg Kennedy is a Professor of Strategic Foreign Policy at the Defence Studies Department, King's College London, based at the Joint Services Command and Staff College, Defence Academy of the United Kingdom, in Shrivenham, Parameters 42(4)/43(1) Winter-Spring 2013]

The exponential rise in the use of drone technology in a variety of military and non-military contexts represents a real challenge to the framework of established international law and it is both right as a matter of principle, and inevitable as a matter of political reality, that the international community should now be focusing attention on the standards applicable to this technological development, particularly its deployment in counterterrorism and counter-insurgency initiatives, and attempt to reach a consensus on the legality of its use, and the standards and safeguards which should apply to it.4 deliver deadly force is taking place in both public and official domains in the United States and many other countries.5 The four key features at the heart of the debate revolve around: who is controlling the weapon system; does the system of control and oversight violate international law governing the use of force; are the drone strikes proportionate acts that provide military effectiveness given the circumstances of the conflict they are being used in; and does their use violate the sovereignty of other nations and allow the United States to disregard formal national boundaries? Unless these four questions are dealt with in the near future the impact of the unresolved legitimacy issues will have a number of repercussions for American foreign and military policies: “Without a new doctrine for the use of drones that is understandable to friends and foes, the United States risks achieving near-term tactical benefits in killing terrorists while incurring potentially significant longer-term costs to its alliances, global public opinion, the war on terrorism and international stability.”6 This article will address only the first three critical questions. The question of who controls the drones during their missions is attracting a great deal of attention. The use of drones by the Central Intelligence Agency (CIA) to conduct “signature strikes” is the most problematic factor in this matter. Between 2004 and 2013, CIA drone attacks in Pakistan killed up to 3,461—up to 891 of them civilians.7 Not only is the use of drones by the CIA the issue, but subcontracting operational control of drones to other civilian agencies is also causing great concern.8 Questions remain as to whether subcontractors were controlling drones during actual strike missions, as opposed to surveillance and reconnaissance activities. Nevertheless, the intense questioning of John O. Brennan, President Obama’s nominee for director of the CIA in February 2013, over drone usage, the secrecy of their controllers and orders, and the legality of their missions confirmed the level of concern America’s elected officials have regarding the legitimacy of drone use. Furthermore, perceptions and suspicions of illegal clandestine intelligence agency operations, already a part of the public and official psyche due to experiences from Vietnam, Iran-Contra, and Iraq II and the weapons of mass destruction debacle, have been reinforced by CIA management of drone capability. Recent revelations about the use of secret Saudi Arabian facilities for staging American drone strikes into Yemen did nothing to dissipate such suspicions of the CIA’s lack of legitimacy in its use of drones.9 The fact that the secret facility was the launching site for drones used to kill American citizens Anwar al-Awlaki and his son in September 2011, both classified by the CIA as al-Qaeda-linked threats to US security, only deepened such suspicions. Despite the fact that Gulf State observers and officials knew about American drones operating from the Arabian peninsula for years, the existence of the CIA base was not openly admitted in case such knowledge should “ . . . damage counter-terrorism collaboration with Saudi Arabia.”10 The fallout from CIA involvement and management of drone strikes prompted Senator Dianne Feinstein, Chairwoman of the Senate Intelligence Committee, to suggest the need for a court to oversee targeted killings. Such a body, she said, would replicate the Foreign Intelligence Surveillance Court, which oversees eavesdropping on American soil.11 Most importantly, such oversight would go a long way towards allaying fears of the drone usage lacking true political accountability and legitimacy. In addition, as with any use of force, drone strikes in overseas contingency operations can lead to increased attacks on already weak governments partnered with the United States. They can lead to retaliatory attacks on local governments and may contribute to local instability. Those actions occur as a result of desires for revenge and frustrations caused by the strikes. Feelings of hostility are often visited on the most immediate structures of authority—local government officials, government buildings, police, and the military.12 It can thus be argued that, at the strategic level, drone strikes are fuelling anti-American resentment among enemies and allies alike. Those reactions are often based on questions regarding the legality, ethicality, and operational legitimacy of those acts to deter opponents. Therefore, specifically related to the reaction of allies, the military legitimacy question arises if the use of drones endangers vital strategic relationships.13 One of the strategic relationships being affected by the drone legitimacy issue is that of the United States and the United Kingdom. Targeted killing, by drone strike or otherwise, is not the sole preserve of the United States. Those actions, however, **attract more negative attention** to the United States due to its prominence on the world’s stage, its declarations of support for human rights and democratic freedoms, and rule-of-law issues, all which appear violated by such strikes. This complexity and visibility make such targeted killings important for Anglo-American strategic relations because of the closeness of that relationship and the perception that Great Britain, therefore, condones such American activities. Because the intelligence used in such operations is seen by other nations as a shared Anglo-American asset, the use of such intelligence to identify and conduct such killings, in the opinion those operations.14 Finally, the apparent gap between stated core policies and values and the ability to practice targeted killings appears to be a starkly hypocritical and deceitful position internationally, a condition that once again makes British policymakers uncomfortable with being tarred by such a brush.15 The divide between US policy and action is exacerbated by drone technology, which makes the once covert practice of targeted killing commonplace and undeniable. It may also cause deep-rooted distrust due to a spectrum of legitimacy issues. Such questions will, therefore, undermine the US desire to export liberal democratic principles. Indeed, it may be beneficial for Western democracies to achieve adequate rather than decisive victories, thereby setting an example of restraint for the international order.16 The United States must be willing to engage and deal with drone-legitimacy issues across the entire spectrum of tactical, operational, strategic, and political levels to ensure its strategic aims are not derailed by operational and tactical expediency.

#### Heg without legitimacy causes violent transitions—voluntary limits on power maintain relative stability

Martin Griffiths January **2004**; Associate Professor and Head of School at School of Government and International Relations, Griffith University (coincidence, as it turns out) “BEYOND THE BUSH DOCTRINE: AMERICAN HEGEMONY AND WORLD ORDER” AUSTRALASIAN JOURNAL OF AMERICAN STUDIES www.anzasa.arts.usyd.edu.au/a.j.a.s/Articles/1\_04/Griffiths.pdf‎

In international relations, an established hegemony helps the cause of international peace in a number of ways. First, a hegemon deters renewed military competition and provides general security through its preponderant power. Second, a hegemon can, if it chooses, strengthen international norms of conduct. Third, a hegemon’s economic power serves as the basis of a global lending system and free trade regime, providing economic incentives for states to cooperate and forego wars for resources and markets. Such was the nature of British hegemony in the nineteenth century, hence the term Pax Britannica. After the Second World War, the United States has performed the roles that Britain once played, though with an even greater preponderance of power. Thus, much of the peace between democracies after World War Two can be explained by the fact that the political-military hegemony of the United States has helped to create a security structure in Europe and the Pacific conducive to peaceful interaction. Today, American hegemony is tolerated by many states in Europe and Asia, **not because the United States is particularly liked**, but because of the perception that its absence might result in aggression by aspiring regional hegemons. However, Chalmers Johnson has argued that this is a false perception promoted from Washington to silence demands for its military withdrawal from Japan and South Korea.8 It is true that hegemonic stability theory can be classified as belonging in the realist tradition because of its focus on the importance of power structures in international politics. The problem is that power alone cannot explain why some states choose to follow or acquiesce to one hegemon while vigorously opposing and forming counter-alliances against another hegemon. Thus when international relations theorists employ the concept of hegemonic stability, they supplement it with the concept of legitimacy.9 Legitimacy in international society refers simply to the perceived justice of the international system. As in domestic politics, legitimacy is a notoriously difficult factor to pin down and measure. Still, one **cannot do away with the concept**, since it is clear that all political orders rely to some extent on consent in addition to coercion. Hegemony without legitimacy is insufficient to deter violent challenges to the international order, and may provoke attempts to build counter-alliances against the hegemon. Hegemonic authority which accepts the principle of the independence of states and treats states with a relative degree of benevolence is more easily accepted. The legitimacy of American hegemony during the cold war was facilitated by two important characteristics of the era. First, the communist threat (whether real or imaginary) disguised the tension between the United States’ promotion of its own interests and its claim to make the world safe for capitalism.10 Second, American hegemony managed to combine economic liberalism between industrialised states with an institutional architecture (the Bretton Woods system) that moderated the volatility of transaction flows across borders. It enabled governments to provide social investments, safety nets and adjustment assistance at the domestic level.11 In the industrialised world, this grand bargain formed the basis of the longest and most equitable economic expansion in human history, from the 1950s to the 1980s. And it provided the institutional foundation for the newest wave of globalisation, which began not long thereafter and is far broader in scope and deeper in reach than its nineteenth century antecedent. The system that the United States led the way in creating after 1945 has fared well because the connecting and restraining aspects of democracy and institutions reduce the incentives for Western nations to engage in strategic rivalry or balance against American hegemony. The strength of this order is attested to by the longevity of its institutions, alliances and arrangements, based on their legitimacy in the eyes of the participants. Reacting against the closed autarchic regions that had contributed to the world depression and split the globe into competing blocs before the war, the United States led the way in constructing a post-war order that was based on economic openness, joint management of the Western political-economic order, and rules and institutions that were organised to support domestic economic stability and social security.12 This order in turn was built around a basic bargain: the hegemonic state obtains commitments from secondary states to participate in the international order, and the hegemon in return **places limits on the exercise of its power**. The advantage for the weak state is that it does not fear domination or abandonment, reducing the incentive to balance against the hegemon, and the leading state does not need to use its power to actively enforce order and compliance. It is these restraints on both sides and the willingness to participate in this mutual accord that explains the longevity of the system, even after the end of the cold war. But as the founder and defender of this international order, the United States, far from being a domineering hegemon, was a reluctant superpower.

#### 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.

#### Formal judicial oversight key – balances resolve with restraint

NYT, 10 [“Lethal Force under Law”, New York Times, <http://www.nytimes.com/2010/10/10/opinion/10sun1.html>]

The drone program has been effective, killing more than 400 Al Qaeda militants this year alone, according to American officials, but fewer than 10 noncombatants. But assassinations are a grave act and subject to abuse — and imitation by other countries. The government needs to do a better job of showing the world that it is acting in strict compliance with international law. The United States has the right under international law to try to prevent attacks being planned by terrorists connected to Al Qaeda, up to and including killing the plotters. But it is not within the power of a commander in chief to simply declare anyone anywhere a combatant and kill them, without the slightest advance independent oversight. The authorization for military force approved by Congress a week after 9/11 empowers the president to go after only those groups or countries that committed or aided the 9/11 attacks. The Bush administration’s distortion of that mandate led to abuses that harmed the United States around the world. The issue of who can be targeted applies directly to the case of Anwar al-Awlaki, an American citizen hiding in Yemen, who officials have admitted is on an assassination list. Did he inspire through words the Army psychiatrist who shot up Fort Hood, Tex., last November, and the Nigerian man who tried to blow up an airliner on Christmas? Or did he actively participate in those plots, and others? The difference is crucial. If the United States starts killing every Islamic radical who has called for jihad, there will be no end to the violence. American officials insist that Mr. Awlaki is involved with actual terror plots. But human rights lawyers working on his behalf say that is not the case, and have filed suit to get him off the target list. The administration wants the case thrown out on state-secrets grounds. The Obama administration needs to go out of its way to demonstrate that it is keeping its promise to do things differently than the Bush administration did. It must explain how targets are chosen, demonstrate that attacks are limited and are a last resort, and allow independent authorities to oversee the process. PUBLIC GUIDELINES The administration keeps secret its standards for putting people on terrorist or assassination lists. In March, Harold Koh, legal adviser to the State Department, said the government adheres to international law, attacking only military targets and keeping civilian casualties to an absolute minimum. “Our procedures and practices for identifying lawful targets are extremely robust,” he said in a speech, without describing them. Privately, government officials say no C.I.A. drone strike takes place without the approval of the United States ambassador to the target country, the chief of the C.I.A. station, a deputy at the agency, and the agency’s director. So far, President Obama’s system of command seems to have prevented any serious abuses, but the approval process is entirely within the administration. After the abuses under President Bush, the world is not going to accept a simple “trust us” from the White House. There have been too many innocent people rounded up for detention and subjected to torture, too many cases of mistaken identity or trumped-up connections to terror. Unmanned drones eliminate the element of risk to American forces and make it seductively easy to attack. The government needs to make public its guidelines for determining who is a terrorist and who can be targeted for death. It should clearly describe how it follows international law in these cases and list the internal procedures and checks it uses before a killing is approved. That can be done without formally acknowledging the strikes are taking place in specific countries. LIMIT TARGETS The administration should state that it is following international law by acting strictly in self-defense, targeting only people who are actively planning or participating in terror, or who are leaders of Al Qaeda or the Taliban — not those who raise funds for terror groups, or who exhort others to acts of terror. Special measures are taken before an American citizen is added to the terrorist list, officials say, requiring the approval of lawyers from the National Security Council and the Justice Department. But again, those measures have not been made public. Doing so would help ensure that people like Mr. Awlaki are being targeted for terrorist actions, not their beliefs or associations. A LAST RESORT Assassination should in every case be a last resort. Before a decision is made to kill, particularly in areas away from recognized battlefields, the government needs to consider every other possibility for capturing the target short of lethal force. Terrorists operating on American soil should be captured using police methods, and not subject to assassination. If practical, the United States should get permission from a foreign government before carrying out an attack on its soil. The government is reluctant to discuss any of these issues publicly, in part to preserve the official fiction that the United States is not waging a formal war in Pakistan and elsewhere, but it would not harm that effort to show the world how seriously it takes international law by making clear its limits. INDEPENDENT OVERSIGHT Dealing out death requires additional oversight outside the administration. Particularly in the case of American citizens, like Mr. Awlaki, the government **needs to employ some** due process before depriving someone of life. It would be logistically impossible to conduct a full-blown trial in absentia of every assassination target, as the lawyers for Mr. Awlaki prefer. But judicial review could still be employed. The government could establish a court like the Foreign Intelligence Surveillance Court, which authorizes wiretaps on foreign agents inside the United States. Before it adds people to its target list and begins tracking them, the government could take its evidence to this court behind closed doors — along with proof of its compliance with international law — and get the equivalent of a judicial warrant in a timely and efficient way. Congressional leaders are secretly briefed on each C.I.A. attack, and say they are satisfied with the information they get and with the process. Nonetheless, that process is informal and could be changed at any time by this president or his successors. Formal oversight is a better way of demonstrating confidence in American methods. Self-defense under international law not only shows the nation’s resolve and power, but sends a powerful message to other countries that the United States couples drastic action with careful judgment.

#### External court review maintains legitimacy – key to global stability

Knowles, 9 [Robert, Assistant Professor, NYU Law, “Article: American Hegemony and the Foreign Affairs Constitution”, 41 Ariz. St. L.J. 87, p. lexis]

The hegemonic model also reduces the need for executive branch flexibility, and the institutional competence terrain shifts toward the courts. The stability of the current U.S.-led international system depends on the ability of the U.S. to govern effectively. Effective governance depends on, among other things, predictability. n422 G. John Ikenberry analogizes America's hegemonic position to that of a "giant corporation" seeking foreign investors: "The rule of law and the institutions of policy making in a democracy are the political equivalent of corporate transparency and [\*155] accountability." n423 Stable interpretation of the law bolsters the stability of the system because other nations will know that they **can rely on** those **interpretations** and that there will be at least some degree of enforcement by the United States. At the same time, the separation of powers serves the global-governance function by reducing the ability of the executive branch to make "abrupt or aggressive moves toward other states." n424 The Bush Administration's detainee policy, for all of its virtues and faults, was an exceedingly aggressive departure from existing norms, and was therefore bound to generate intense controversy. It was formulated quickly, by a small group of policy-makers and legal advisors without consulting Congress and over the objections of even some within the executive branch. n425 Although the Administration invoked the law of armed conflict to justify its detention of enemy combatants, it did not seem to recognize limits imposed by that law. n426 Most significantly, it designed the detention scheme around interrogation rather than incapacitation and excluded the detainees from all legal protections of the Geneva Conventions. n427 It declared all detainees at Guantanamo to be "enemy combatants" without establishing a regularized process for making an individual determination for each detainee. n428 And when it established the military commissions, also without consulting Congress, the Administration denied defendants important procedural protections. n429 In an anarchic world characterized by great power conflict, one could make the argument that the executive branch requires maximum flexibility to defeat the enemy, who may not adhere to international law. Indeed, the precedents relied on most heavily by the Administration in the enemy combatant cases date from the 1930s and 1940s - a period when the international system was radically unstable, and the United States was one of several great powers vying for advantage. n430 But during that time, the executive branch faced much more exogenous pressure from other great powers to comply with international law in the treatment of captured enemies. If the United States strayed too far from established norms, it would risk retaliation upon its own soldiers or other consequences from [\*156] powerful rivals. Today, there are no such constraints: enemies such as al Qaeda are not great powers and are not likely to obey international law anyway. Instead, the danger is that American rule-breaking will set a pattern of rule-breaking for the world, leading to instability. n431 America's military predominance enables it to set the rules of the game. **When the U.S. breaks its own rules,** it loses legitimacy. The Supreme Court's response to the detainee policy enabled the U.S. government as a whole to hew more closely to established procedures and norms, and to regularize the process for departing from them. After Hamdi, n432 the Department of Defense established a process, the CSRTs, for making an individual determination about the enemy combatant status of all detainees at Guantanamo. After the Court recognized habeas jurisdiction at Guantanamo, Congress passed the DTA, n433 establishing direct judicial review of CSRT determinations in lieu of habeas. Similarly, after the Court declared the military commissions unlawful in Hamdan, n434 this forced the Administration to seek congressional approval for commissions that restored some of the rights afforded at courts martial. n435 In Boumediene, the Court rejected the executive branch's foreign policy arguments, and bucked Congress as well, to restore the norm of habeas review. n436 Throughout this enemy combatant litigation, it has been the courts' relative insulation from politics that has enabled them to take the long view. In contrast, the President's (and Congress's) responsiveness to political concerns in the wake of 9/11 has encouraged them to depart from established norms for the nation's perceived short-term advantage, even at the expense of the nation's long-term interests. n437 As Derek Jinks and Neal Katyal have observed, "treaties are part of [a] system of time-tested standards, and this feature makes the wisdom of their judicial interpretation manifest." n438 At the same time, the enemy combatant cases make allowances for the executive branch's superior speed. The care that the Court took to limit the issues it decided in each case gave the executive branch plenty of time to [\*157] arrive at an effective detainee policy. n439 Hamdi, Rasul, and Boumediene recognized that the availability of habeas would depend on the distance from the battlefield and the length of detention. n440 The enemy combatant litigation also underscores the extent to which the classic realist assumptions about courts' legitimacy in foreign affairs have been turned on their head. In an anarchic world, legitimacy derives largely from brute force. The courts have no armies at their disposal and look weak when they issue decisions that cannot be enforced. n441 But in a hegemonic system, where governance depends on voluntary acquiesnce, the courts have a greater role to play. Rather than hobbling the exercise of foreign policy, the courts are a key form of "soft power." n442 As Justice Kennedy's majority opinion observed in Boumediene, **courts can** bestow **external** legitimacy on the acts of the political branches. n443 Acts having a basis in law are almost universally regarded as more legitimate than merely political acts. Most foreign policy experts believe that the Bush Administration's detention scheme "hurt America's image and standing in the world." n444 The restoration of habeas corpus in Boumediene may help begin to counteract this loss of prestige. Finally, the enemy combatant cases are striking in that they embrace a role for representation-reinforcement in the international realm. n445 Although defenders of special deference acknowledge that courts' strengths lie in protecting the rights of minorities, it has been very difficult for courts to protect these rights in the face of exigencies asserted by the executive branch in foreign affairs matters. This is especially difficult when the minorities are alleged enemy aliens being held outside the sovereign territory of the United States in wartime. In the infamous Korematsu decision, another World War II-era case, the Court bowed to the President's factual assessment of the emergency justifying detention of U.S. citizens of Japanese ancestry living in the United States. n446 In Boumediene, the Court [\*158] pointedly declined to defer to the executive branch's factual assessments of military necessity. n447 The court may have recognized that a more aggressive role in protecting the rights of non-citizens was required by American hegemony. In fact, the arguments for deference with respect to the rights of non-citizens are even weaker because aliens lack a political constituency in the United States. n448 This outward-looking form of representation-reinforcement serves important functions. It strengthens the legitimacy of U.S. hegemony by establishing equality as a benchmark and reinforces the sense that our constitutional values reflect universal human rights. n449 Conclusion When it comes to the constitutional regime of foreign affairs, geopolitics has always mattered. Understandings about America's role in the world have shaped foreign affairs doctrines. But the classic realist assumptions that support special deference do not reflect the world as it is today. A better, more realist, approach looks to the ways that the courts can reinforce and legitimize America's leadership role. The Supreme Court's rejection of the government's claimed exigencies in the enemy combatant cases strongly indicates that the Judiciary is becoming reconciled to the current world order and is asserting its prerogatives in response to the fewer constraints imposed on the executive branch. In other words, the courts are moving toward the hegemonic model. In the great dismal swamp that is the judicial treatment of foreign affairs, this transformation offers hope for clarity: the positive reality of the international system, despite terrorism and other serious challenges, permits the courts to reduce the "deference gap" between foreign and domestic cases.

#### Intra-executive processes cause operational error

Chehab, 12 [Ahmad, Georgetown University Law Center, Retrieving the Role of Accountability in the Targeted Killings Context: A Proposal for Judicial Review]

The practical, pragmatic justification for the COAACC derives largely from considering social psychological findings regarding the skewed potential associated with limiting unchecked decision-making in a group of individuals. As an initial point, psychologists have long pointed out how individuals frequently fall prey to cognitive illusions that produce systematic errors in judgment.137 People simply do not make decisions by choosing the optimal outcome from available alternatives, but instead employ shortcuts (i.e., heuristics) for convenience.138 Cognitive biases like groupthink can hamper effective policy deliberations and formulations.139 Groupthink largely arises when a group of decision-makers seek conformity and agreement, thereby avoiding alternative points of view that are critical of the consensus position.140 This theory suggests that some groups—particularly those characterized by a strong leader, considerable internal cohesion, internal loyalty, overconfidence, and a shared world view or value system—suffer from a deterioration in their capacity to engage in critical analysis.141 Many factors can affect such judgment, including a lack of crucial information, insufficient timing for decision-making, poor judgment, pure luck, and/or unexpected actions by adversaries.142 Moreover, decision-makers inevitably tend to become influenced by irrelevant information,143 seek out data and assessments that confirm their beliefs and personal hypotheses notwithstanding contradictory evidence,144 and “[i]rrationally avoid choices that represent extremes when a decision involves a trade-off between two incommensurable values.”145 Self-serving biases can also hamper judgment given as it has been shown to induce well-intentioned people to rationalize virtually any behavior, judgment or action after the fact.146 The confirmation and overconfidence bias, both conceptually related to groupthink, also result in large part from neglecting to consider contradictory evidence coupled with an irrational persistence in pursuing ideological positions divorced from concern of alternative viewpoints.147 Professor Cass Sunstein has described situations in which groupthink produced poor results precisely because consensus resulted from the failure to consider alternative sources of information.148 The failures of past presidents to consider alternative sources of information, critically question risk assessments, ensure neutral-free ideological sentiment among those deliberating,149 and/or generally ensure properly deliberated national security policy has produced prominent and devastating blunders,150 including the Iraq War of 2003,151 the Bay of Pigs debacle in the 1960’s,152 and the controversial decision to wage war against Vietnam.153 Professor Sunstein also has described the related phenomenon of “group polarization,” which includes the tendency to push group members toward a “more extreme position.”154 Given that both groupthink and group polarization can lead to erroneous and ideologically tainted policy positions, the notion of giving the President unchecked authority in determining who is eligible for assassination can only serve to increase the likelihood for committing significant errors.155 The reality is that psychological mistakes, organizational ineptitude, lack of structural coherence and other associated deficiencies are inevitable features in Executive Branch decision-making. D. THE NEED FOR ACCOUNTABILITY CHECKS To check the vices of groupthink and shortcomings of human judgment, the psychology literature emphasizes a focus on accountability mechanisms in which a better reasoned decision-making process can flourish.156 By serving as a constraint on behavior, “accountability functions as a critical norm-enforcement mechanism—the social psychological link between individual decision makers on the one hand and social systems on the other.”157 Such institutional review can channel recognition for the need by government decision-makers to be more self-critical in policy targeted killing designations, more willing to consider alternative points of view, and more willing to anticipate possible objections.158 Findings have also shown that ex ante awareness can lead to more reasoned judgment while also preventing tendentious and ideological inclinations (and political motivations incentivized and exploited by popular hysteria and fear).159 Requiring accounting in a formalized way prior to engaging in a targeted killing—by providing, for example, in camera review, limited declassification of information, explaining threat assessments outside the immediate circle of policy advisors, and securing meaningful judicial review via a COAACC-like tribunal—can promote a more reliable and informed deliberation in the executive branch. With process-based judicial review, the COAACC could effectively reorient the decision to target individuals abroad by examining key procedural aspects—particularly assessing the reliability of the “terrorist” designation—and can further incentivize national security policy-makers to engage in more carefully reasoned choices and evaluate available alternatives than when subject to little to no review.

#### Ex ante key – FISA critics miss the mark

Guiora, 12 [Targeted Killing: When Proportionality Gets All Out of Proportion, Amos N. Guiora. Professor of Law, S.J. Quinney College of Law, University of Utah, p. SSRN]

The unitary executive theory aggressively articulated, and implemented, by the Bush Administration has been adopted in toto by the Obama Administration. While the executive clearly prefers to operate in a vacuum, the question whether that most effectively ensures effective operational counterterrorism is an open question. The advantage of institutionalized, process-based input into executive action prior to decision implementation is worthy of discussion in operational counterterrorism. The solution to this search for an actionable guideline is the **strict scrutiny standard.** What is strict scrutiny, and how is it to be implemented in the context of operational counterterrorism? Why is there a need, if at all, for an additional standard articulating self-defense? The strict scrutiny standard would enable operational engagement of a non-state actor predicated on intelligence information that would meet admissibility standards akin to a court of law. The strict scrutiny test seeks to strike a balance **enabling the state to act sooner** but subject to significant restrictions. The ability to act sooner is limited, however, by the requirement that intelligence information must be reliable, viable, valid, and corroborated. The strict scrutiny standard proposes that for states to act as early as possible in order to prevent a possible terrorist attack the information must meet admissibility standards similar to the rules of evidence. The intelligence must be reliable, material, and probative. The proposal is predicated on the understanding that while states need to engage in operational counterterrorism, mistakes regarding the correct interpretation and analysis of intelligence information can lead to tragic mistakes. Adopting admissibility standards akin to the criminal law minimizes operational error. Rather than relying on the executive branch making decisions in a “closed world” devoid of oversight and review, the intelligence information justifying the proposed action must be submitted to a court that would ascertain the information’s admissibility. The discussion before the court would necessarily be conducted ex parte; however, the process of preparing and submitting available intelligence information to a court would significantly contribute to minimizing operational error that otherwise would occur. The logistics of this proposal are far less daunting than might seem—the court before which the executive would submit the evidence is the FISA Court. Presently, FISA Court judges weigh the reliability of intelligence information in determining whether to grant government ex parte requests for wire-tapping warrants. Under this proposal, judicial approval is necessary prior to undertaking a counterterrorism operation predicated solely on intelligence information. The standard the court would adopt in determining the information’s reliability is the same applied in the traditional criminal law paradigm. The intelligence must be reliable, material, and probative. While the model is different—a defense attorney cannot question state witnesses—the court will assume a dual role. In this dual role capacity the court will cross-examine the representative of the intelligence community and subsequently rule as to the information’s admissibility. While some may suggest that the FISA court is largely an exercise in “rubber-stamping,” the importance of the proposal is in requiring the government to present the available information to an independent judiciary as a precursor to engaging in operational counterterrorism. The call is complicated: the United States is a nation based on democratic values rooted in ethics and morals; yet, when push comes to shove the United States does not always act in accordance with these articulated principles. The vision of a “city upon a hill,” articulated by Puritan settler John Winthrop and subsequently referenced by President Ronald Reagan, 9 has been called into question by certain U.S. counterterrorism measures. This is not the first time that American responses in the face of crisis (whether real or perceived) have reflected “over-board” and “over-broad” approaches.10

#### Op error strengthens armed insurgencies

Mayer 9 (Jane, critically acclaimed author and staff writer for the New Yorker, “The Predator War,” The New Yorker, 10-26, http://www.newyorker.com/reporting/2009/10/26/091026fa\_fact\_mayer)

Indeed, the history of targeted killing is marked by errors. In 1973, for example, Israeli intelligence agents murdered a Moroccan waiter by mistake. They thought that he was a terrorist who had been involved in slaughtering Israeli athletes at the Munich Olympics, a year earlier. And in 1986 the Reagan Administration attempted to retaliate against the Libyan leader Muammar Qaddafi for his suspected role in the deadly bombing of a disco frequented by American servicemen in Germany. The U.S. launched an air strike on Qaddafi’s household. The bombs missed him, but they did kill his fifteen-month-old daughter. The C.I.A.’s early attempts at targeting Osama bin Laden were also problematic. After Al Qaeda blew up the U.S. Embassies in Tanzania and Kenya, in August, 1998, President Bill Clinton retaliated, by launching seventy-five Tomahawk cruise missiles at a site in Afghanistan where bin Laden was expected to attend a summit meeting. According to reports, the bombardment killed some twenty Pakistani militants but missed bin Laden, who had left the scene hours earlier. The development of the Predator, in the early nineteen-nineties, was supposed to help eliminate such mistakes. The drones can hover above a target for up to forty hours before refuelling, and the precise video footage makes it much easier to identify targets. But the strikes are only as accurate as the intelligence that goes into them. Tips from informants on the ground are subject to error, as is the interpretation of video images. Not long before September 11, 2001, for instance, several U.S. counterterrorism officials became certain that a drone had captured footage of bin Laden in a locale he was known to frequent in Afghanistan. The video showed a tall man in robes, surrounded by armed bodyguards in a diamond formation. At that point, drones were unarmed, and were used only for surveillance. “The optics were not great, but it was him,” Henry Crumpton, then the C.I.A.’s top covert-operations officer for the region, told Time. But two other former C.I.A. officers, who also saw the footage, have doubts. “It’s like an urban legend,” one of them told me. “They just jumped to conclusions. You couldn’t see his face. It could have been Joe Schmo. Believe me, no tall man with a beard is safe anywhere in Southwest Asia.” In February, 2002, along the mountainous eastern border of Afghanistan, a Predator reportedly followed and killed three suspicious Afghans, including a tall man in robes who was thought to be bin Laden. The victims turned out to be innocent villagers, gathering scrap metal. In Afghanistan and Pakistan, the local informants, who also serve as confirming witnesses for the air strikes, are notoriously unreliable. A former C.I.A. officer who was based in Afghanistan after September 11th told me that an Afghan source had once sworn to him that one of Al Qaeda’s top leaders was being treated in a nearby clinic. The former officer said that he could barely hold off an air strike after he passed on the tip to his superiors. “They scrambled together an élite team,” he recalled. “We caught hell from headquarters. They said ‘Why aren’t you moving on it?’ when we insisted on checking it out first.” It turned out to be an intentionally false lead. “Sometimes you’re dealing with tribal chiefs,” the former officer said. “Often, they say an enemy of theirs is Al Qaeda because they just want to get rid of somebody. Or they made crap up because they wanted to prove they were valuable, so that they could make money. You couldn’t take their word.” The consequences of bad ground intelligence can be tragic. In September, a nato air strike in Afghanistan killed between seventy and a hundred and twenty-five people, many of them civilians, who were taking fuel from two stranded oil trucks; they had been mistaken for Taliban insurgents. (The incident is being investigated by nato.) According to a reporter for the Guardian, the bomb strike, by an F-15E fighter plane, left such a tangle of body parts that village elders resorted to handing out pieces of unidentifiable corpses to the grieving families, so that they could have something to bury. One Afghan villager told the newspaper, “I took a piece of flesh with me home and I called it my son.” Predator drones, with their superior surveillance abilities, have a better track record for accuracy than fighter jets, according to intelligence officials. Also, the drone’s smaller Hellfire missiles are said to cause far less collateral damage. Still, the recent campaign to kill Baitullah Mehsud offers a sobering case study of the hazards of robotic warfare. It appears to have taken sixteen missile strikes, and fourteen months, before the C.I.A. succeeded in killing him. During this hunt, between two hundred and seven and three hundred and twenty-one additional people were killed, depending on which news accounts you rely upon. It’s all but impossible to get a complete picture of whom the C.I.A. killed during this campaign, which took place largely in Waziristan. Not only has the Pakistani government closed off the region to the outside press; it has also shut out international humanitarian organizations like the International Committee for the Red Cross and Doctors Without Borders. “We can’t get within a hundred kilometres of Waziristan,” Brice de la Vingne, the operational coördinator for Doctors Without Borders in Pakistan, told me. “We tried to set up an emergency room, but the authorities wouldn’t give us authorization.” A few Pakistani and international news stories, most of which rely on secondhand sources rather than on eyewitness accounts, offer the basic details. On June 14, 2008, a C.I.A. drone strike on Mehsud’s home town, Makeen, killed an unidentified person. On January 2, 2009, four more unidentified people were killed. On February 14th, more than thirty people were killed, twenty-five of whom were apparently members of Al Qaeda and the Taliban, though none were identified as major leaders. On April 1st, a drone attack on Mehsud’s deputy, Hakimullah Mehsud, killed ten to twelve of his followers instead. On April 29th, missiles fired from drones killed between six and ten more people, one of whom was believed to be an Al Qaeda leader. On May 9th, five to ten more unidentified people were killed; on May 12th, as many as eight people died. On June 14th, three to eight more people were killed by drone attacks. On June 23rd, the C.I.A. reportedly killed between two and six unidentified militants outside Makeen, and then killed dozens more people—possibly as many as eighty-six—during funeral prayers for the earlier casualties. An account in the Pakistani publication The News described ten of the dead as children. Four were identified as elderly tribal leaders. One eyewitness, who lost his right leg during the bombing, told Agence France-Presse that the mourners suspected what was coming: “After the prayers ended, people were asking each other to leave the area, as drones were hovering.” The drones, which make a buzzing noise, are nicknamed machay (“wasps”) by the Pashtun natives, and can sometimes be seen and heard, depending on weather conditions. Before the mourners could clear out, the eyewitness said, two drones started firing into the crowd. “It created havoc,” he said. “There was smoke and dust everywhere. Injured people were crying and asking for help.” Then a third missile hit. “I fell to the ground,” he said. The local population was clearly angered by the Pakistani government for allowing the U.S. to target a funeral. (Intelligence had suggested that Mehsud would be among the mourners.) An editorial in The News denounced the strike as sinking to the level of the terrorists. The Urdu newspaper Jang declared that Obama was “shutting his ears to the screams of thousands of women whom your drones have turned into dust.” U.S. officials were undeterred, continuing drone strikes in the region until Mehsud was killed. After such attacks, the Taliban, attempting to stir up anti-American sentiment in the region, routinely claims, falsely, that the victims are all innocent civilians. In several Pakistani cities, large protests have been held to decry the drone program. And, in the past year, perpetrators of terrorist bombings in Pakistan have begun presenting their acts as “revenge for the drone attacks.” In recent weeks, a rash of bloody assaults on Pakistani government strongholds has raised the spectre that formerly unaligned militant groups have joined together against the Zardari Administration. David Kilcullen, a counter-insurgency warfare expert who has advised General David Petraeus in Iraq, has said that the propaganda costs of drone attacks have been disastrously high. Militants have used the drone strikes to denounce the Zardari government—a shaky and unpopular regime—as little more than an American puppet. A study that Kilcullen co-wrote for the Center for New American Security, a think tank, argues, “Every one of these dead non-combatants represents an alienated family, a new revenge feud, and more recruits for a militant movement that has grown exponentially even as drone strikes have increased.” His co-writer, Andrew Exum, a former Army Ranger who has advised General Stanley McChrystal in Afghanistan, told me, “Neither Kilcullen nor I is a fundamentalist—we’re not saying drones are not part of the strategy. But we are saying that right now they are part of the problem. If we use tactics that are killing people’s brothers and sons, not to mention their sisters and wives, we can work at cross-purposes with insuring that the tribal population doesn’t side with the militants. Using the Predator is a tactic, not a strategy.” Exum says that he’s worried by the remote-control nature of Predator warfare. “As a military person, I put myself in the shoes of someone in fata”—Pakistan’s Federally Administered Tribal Areas—“and there’s something about pilotless drones that doesn’t strike me as an honorable way of warfare,” he said. “As a classics major, I have a classical sense of what it means to be a warrior.” An Iraq combat veteran who helped design much of the military’s doctrine for using unmanned drones also has qualms. He said, “There’s something important about putting your own sons and daughters at risk when you choose to wage war as a nation. We risk losing that flesh-and-blood investment if we go too far down this road.”

#### The impact is Middle East War and Pakistani collapse

Hussain 13 (Nazia, research scholar at the Terrorism, Transnational Crime and Corruption Center and a doctoral student at George Mason University, “Pakistan's Jihadi Problem and the Middle East,” Middle East Institute, 4-11, <http://www.mei.edu/content/pakistans-jihadi-problem-and-middle-east>)

Jihadi groups in Pakistan pose grave threats to the stability of the country and the surrounding region. Their operations and influence have extended from beyond the tribal areas to Pakistan’s cities. Along with countries such as Syria and Iraq, Pakistan has become a theater of doctrinal differences between Shia and Sunni Muslims, signifying that rifts between local groups have become linked to the wider violent sectarianism in the Middle East. This evolving composition of the “Jihadi problem” in Pakistan demonstrates that while jihadi groups may be based locally, their outlook is becoming increasingly transnational, and directly linked with the Middle East and the various conflicts raging within the region. The jihadi groups, mainly Tehreek-e-Taliban Pakistan (TTP) have become powerful enough to extend influence from beyond the tribal areas to major urban centers. Not only have they been operating in Quetta and Peshawar for some time, they are disbursing justice and instilling a reign of fear in Karachi, a city which contributes a quarter of Pakistan’s GDP. At the political level, this ease of functioning in Karachi is important as it means that they are in the process of displacing political parties such as Muttahida Qaumi Movement (MQM), Pakistan Peoples Party (PPP), and Awami National Party (ANP), thereby constricting political space for Pakistanis. In an open letter to Pakistanis, the TTP called upon them to boycott the elections as it would only mean a continuation of Western-style corrupt governance, but if they had to attend any political gatherings, to avoid those held by MQM, ANP, and PPP. The threats have worked to the effect that the secular ANP, which to date has represented Pashtuns in Pakistan, has been forced to go door-to-door for political canvassing, instead of holding political rallies. In Punjab, the sectarian Lashkar-e-Jhangvi (LeJ) has secured a political alliance with the ruling party of Pakistan Muslim League-Nawaz faction (PML-N), highlighting that it not only has a constituency that will vote for it, but also has political sway to forge a partnership with the ruling party. These developments point out that jihadi and sectarian groups have begun to command popular respect, and cannot be considered merely as foot soldiers of jihad that can be controlled by the state machinery. Slowly but surely, they are carving constituencies of support, instilling fear, or both, among the people of Pakistan. Adding to the conundrum, the ongoing Shia-Sunni conflict in the Middle East has spilled over into Pakistan. The trend of wreaking revenge on Pakistan’s Shia minority for ideological reasons as well as for the tactical purpose of avenging the suffering of Sunnis at the hands of the Alawite regime in Syria and the slights suffered under the Shia government in Iraq is disturbing. It manifests the fact that religious motivations of local sectarian groups are aligning with the interests of transnational entities such as Al Qaeda that believe in creating unrest in the already turbulent Syria and Iraq. Since the1980s, doctrinal differences between Sunnis and Shias have become a full-blown conflict in Pakistan. The country also has become a theater of competing ideologies of Sunni and Shia Islam, especially after the revolution in neighboring Iran. As a US diplomatic cable published by Wikileaks noted, an estimated $100 million a year from donors from the Gulf was supporting some of the hardline religious seminaries that have been responsible in creation of an extremist recruitment network in Punjab province. Vali Nasr traces the genesis of this problem in his book, The Shia Revival (p.160–162), pointing out that, ‘In the 1980s and the1990s, South Asia in general and Pakistan in particular served as the main battleground of the Saudi-Iranian and Sunni-Shia conflict. India and Pakistan were far more vulnerable to Shia assertiveness than the Arab countries...Pakistan was where Iran focused its attention first. There, as contrasted with the situation along the Iran-Iraq border, it would not be conventional war but rather ideological campaigns and sectarian inspired civil violence that would decide the outcome…The more aggressively Iran tried to influence the Shias of India and Pakistan, the more the Sunni ulama in those countries became determined to respond. After Iran organized Shia youth into student associations and supported the formation of a Pakistani Shia party modeled after Lebanon’s Amal, the Sunnis **began to form sectarian militias recruited from madrassas across the country**, including those that had been set up in the Pashtun region along the Afghan border to train fighters for the war against the Soviet Union. These militias enjoyed the backing not only of Islamabad but also of Riyadh and even for a time of Baghdad, as all three regimes saw Iranian influence in Pakistan as a strategic threat.” From the days of foreign governments supporting various factions to the use of the jihadi groups in India and Afghanistan, the situation has become even more complex. Different jihadi groups have not only become interlinked with each other for operational ease, they also share the goal of establishing an Islamic caliphate in Pakistan and beyond. In that respect, the dream of making Pakistan a truly Islamic state has become even more elusive. It can be argued that what these groups aspire for, in its distorted version, is striking at the heart of the ideological confusion that surrounded Pakistan and the possible role of Islam in its polity and society. Over the years, successive governments dabbled with the idea of finding a place for Islam in the new republic, but none did this more systematically than General Zia-ul-Haq. Not only was the use of Islam a useful tool to dilute the impact of populist appeal of Zulfiqar Ali Bhutto, it also provided a newborn constituency of Islamists and ulama to the Zia government. The new constituency of Islamists in Pakistan was further strengthened by support during the Afghan jihad days. The historical genesis of the jihadi groups is useful to understand, as it paints them as more than miscreants contributing to chaos in Pakistan, but more so, as people whose thinking and operations have been in the making for years. These groups, by their very actions, question the role of Islam ― and what version of Islam at that ― in the state of Pakistan. Furthermore, in their conception of Pakistan as an Islamic caliphate, and their worldview of not tolerating Shia interpretations of Islam, their actions are synchronizing with the current plight of Sunni brethren in the Middle East. In conclusion, the jihadi problem poses an existential problem not only in terms of the future of, and the role of Islam (and dominant interpretation of religion) in Pakistan, but is also connected to the Sunni-Shia conflict in the Middle East, as demonstrated in Iraq and Syria, and which threatens to affect other countries in the region as well. For policy makers in Pakistan and elsewhere, it is important to understand the nature of the “jihadi problem” as beyond the debate of terrorism and counterterrorism, and law and the absence of the rule of law. Hypothetically, neither can all Shias leave Pakistan, nor all extremist groups tried in courts of law. Instead, it is necessary to understand the multidimensional “jihadi problem” confronting Pakistan and the region. The links between national and transnational issues need to be recognized, in order to collaborate with Middle Eastern countries in preventing a Shia-Sunni conflagration that spans the length and breadth of the Muslim world. Lastly, policy makers should take into account the Pakistani people, who, if their loyalties are transferred to actors other than the state, can be the country’ undoing, or if their energies are harnessed, can provide the opportunity to turn things around. Pakistan needs to spend more on social sectors,[1] as well as improve governance throughout the country. **If the government will not cater to the needs of the people, they will have no option but to seek sustenance from actors who will. That could prove** tragic **for Pakistan and dangerous for its immediate neighbors and the international community**.

#### Goes nuclear

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

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

### Plan

#### The United States Federal Government should establish a limited ex ante judicial review process for targeted killing by drones.

### Solvency

#### Our procedural safeguard is key to minimize error and establish a credible signal

Somin, 13 [Ilya Somin Professor of Law HEARING ON “DRONE WARS: THE CONSTITUTIONAL AND COUNTERTERRORISM IMPLICATIONS OF TARGETED KILLING” TESTIMONY BEFORE THE UNITED STATES SENATE JUDICIARY SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS, AND HUMAN RIGHTS April 23, 2013]

In my view, the use of targeted killings by drones is not inherently illegal or immoral. It is a legitimate weapon of war in the struggle against al Qaeda and associated terrorist groups. However, serious constitutional and other problems arise if the US government fails to take proper care to ensure that the use of drones is strictly limited to legitimate terrorist targets. These dangers are likely to be at their most severe in the admittedly rare cases involving American citizens. I would urge the Subcommittee and Congress generally to consider adopting procedural safeguards that would minimize the likelihood of erroneous or illegal drone strikes. One proposal that deserves serious consideration is the establishment of an independent court that would oversee drone strikes in advance. 2 I. WHY TARGETED KILLING IS NOT INHERENTLY ILLEGAL OR IMMORAL. The Authorization for the Use of Military Force enacted by Congress on September 14, 2001 authorizes the president to “use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons.”1 This is generally understood as creating a legal state of war between the United States and Al Qaeda and its allies. The Supreme Court has recognized this, describing the conflict we are engaged in as “the war with al Qaeda.”2 Similarly, President Obama, like President George W. Bush before him, has emphasized that “we are indeed at war with Al Qaeda and its affiliates.”3 Thus, all three branches of government have recognized that a state of war exists, and that therefore the United States is entitled to use all measures normally permitted in warfare against its enemies. In wartime, the individualized targeting of an enemy commander is surely both legal and moral. During World War II, for example, the United States targeted Japanese Admiral Isoruku Yamamoto, and the British and Czechs successfully targeted German SS General Reinhard Heydrich.4 Few if any serious commentators claim that these operations and others like them were either illegal or morally dubious. If it is permissible to individually target a uniformed enemy officer, such as Admiral Yamamoto in World War II, it is surely legitimate to do the same to the leader of a terrorist organization. Indeed, it would be perverse if terrorist leaders enjoyed greater protection against targeting than uniformed military officers. Unlike the latter, terrorists do not even pretend to obey the laws of war. And they deliberately endanger civilians by choosing not to wear distinctive uniforms. To give terrorists greater protection against targeted killing than that enjoyed by uniformed military personnel would in effect reward and incentivize illegal behavior that endangers innocent civilians by making it harder to distinguish them from combatants. In some ways, individual targeting of terrorist leaders is actually more defensible than mass targeting of their underlings. Leaders usually bear greater moral and legal responsibility for the activities of their groups than do low-level members. And, at least in some cases, individual targeting of leaders is less likely to inflict collateral damage on civilians than conventional attacks on groups. This analysis does not change if the enemy leader happens to be an American citizen. Surely the targeting of Admiral Yamamoto would not have become illegal or immoral if he had acquired dual US citizenship while living in the United States during the 1920s. As Justice Sandra Day O’Connor noted in her majority opinion for the Supreme Court in Hamdi v. Rumsfeld, “[a] citizen, no less than an alien, can be part of or supporting forces hostile to the United States or coalition partners and engaged in an armed conflict against the United States.”5 Benjamin Wittes of the Brookings Institution correctly points out that “Americans have fought in foreign armies against their country in numerous armed conflicts in the past, and their citizenship has never relieved them of the risks of that belligerency.”6 Most obviously, nearly all the combatants arrayed against US forces in the Civil War were American citizens. Yet that did not prevent the Union Army from targeting them with lethal force or make it illegal to do so. Giving American citizens who join terrorist organizations blanket immunity from individual targeting is also problematic because it would increase terrorists’ incentives to recruit Americans. Obviously, a terrorist leader who is immune from individually targeted attack can be more effective than one who is not. There is also no reason to believe that the use of drones for such targeting raises any greater moral or legal problems than the use of conventional weapons such as air strikes, attacks by ground forces, or artillery. Drones can, of course, be used in ways that are illegal, unethical, or unwise. For example, they could be used to deliberately target civilians. But the same is true of virtually every other weapon of war. Given the existence of a state of war, I believe that the Obama administration was correct to conclude in its recently released White Paper that it is legal for the government to target US citizens who are “senior operational leader[s] of al-Qa’ida or an associated force.”7 Some critics of the Administration White Paper focus on the possible weaknesses of the memo’s three additional requirements for the targeted killing of a US citizen: that “(1) an informed, high-level official of the US government has determined that the targeted individual poses an imminent threat of violent attack against the United States, (2) capture is infeasible and the United States continues to monitor whether capture becomes feasible, and (3) the operation would be conducted in a manner consistent with applicable law of war principles.”8 Law Professor Gerard Magliocca, for example, argues that “[t]he White Paper says that a citizen is eligible for death-by-drone when ‘an informed, high-level, official of the U.S. government has determined that the targeted individual poses an imminent threat of violent attack against the United States.’ In my opinion, this threshold is too low.”9 But the “imminent threat” test applies only to people located outside the United States who are “senior operational leaders of al-Qa’ida or an associated force,” not to just anyone who “an informed...official” believes to be a threat.10 In other words, the requirements that the target pose an “imminent threat” and cannot be captured are in addition to the requirement that he be a senior leader of Al Qaeda or one of its “associated forces.” Once this key point is recognized, many of the objections to the memo are weakened. Indeed, a senior al Qaeda leader likely qualifies as a legitimate target even if he does not pose an “imminent threat.” It was surely permissible to target Admiral Yamamoto even if the US did not have any proof that he was planning “imminent” military operations against US forces. The fact that he was a top enemy commander in an ongoing war was enough. Here as elsewhere, there is no good reason to give terrorist leaders greater immunity from attack than that enjoyed by uniformed military officers. Even when the use of targeted killing is both legal and moral, it is not always prudent and wise. In, many cases, it might be desirable to refrain from otherwise unproblematic strikes in order to avoid antagonizing civilian populations in the relevant region, or for other strategic reasons. Such considerations are extremely important, but probably best left to those with greater expertise on the relevant issues than I possess. I note them here only to emphasize that I do not claim that the US government should indiscriminately resort to the use of targeted killing in every instance where it might be legally permissible to do so. To the contrary, a prudent government should exercise great caution in ordering such operations. II. THE TARGETING DILEMMA. Although the targeting of genuine al Qaeda leaders is legally and morally unproblematic, the administration’s policy of targeted killing still raises serious questions. The key issue is whether we are following rigorous enough procedures to ensure that the people targeted by drone strikes really are members of terrorist organizations at war with the United States. A. Choosing Targets. Unfortunately, identifying al Qaeda leaders is a far more difficult task than identifying enemy officers in a conventional war. Precisely because terrorists do not wear uniforms and often do not have a clear command structure, it is easy to make mistakes. And where US citizens are involved, there is the danger that the government will target someone merely because that person is a political enemy of the current administration. Even if officials are acting entirely in good faith, there is still a serious risk that innocent people will be targeted in error. The DOJ White Paper does not even consider the question of how we decide whether a potential target really is a terrorist leader or not. But that is the most difficult and dangerous issue that must be considered. The problem is not an easy one. On the one hand, war cannot wait on elaborate judicial processes. And we usually cannot give a potential target an opportunity to contest his designation in court without tipping him off. On the other hand, it is both dangerous and legally problematic to give the president and his subordinates unconstrained power to designate American citizens as “terrorist leaders” and then target them at will. A drone strike aimed at American citizen without adequate evidence showing that he or she is a terrorist combatant raises serious constitutional problems. In particular, it is likely to violate the Due Process Clause of the Fifth Amendment, which forbids government deprivation of “life, liberty, or property without due process of law.”11 Legal scholars and jurists have spilled many barrels of ink debating the exact meaning of these words. But at the very least, they surely prevent the executive from unilaterally ordering the death of American citizen without at least some substantial proof that he is an enemy combatant, and perhaps an independent judicial determination thereof.12 As the Supreme Court has recognized, the Bill of Rights protects American citizens overseas, as well as domestically.13 Whether non-citizens are also entitled to the protection of the Due Process Clause when targeted beyond the boundaries of the United States is more disputable. Even though the text of the Amendment extends to all “persons,” some historical evidence suggests that the Due Process Clause was originally understood as not applying to foreigners outside US jurisdiction.14 The risk of either inadvertent or deliberate targeting of innocent people is heightened by the growing scale of targeted killing over the last several years. According to leading counterterrorism expert Peter Bergen, the Obama Administration conducted 283 drone strikes in Pakistan alone between 2009 and late 2012, more than six times as many as in the years of the George W. Bush administration.15 These strikes go well beyond targeting “senior” terrorists. Indeed, only 13% of them succeeded in killing a terrorist or “militant” leader.16 A recent analysis of government documents obtained by McClatchy Newspapers suggests that the vast majority of drone strikes under the Obama administration have been aimed at low-level al Qaeda and Taliban members.17 During a 12 month period ending in September 2011, McClatchy estimates that drone strikes in Pakistan killed some 482 people, of which only 8 were “senior al Qaida leaders” and 265 were low-level “militants.”18 Low- level terrorists and their allies are still legitimate targets. But the extension of the targeted killing program to cover such minor figures necessarily heightens the risk of error and abuse. A related challenge is the extension of targeted killings to cover radical Islamist groups that have few or no ties to al Qaeda or the Taliban. The AUMF only authorizes military action against “those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons.”19As Harvard Law School Professor and former head of the Office of Legal Counsel Jack Goldsmith points out, the AUMF “is a tenuous foundation for military action against newly threatening Islamist terrorist groups … that have ever-dimmer links to the rump al-Qaeda organization.”20 The difficulty of determining which groups are closely enough affiliated with al Qaeda to be covered by the AUMF also heightens the danger of error and abuse in target selection. In this testimony, I do not address the special issues raised by the potential use of targeted killings on American soil. But I agree with Attorney General Eric Holder’s recent statement indicating that the president does not “have the authority to use a weaponized drone to kill an American not engaged in combat on American soil.”21 B. Possible Institutional Safeguards. One partial solution to the problem of target selection would be to require officials to get advance authorization for targeting a United States citizen from a specialized court, similar to the FISA Court, which authorizes intelligence surveillance warrants for spying on suspected foreign agents in the United States. The specialized court could act faster than ordinary courts do and without warning the potential target, yet still serve as a check on unilateral executive power. In the present conflict, there are relatively few terrorist leaders who are American citizens. Given that reality, we might even be able to have more extensive judicial process than exists under FISA. Professor Amos Guiora of the University of Utah, a leading expert on legal regulation of counterterrorism operations with extensive experience in the Israeli military, has developed a proposal for a FISA-like oversight court that deserves serious consideration by this subcommittee, and Congress more generally.22 The idea of a drone strike oversight court has also been endorsed by former Secretary of Defense Robert Gates, who served in that position in both the Obama and George W. Bush administrations. Gates emphasizes that “some check 7 on the president’s ability to do this has merit as we look to the long-term future,” so that the president would not have the unilateral power of “being able to execute” an American citizen.23 We might even consider developing a system of judicial approval for targeted strikes aimed at non-citizens. The latter process might have to be more streamlined than that for citizens, given the larger number of targets it would have to consider. But it is possible that it could act quickly enough to avoid compromising operations, while simultaneously acting as a check on abusive or reckless targeting. However, the issue of judicial review for strikes against non-citizens is necessarily more difficult than a court that only covers relatively rare cases directed at Americans. Alternatively, one can envision some kind of more extensive due process within the executive branch itself, as advocated by Neal Katyal of the Georgetown University Law Center.24 But any internal executive process has the flaw that it could always be overriden by the president, and possibly other high-ranking executive branch officials. Moreover, lower-level executive officials might be reluctant to veto drone strikes supported by their superiors, either out of careerist concerns,

or because administration officials are naturally likely to share the ideological and policy priorities of the president. An external check on targeting reduces such risks. External review might also enhance the credibility of the target-selection process with informed opinion both in the United States and abroad. Whether targeting decisions are made with or without judicial oversight, there is also an important question of burdens of proof. How much evidence is enough to justify classifying you or me as a senior Al Qaeda leader? The administration memo does not address that crucial question either. Obviously, it is unrealistic to hold military operations to the standards of proof normally required in civilian criminal prosecutions. But at the same time, we should be wary of giving the president unfettered power to order the killing of citizens simply based on his assertion that they pose a threat. Amos Guiora suggests that an oversight court should evaluate proposed strikes under a “strict scrutiny standard” that ensures that strikes are only ordered based on intelligence that is “reliable, material and probative.”25 It is difficult for me to say whether this standard of proof is the best available option. But the issue is a crucial one that deserves further consideration. Ideally, we need a standard of proof rigorous enough to minimize reckless or abusive use of targeted killing, but not so high as to preclude its legitimate use. Neither judicial review nor any other oversight system can completely eliminate all errors from the system. Given the limitations of intelligence and the fallibility of human decision-makers, some mistakes are probably inevitable. The only way avoid all error is to ban targeted killing entirely. But that approach might actually lead to greater loss of innocent life overall, by making it more difficult to combat terrorism and by incentivizing policymakers to use military tactics that often cause greater loss of life than targeted drone strikes. What we can hope to achieve is an oversight system that greatly diminishes the risk of serious abuse: targeted killings that are undertaken recklessly or - worse still – for the deliberate purpose of eliminating people who do not pose any genuine threat, but are merely attacked because they are critics of the government, or otherwise attracted the wrath of policymakers. Overall, we should seek to establish procedural safeguards that provide a check on executive discretion without miring the process in prolonged litigation that makes it impossible to conduct operations in “real time.” We cannot achieve anything approaching perfection. But it is reasonable to hope that we can improve on the status quo. Judicial oversight can help ensure that we are targeting the right individuals. But courts are less likely to be effective in addressing the problem of defining the range of groups that we are at war with. Our enemies probably are not limited to individuals formally affiliated with al Qaeda, since that organization has a variety of allies that support it. But the AUMF is not broad enough to cover all radical Islamist groups everywhere, nor is it desirable that we wage war against all of them. Ultimately, only Congress can properly clarify the scope of the conflict we are engaged in. Like many commentators and legal scholars across the political spectrum, I hope that Congress enacts a framework statute defining the scope of the War on Terror, and regulating the use of targeted killing, including appropriate procedural safeguards. So far, however, it has not chosen to do. It may take a highly visible disaster such as the deliberate or clearly reckless targeting of an obviously innocent person, to stimulate appropriate legislative action. At that point, it may be too late to reverse either the resulting harm to innocent people or the damage to the public image and foreign policy interests of the United States. But I very much hope that such a conjecture is unduly pessimistic.

#### Ex ante review key to improve targeting and legitimize the program

McKelvey, 11 [Benjamin, JD Candidate, Senior Editorial Board, Vanderbilt Journal of Transnational Law, “Due Process Rights and the Targeted Killing of Suspected Terrorists: The Unconstitutional Scope of Executive Killing Power,” Vanderbilt Journal of Transnational Law, November, 44 VAND. J. TRANSNAT'L L. 1353, <http://www.vanderbilt.edu/jotl/2012/06/due-process-rights-and-the-targeted-killing-of-suspected-terrorists-the-unconstitutional-scope-of-executive-killing-power/>]

A. Option One: Congress Could Pass Legislation to Establish Screening and Oversight of Targeted Killing As the Aulaqi case demonstrates, any resolution to the problem of targeted killing would require a delicate balance between due process protections and executive power.204 In order to accomplish this delicate balance, Congress can pass legislation modeled on the Foreign Intelligence Surveillance Act (FISA) that establishes a federal court with jurisdiction over targeted killing orders, similar to the wiretapping court established by FISA.205 There are several advantages to a legislative solution. First, FISA provides a working model for the judicial oversight of real-time intelligence and national security decisions that have the potential to violate civil liberties.206 FISA also effectively balances the legitimate but competing claims at issue in Aulaqi: the sensitive nature of classified intelligence and national security decisions versus the civil liberties protections of the Constitution.207 A legislative solution can provide judicial enforcement of due process while also respecting the seriousness and sensitivity of executive counterterrorism duties.208 In this way, congress can alleviate fears over the abuse of targeted killing without interfering with executive duties and authority. Perhaps most importantly, a legislative solution would provide the branches of government and the American public with a clear articulation of the law of targeted killing.209 The court in Aulaqi began its opinion by explaining that the existence of a targeted killing program is no more than media speculation, as the government has neither confirmed nor denied the existence of the program.210 Congress can acknowledge targeted killing in the light of day while ensuring that it is only used against Americans out of absolutenecessity.211 Independent oversight would promote the use of all peaceful measures before lethal force is pursued.212 i. FISA as an Applicable Model FISA is an existing legislative model that is applicable both in substance and structure.213 FISA was passed to resolve concerns over civil liberties in the context of executive counterintelligence.214 It is therefore a legislative response to a set of issues analogous to the constitutional problems of targeted killing.215 FISA also provides a structural model that could help solve the targeted killing dilemma.216 The FISA court is an example of a congressionally created federal court with special jurisdiction over a sensitive national security issue.217 Most importantly, FISA works. Over the years, the FISA court has proven itself capable of handling a large volume of warrant requests in a way that provides judicial screening without diminishing executive authority.218 Contrary to the DOJ’s claims in Aulaqi, the FISA court proves that independent judicial oversight is institutionally capable of managing real-time executive decisions that affect national security.219 The motivation for passing FISA makes this an obvious choice for a legislative model to address targeted killing. With FISA, Congress established independent safeguards and a form of oversight in response to President Nixon’s abusive wiretapping practices.220 The constitutional concern in FISA involved the violation of Fourth Amendment privacy protections by excessive, unregulated executivepower.221 Similarly, the current state of targeted killing law allows for executive infringement on Fifth Amendment due process rights. Although there is no evidence of abusive or negligent practices of targeted killing, the main purpose of congressional intervention is to ensure that targeted killing is conducted only in lawful circumstances after a demonstration of sufficient evidence. Finally, a FISA-style court is a potentially effective possibility because it would provide ex ante review of targeted killing orders, and the pre-killing stage is the only stage during which judicial review would be meaningful.222 In the context of targeted killing, due process is not effective after the decision to deprive an American of life has already been carried out. Pre-screening targeted killing orders is a critical component of judicial oversight. Currently, this screening is conducted by a team of attorneys at the CIA.223 Despite assurances that review of the evidence against potential targets is rigorous and careful, due process is best accomplished through independent judicial review.224 The FISA court provides a working model for judicial review of real-time requests related to national security.225 FISA also established the requisite level of probable cause for clandestine wiretapping and guidelines for the execution and lifetime of the warrant, whereas the legal standards used by the CIA’s attorneys are unknown.226 The only meaningful way to ensure that Americans are not wrongfully targeted with lethal force is to screen the evidence for the decision and to give ultimate authority to an impartial judge with no institutional connection to the CIA.

#### Executive lead role spurs mistrust and global opposition

Goldsmith, 13 [May 1st, Jack Goldsmith teaches at Harvard Law School and is a member of the Hoover Institution Task Force on National Security and Law. He is the author, most recently, of Power and Constraint, How Obama Undermined the War on Terror http://www.newrepublic.com/article/112964/obamas-secrecy-destroying-american-support-counterterrorism]

And so Barack Obama greatly expanded the secret war that George W. Bush began. In the fall of 2009, Obama approved a "long list" of new CIA paramilitary operation proposals, as well as CIA requests for more armed drones, more spies, and larger targeting areas in Pakistan. "The CIA gets what it wants," said the president, approving the CIA requests, and conveying what Mazzetti thinks was his first-term attitude toward the Agency. The Department of Defense also got most of what it wanted. Obama approved an initiative by General David Petraeus to expand "military spying activities throughout the Muslim world," and gave special operations forces "even broader authorities to run spying missions across the globe" than they possessed under the Bush administration. Mazzetti describes Obama's souped-up secret war as "the way of the knife," a reference to Obama counterterrorism czar (and now CIA director) John Brennan's claim that the administration had replaced the "hammer" of large deployments with the "scalpel" of secret pinpoint missions. Its most famous use was the Abbottabad raid to kill bin Laden. But its most enduring legacy is Obama's significant expansion of the CIA and JSOC drone-strike campaign against Al Qaeda and affiliates, especially in Pakistan and Yemen. In 2009, the Obama administration conducted more drone strikes in those countries than the Bush administration had done in the seven years after 9/11; and to date, it has conducted almost nine times more drone strikes there than its predecessor. The administration's most controversial drone strike came against an American citizen, Anwar al-Awlaki, a leader of Al Qaeda in the Arabian Peninsula, the Yemeni organization responsible for the failed Detroit "underwear bomb" attack on Christmas in 2009 and other attempted attacks against the United States. Government lawyers gave the green light to kill al-Awlaki in 2010, but the administration had no idea where in Yemen he was. By 2011, the CIA and JSOC both had spies on the ground in Yemen and were "running two distinct drone wars," with different targeting lists, from bases in Saudi Arabia (for the CIA) and Ethiopia and Djibouti (for JSOC). In the fall of 2011, in part because of prior JSOC targeting mistakes and in part because of the CIA's extraordinary successes in Pakistan, Obama tasked the CIA alone with finding and killing al-Awlaki. On September 30, a CIA Reaper drone fired on a convoy near the Saudi Arabian desert and completed the mission. At the end of president Obama's first term, Mazzetti remarks, Americans seemed "little concerned about their government's escalation of clandestine warfare." By that point Obama's way of the knife had both decimated the senior leadership of Al Qaeda and reversed the Republicans' traditional advantage on national security. "Ask Osama bin Laden and the 22 out of 30 top Al Qaeda leaders who have been taken off the field whether I engage in appeasement," said the boastful president in December 2011, flicking away Republican charges that he was soft on terrorism. "Or whoever is left out there, ask them about that," he added. But in the last few months the Obama administration's secret war—and especially its drone program—have come under attack on multiple fronts. In 2011, The Washington Post reported the CIA's counterterrorism chief bragging of his Al Qaeda strikes that "we are killing these sons of bitches faster than they can grow them now." It is unclear whether this statement is true today. The core Al Qaeda organization appears debilitated. But its affiliate organizations are operating in Somalia, Yemen, and Iraq. And powerful new affiliates appear to be springing up elsewhere, including Al Qaeda in the Islamic Maghreb in post-Qaddafi North Africa, and the Al Nusra Front in revolutionary Syria. Secrecy is the essence of the type of war that Obama has chosen to fight. In this light, questions about the strategic success of Obama's drone campaign, and his secret war more generally, are growing. "We cannot kill our way to victory," former Congresswoman Jane Harman, who was a member of the House Intelligence Committee, testified in a counterterrorism hearing last month. General Stanley McChrystal, who presided over JSOC from 2003 to 2008, made a similar point in a recent interview in Foreign Affairs. The "danger of special operating forces," he noted, is that "you get this sense that it is satisfying, it's clean, it's low risk, it's the cure for most ills." But history provides no example of "a covert fix that solved a complex problem," he continued, adding that a too-heavy reliance on drone strikes is also "problematic" because "it's not a strategy in itself; it's a short-term tactic." One reason McChrystal questions the strategic efficacy of heavy reliance on drones is that "inhabitants of that area and the world have significant problems watching Western forces, particularly Americans, conduct drone strikes inside the terrain of another country." Last summer, Pew Research reported "considerable opposition" in "nearly all countries," and especially in predominantly Muslim countries, to Obama's drone program. It also found that Lebanon, Egypt, Jordan, and Pakistan now had a less favorable attitude toward the United States than at the end of the Bush administration. And a Gallup poll in February found that 92 percent of the people in Pakistan disapprove of the American leadership and 4 percent approve—historically bad numbers for the United States that are largely attributable to the way of the knife. These are discouraging numbers for a president who hoped to diminish the terrorism threat by establishing "a new beginning between the United States and Muslims ... based upon mutual interest and mutual respect," as Obama said in Cairo in 2009. The president added in that speech that the United States during the Bush era had acted "contrary to our ideals," and he pledged to "change course." But as the polls abroad show, Obama's change of course has not made the world think better of American ideals. Ben Emmerson, a United Nations special rapporteur on counter-terrorism and human rights, recently suggested that some American drone attacks might be war crimes. Since he launched an investigation in January, he has noted that most nations "heavily disput[e]" the legal theory underlying Obama's stealth wars, and concluded that American drone strikes violate Pakistan's sovereignty, contrary to international law. Most Americans are little interested in the popularity abroad of the way of the knife. To date, they very strongly support what they know about the president's drone campaign against foreign terrorist suspects. Support for targeting American citizens such as Anwar al-Awlaki, however, has dropped, and the focus on American citizens is affecting other elements of the way of the knife. In large part this has resulted from the administration's stilted explanations about the legal limits on killing Americans and the secret processes for placing American suspects on target lists. When a less-than-convincing Justice Department white paper on the topic leaked to the press in February, it stoked suspicions that the administration had big plans and something to hide. Questions grew when the administration continued to withhold legal memos from Congress, and when John Brennan danced around the issue during his confirmation hearings to be director of the CIA. Senator Rand Paul then cleverly asked Brennan whether the president could order a drone to kill a terrorist suspect inside the United States. When Brennan and Attorney General Eric Holder seemed to prevaricate, Paul conducted his now-famous filibuster. "I cannot sit at my desk quietly and let the president say that he will kill Americans on American soil who are not actively attacking the country," Paul proclaimed. The president never said, or suggested, any such thing. But with trust in Obama falling fast, Paul was remarkably successful in painting the secret wars abroad as a Constitution-defying threat to American citizens at home. Paul's filibuster attracted attention to the issue of drone attacks on Americans in the homeland. A more serious challenge to the president comes from growing concerns, including within his own party, about the legal integrity of his secret wars abroad. Anne-Marie Slaughter, a former senior official in Obama's State Department, recently gainsaid "the idea that this president would leave office having dramatically expanded the use of drones—including [against] American citizens—without any public standards and no checks and balances." Many in Congress want to increase the transparency of the processes and legal standards for placing a suspect (especially an American) on a targeting list, to tighten those legal standards (perhaps by recourse to a "drone court"), and to establish a more open accounting of the consequences (including civilian casualties) from the strikes. "This is now out in the public arena, and now it has to be addressed," Senator Dianne Feinstein, a Democrat, recently said. Others in Congress worry about the obsolescence of the legal foundation for the way of the knife: the congressional authorization, in 2001, of force against Al Qaeda. "I don't believe many, if any, of us believed when we voted for [the authorization] that we were voting for the longest war in the history of the United States and putting a stamp of approval on a war policy against terrorism that, 10 years plus later, we're still using," said Senator Richard Durbin, also a Democrat, in a Wall Street Journal interview. "What are the checks and balances of the system?" he asked. Senator John McCain, who led bipartisan efforts against what he saw as Bush-era legal excesses, is now focusing similar attention on Obama. "I believe that we need to revisit this whole issue of the use of drones, who uses them, whether the CIA should become their own air force, what the oversight is, [and] what the legal and political foundations [are] for this kind of conflict," he said last month. These are unhappy developments for the president who in his first inaugural address pledged with supercilious confidence that, unlike his predecessor, he would not expend the "rule of law" for "expedience's sake." Obama reportedly bristles at the legal and political questions about his secret war, and the lack of presidential trust that they imply. "This is not Dick Cheney we're talking about here," he recently pleaded to Democratic senators who complained about his administration's excessive secrecy on drones, according to Politico. And yet the president has ended up in this position because he committed the same sins that led Cheney and the administration in which he served to a similar place. The first sin is an extraordinary institutional secrecy that Obama has long promised to reduce but has failed to. In part this results from any White House's inevitable tendency to seek maximum protection for its institutional privileges and prerogatives. The administration's disappointing resistance to sharing secret legal opinions about the secret war with even a small subset of Congress falls into this category. Much of what the administrat-ion says about its secret war seems incomplete, self-serving, and ultimately non-credible. But the point goes deeper, for secrecy is the essence of the type of war that Obama has chosen to fight. The intelligence-gathering in foreign countries needed for successful drone strikes there cannot be conducted openly. Nor can lethal operations in foreign countries easily be acknowledged. Foreign leaders usually insist on non-acknowledgment as a condition of allowing American operations in their territories. And in any event, an official American confirmation of the operations might spark controversies in those countries that would render the operations infeasible. The impossible-to-deny bin Laden raid was a necessary exception to these principles, and the United States is still living with the fallout in Pakistan. For official secrecy abroad to work, the secrets must be kept at home as well. In speeches, interviews, and leaks, Obama's team has tried to explain why its operations abroad are lawful and prudent. But to comply with rules of classified information and covert action, the explanations are conveyed in limited, abstract, and often awkward terms. They usually raise more questions than they answer—and secrecy rules often preclude the administration from responding to follow-up questions, criticisms, and charges. As a result, much of what the administration says about its secret war—about civilian casualties, or the validity of its legal analysis, or the quality of its internal deliberations—seems incomplete, self-serving, and ultimately non-credible. These trust-destroying tendencies are exacerbated by its persistent resistance to transparency demands from Congress, from the press, and from organizations such as the aclu that have sought to know more about the way of the knife through Freedom of Information Act requests. A related sin is the Obama administration's surprising failure to secure formal congressional support. Nearly every element of Obama's secret war rests on laws—especially the congressional authorization of force (2001) and the covert action statute (1991)—designed for different tasks. The administration could have worked with Congress to update these laws, thereby forcing members of Congress to accept responsibility and take a stand, and putting the secret war on a firmer political and legal foundation. But doing so would have required extended political efforts, public argument, and the possibility that Congress might not give the president precisely what he wants. The administration that embraced the way of the knife in order to lower the political costs of counterterrorism abroad found it easier to avoid political costs at home as well. But this choice deprived it of the many benefits of public argumentation and congressional support. What Donald Rumsfeld said self-critically of Bush-era unilateralism applies to Obama's unilateralism as well: it fails to "take fully into account the broader picture—the complete set of strategic considerations of a president fighting a protracted, unprecedented and unfamiliar war for which he would need sustained domestic and international support." Instead of seeking contemporary congressional support, the administration has relied mostly on government lawyers' secret interpretive extensions of the old laws to authorize new operations against new enemies in more and more countries. The administration has great self-confidence in the quality of its stealth legal judgments. But as the Bush administration learned, secret legal interpretations are invariably more persuasive within the dark circle of executive branch secrecy than when exposed to public sunlight. On issues ranging from proper targeting standards, to the legality of killing American citizens, to what counts as an "imminent" attack warranting self-defensive measures, these secret legal interpretations—so reminiscent of the Bushian sin of unilateral legalism—have been less convincing in public, further contributing to presidential mistrust. Feeling the heat from these developments, President Obama promised in his recent State of the Union address "to engage with Congress to ensure not only that our targeting, detention, and prosecution of terrorists remains consistent with our laws and system of checks and balances, but that our efforts are even more transparent to the American people and to the world." So far, this promise, like similar previous ones, remains unfulfilled. The administration has floated the idea of "[shifting] the CIA's lethal targeting program to the Defense Department," as The Daily Beast reported last month. Among other potential virtues, this move might allow greater public transparency about the way of the knife to the extent that it would eliminate the covert action bar to public discussion. But JSOC's non-covert targeted killing program is no less secretive than the CIA's, and its congressional oversight is, if anything, less robust. A bigger problem with this proposed fix is that it contemplates executive branch reorganization followed, in a best-case scenario, by more executive branch speeches and testimony about what it is doing in its stealth war. The proposal fails to grapple altogether with the growing mistrust of the administration's oblique representations about secret war. The president cannot establish trust in the way of the knife through internal moves and more words. **Rather,** he must take advantage oftheseparation of powers. Military detention, military commissions, and warrantless surveillance became more legitimate and less controversial during the Bush era because **adversarial branches of government** assessed the president's policies before altering and then approving them. President Obama should ask Congress to do the same with the way of the knife, even if it means that secret war abroad is harder to conduct. Administration officials resist this route because they worry about the outcome of the public debate, and because the president is, as The Washington Post recently reported, "seen as reluctant to have the legislative expansion of another [war] added to his legacy." But the administration can influence the outcome of the debate only by engaging it. And as Mazzetti makes plain, the president's legacy already includes the dramatic and unprecedented unilateral expansion of secret war. What the president should be worried about for legacy purposes is that this form of warfare, for which he alone is today responsible, is increasingly viewed as illegitimate.

## 2ac

### Busby

#### World getting better

**Busby, 12** [Get Real Chicago IR guys out in force, Josh, Assistant Professor of Public Affairs and a fellow in the RGK Center for Philanthropy and Community Service as well as a Crook Distinguished Scholar at the Robert S. Strauss Center for International Security and Law. <http://duckofminerva.blogspot.com/2012/01/get-real-chicago-ir-guys-out-in-force.html>]

Is Unipolarity Peaceful? As evidence, Monteiro provides metrics of the number of years during which great powers have been at war. For the unipolar era since the end of the Cold War, the United States has been at war 13 of those 22 years or 59% (see his Table 2 below). Now, I've been following some of the discussion by and about Steven Pinker and Joshua Goldstein's [work](http://www.nytimes.com/2011/12/18/opinion/sunday/war-really-is-going-out-of-style.html?pagewanted=all) that suggests the world is becoming more peaceful with interstate wars and intrastate wars becoming more rare. I was struck by the graphic that Pinker used in a Wall Street Journal [piece](http://online.wsj.com/article/SB10001424053111904106704576583203589408180.html) back in September that drew on the Uppsala Conflict Data, which shows a steep decline in the number of deaths per 100,000 people. How do we square this account by Monteiro of a unipolar world that is not peaceful (with the U.S. at war during this period in Iraq twice, Afghanistan, Kosovo) and Pinker's account which suggests declining violence in the contemporary period? Where Pinker is focused on systemic outcomes, Monteiro's measure merely reflect years during which the great powers are at war. Under unipolarity, there is only one great power so the measure is partial and not systemic. However, Monteiro's theory aims to be systemic rather than partial. In critiquing Wohlforth's early work on unipolarity stability, Monteiro notes: Wohlforth’s argument does not exclude all kinds of war. Although power preponderance allows the unipole to manage conflicts globally, this argument is not meant to apply to relations between major and minor powers, or among the latter (17). So presumably, a more adequate test of the peacefulness or not of unipolarity (at least for Monteiro) is not the number of years the great power has been at war but whether the system as a whole is becoming more peaceful under unipolarity **compared** to previous eras, including wars between major and minor powers or wars between minor powers and whether the wars that do happen are as violent as the ones that came before. Now, as Ross Douthat pointed [out](http://douthat.blogs.nytimes.com/2011/10/17/steven-pinkers-history-of-violence/), Pinker's argument isn't based on a logic of benign hegemony. It could be that even if the present era is more peaceful, unipolarity has nothing to do with it. Moreover, Pinker may be wrong. Maybe the world isn't all that peaceful. I keep thinking about the places I don't want to go to anymore because they are violent (Mexico, Honduras, El Salvador, Nigeria, Pakistan, etc.) As Tyler Cowen [noted](http://marginalrevolution.com/marginalrevolution/2011/10/steven-pinker-on-violence.html), the measure Pinker uses to suggest violence is a per capita one, which doesn't get at the absolute level of violence perpetrated in an era of a greater world population. But, if my read of other [reports](http://www.hsrgroup.org/human-security-reports/20092010/graphs-and-tables.aspx) based on Uppsala data is right**,** war is becoming more rare and less deadly (though later [data](http://www.pcr.uu.se/research/ucdp/charts_and_graphs/) suggests lower level armed conflict may be increasing again since the mid-2000s). The apparent violence of the contemporary era may be something of a presentist bias and reflect our own lived experience and the ubiquity of news media .Even if the U.S. has been at war for the better part of unipolarity, the deadliness is declining, even compared with Vietnam, let alone World War II. Does Unipolarity Drive Conflict? So, I kind of took issue with the Monteiro's premise that unipolarity is not peaceful. What about his argument that unipolarity drives conflict? Monteiro suggests that the unipole has three available strategies - defensive dominance, offensive dominance and disengagement - though is less likely to use the third. Like Rosato and Schuessler, Monteiro suggests because other states cannot trust the intentions of other states, namely the unipole, that minor states won't merely bandwagon with the unipole. Some "recalcitrant" minor powers will attempt to see what they can get away with and try to build up their capabilities. As an aside, in Rosato and Schuessler world, unless these are located in strategically important areas (i.e. places where there is oil), then the unipole (the United States) should disengage. In Monteiro's world, disengagement would inexorably lead to instability and draw in the U.S. again (though I'm not sure this necessarily follows), but neither defensive or offensive dominance offer much possibility for peace either since it is U.S. power in and of itself that makes other states insecure, even though they can't balance against it.

### 2ac role of the ballot

#### Debate is unique because it forces active participation in real world controversies – rejoining the 1ac’s normative advocacy is vital to activate that potential --- you clearly could have impact turned the AFF, hegemony bad, drones bad,

Ellis, et al, 09 [Richard, LOL that’s my Debate partner, but actually…. Ph.D. University of California, Berkeley, degree completed December 1989, M.A. University of California, Berkeley, Political Science, 1984, B.A. University of California, Santa Cruz, Politics, 1982, Debating the Presidency: Conflicting Perspectives on the American Executive, p. google books,]

In 1969 the political scientist Aaron Wildavsky published a hefty reader on the American presidency. He prefaced it with the observation that “the presidency is the most important political institution in American life” and then noted the paradox that an institution of such overwhelming importance had been studied so little. “The eminence of the institution,” Wildavsky wrote, “is matched only by the extraordinary neglect shown to it by political scientists. Compared to the hordes of researchers who regularly descend on Congress, local communities, and the most remote foreign principalities, there is an extraordinary dearth of students of the presidency, although scholars ritually swear that the presidency is where the action is before they go somewhere else to do their research.”1 Political scientists have come a long way since 1969. The presidency remains as central to national life as it was then, and perhaps even more so. The state of scholarly research on the presidency today is unrecognizable compared with what it was forty years ago. A rich array of new studies has reshaped our understanding of presidential history, presidential character, the executive office, and the presidency’s relationship with the public, interest groups, parties, Congress, and the executive branch. Neglect is no longer a problem in the study of the presidency. In addition, those who teach about the presidency no longer lack for good textbooks on the subject. A number of terrific books explain how the office has developed and how it works. Although students gain a great deal from reading these texts, even the best of them can inadvertently **promote a passive learning experience.** Textbooks convey what political scientists know, but the balance and impartiality that mark a good text can **obscure the contentious nature** of the scholarly enterprise. Sharp disagreements **are often smoothed over** in the writing. The primary purpose of Debating the Presidency **is to allow students to** participate **directly in the ongoing real-world controversies swirling around the presidency and to judge for themselves which side is right.** It is premised philosophically on our view of students as active learners to be engaged rather than as passive receptacles to be filled. The book is designed to promote a classroom experience in which students debate and discuss issues rather than simply listen to lectures. Some issues, of course, lend themselves more readily to this kind of classroom debate. In our judgment, questions of a normative nature —**asking** not just what is, **but what ought to be**—are likely to foster the most interesting and engaging classroom discussions. So in selecting topics for debate, we generally eschewed narrow but important empirical questions of political science—such as whether the president receives greater support from Congress on foreign policy than on domestic issues—for broader questions that include empirical as well as normative components—such as **whether the president has usurped the war power** that rightfully belongs to Congress. We aim not only to teach students to think like political scientists, **but also to encourage them to think like democratic citizens**. Each of the thirteen issues selected for debate in this book’s second edition poses questions on which thoughtful people differ. These include whether the president should be elected directly by the people, whether the media are too hard on presidents, and whether the president has too much power in the selection of judges. Scholars are trained to see both sides of an argument, but we invited our contributors to choose one side and defend it vigorously. Rather than provide balanced scholarly essays impartially presenting the strengths and weaknesses of each position, Debating the Presidency leaves the balancing and weighing of arguments and evidence to the reader. The essays contained in the first edition of this book were written near the end of President George W. Bush’s fifth year in office; this second edition was assembled during and after Barack Obama’s first loo days as president. The new edition includes four new debate resolutions that should spark spirited classroom discussion about the legitimacy of signing statements, the war on terror, the role of the vice presidency, and the Twenty-second Amendment. Nine debate resolutions have been retained from the first edition and, wherever appropriate, the essays have been revised to reflect recent scholarship or events. For this edition we welcome David Karol, Tom Cronin, John Yoo, Lou Fisher, Peter Shane, Nelson Lund, Doug Kriner, and Joel Goldstein, as well as Fred Greenstein, who joins the debate with Stephen Skowronek over the importance of individual attributes in accounting for presidential success. In deciding which debate resolutions to retain from the first edition and which ones to add, we were greatly assisted by advice we received from many professors who adopted the first edition of this book. Particularly helpful were the reviewers commissioned by CQ Press: Craig Goodman of Texas Tech University, Delbert J. Ringquist of Central Michigan University, Brooks D. Simpson of Arizona State University, and Ronald W. Vardy of the University of Houston. We are also deeply grateful to chief acquisitions editor Charisse Kiino for her continuing encouragement and guidance in developing this volume. Among the others who helped make the project a success were editorial assistants Jason McMann and Christina Mueller, copy editor Mary Marik, and the book’s production editor, Gwenda Larsen. Our deepest thanks go to the contributors, not just for their essays, but also for their excellent scholarship on the presidency.

#### Any other role of the ballot is a fantasy that confines their method to a forum where it can’t accomplish anything

Gunnell, 86 - Distinguished Professor of Political Science at University of Albany (John G., “Tradition, Interpretation, and Science: Political Theory in the American Academy” pages 351-352)

There may be pointed exceptions; but, on the whole, the radicalism of political theory in the American university is now distinctly academic in both senses of that term. This is due in part to some definite historical factors internal to the evolution of the social sciences in the United States. There is a great distance between the radical activist origins of social science in America (during the twenty years from 1865 to 1885) and contemporary claims about radical social science and critical political theory. What has intervened is academic professionalism. Radical or critical political theory is an idea, largely something that is talked about rather than practiced. It is an academic fantasy and a faint memory which long ago severed any real connection with the objects in their concern. Only a strange academic pretension produces the notion that finding the right philosophical grounding can make academic political theory into something more than it is. Only another pretension implies that depth of concern or other emotive attributes can make this academic practice, as either scholarly production or classroom education, a form of political action or some equivalent to it. Secured (or imprisoned) within structures of the university and profession, self-ascribed academic radicals posture like actors on a stage. They only descend into the audience within the limits of certain avante-garde productions that would never, in the end, endanger their status as actors or propel the audience beyond the role of spectators. But even the audience consists primarily of other actors. Caught up in this academic theater, they come to believe after a while that the play is the most real thing, that acting is a more noble and efficacious endeavor than the actual practices of life, and that its purity must be maintained. In large measure, of course, this is rhetoric, but not the rhetoric of the street. Political myth is one thing, but mythical politics is another. While these actors have visions of the world which they wish to reproduce, they have long since lost touch with the concrete character of society, and their world is the product of a script written by others. Maybe the greatest irony is that, while their performances are dedicated to changing the world, they seldom address the specific world in which they reside. They are content to play in a theater whose management and financing is microcosm of the world which they wish to transform, but their vision is too prodigious to be directed toward such small objects. They may complain in passing about the way the players are hired and fired and about the lack of democracy in the company, but they are on the road too frequently to get involved deeply. And, after all, it is their sinecure as permanent members of the troupe that allows them to display their grand gestures without fear of contamination or reprisal. There are some, usually the more conservative players, who also think that society is a seamless web and that theater changes the world, and they become upset at stage histrionics which mock and criticize life. But much paranoia is surpassed only by the blind faith of those who believe that their performances transform the lives of those with whom they come into contact and that the theater is surely so much a part of life that any real distinction is forced and analytic. It is difficult to know how many have a real passion for the life which they represent on stage or the extent to which their drama is a surrogate for what the world denies them or what they have denied themselves. Probably, many are just actors with feigned and rehearsed concern which they have acquired from their masters and coaches. For them, the play is the thing. For a few, however, these scenes are a vehicle for higher purpose. Sadly, society reserves the theater for their activity, putting them safely away where anything can be said, because everyone knows that it is just a play. Society knows that, in the end, the demands of the profession will keep most from mixing their art with life. Of the few who escape to seek recognition outside the theater, it is safe to assume that they are too inexperienced in the ways of the world to manipulate it and that the worst oppression is simply to ignore them. This fable is merely a way of making a long story short. But I do want to make it as clear as possible that the apoliticalness and conservatism ascribed to me is charged against a background of alienated and philosophical radicalism that seldom talks about actual practices, let alone to them. My concern with the open society, which Reid takes to reflect attachment to liberal ideology, simply comes from the observation that such a society effectively defuses radicalism. It does so particularly by reserving the university for radical talk, deprived or at least flattened of potential significance through pure tolerance. Reid wishes to pose the question of "the theorist's public responsibility," and this question should be posed. But my brief comments about the open society are less a way of legitimating the abdication of that responsibility than a way of indicating how it cannot be fulfilled in terms of alienated political theory. To couch diagnosis and prescription in this language is to continue to ensure impotence-both because it has no audience and because it obscures the world as much as the conceptual schemes of orthodox social science. It merely substitutes one reified structure for another.

### AT: Identitty

#### Forced refutation of someone else’s personal experience collapses the possibility of open and structured conversation – proves the 1ac is a DA to their method

SUBOTNIK 98 Professor of Law, Touro College, Jacob D. Fuchsberg Law Center. 7 Cornell J. L. & Pub. Pol'y 681

Having traced a major strand in the development of CRT, we turn now to the strands' effect on the relationships of CRATs with each other and with outsiders. As the foregoing material suggests, the central CRT message is not simply that minorities are being treated unfairly, or even that individuals out there are in pain - assertions for which there are data to serve as grist for the academic mill - but that the minority scholar himself or herself hurts and hurts badly. An important problem that concerns the very definition of the scholarly enterprise now comes into focus. What can an academic trained to [\*694] question and to doubt n72 possibly say to Patricia Williams when effectively she announces, "I hurt bad"? n73 "No, you don't hurt"? "You shouldn't hurt"? "Other people hurt too"? Or, most dangerously - and perhaps most tellingly - "What do you expect when you keep shooting yourself in the foot?" If the majority were perceived as having the well- being of minority groups in mind, these responses might be acceptable, even welcomed. And they might lead to real conversation. But, writes Williams, the failure by those "cushioned within the invisible privileges of race and power... to incorporate a sense of precarious connection as a part of our lives is... ultimately obliterating." n74 "Precarious." "Obliterating." These words will clearly invite responses only from fools and sociopaths; they will, by effectively precluding objection, disconcert and disunite others. "I hurt," in academic discourse, has three broad though interrelated effects. First, it demands priority from the reader's conscience. It is for this reason that law review editors, waiving usual standards, have privileged a long trail of undisciplined - even silly n75 - destructive and, above all, self-destructive arti cles. n76 Second, by emphasizing the emotional bond between those who hurt in a similar way, "I hurt" discourages fellow sufferers from abstracting themselves from their pain in order to gain perspective on their condition. n77 [\*696] Last, as we have seen, it precludes the possibility of open and structured conversation with others. n78 [\*697] It is because of this conversation-stopping effect of what they insensitively call "first-person agony stories" that Farber and Sherry deplore their use. "The norms of academic civility hamper readers from challenging the accuracy of the researcher's account; it would be rather difficult, for example, to criticize a law review article by questioning the author's emotional stability or veracity." n79 Perhaps, a better practice would be to put the scholar's experience on the table, along with other relevant material, but to subject that experience to the same level of scrutiny. If through the foregoing rhetorical strategies CRATs succeeded in limiting academic debate, why do they not have greater influence on public policy? Discouraging white legal scholars from entering the national conversation about race, n80 I suggest, has generated a kind of cynicism in white audiences which, in turn, has had precisely the reverse effect of that ostensibly desired by CRATs. It drives the American public to the right and ensures that anything CRT offers is reflexively rejected. In the absence of scholarly work by white males in the area of race, of course, it is difficult to be sure what reasons they would give for not having rallied behind CRT. Two things, however, are certain. First, the kinds of issues raised by Williams are too important in their implications [\*698] for American life to be confined to communities of color. If the lives of minorities are heavily constrained, if not fully defined, by the thoughts and actions of the majority elements in society, it would seem to be of great importance that white thinkers and doers participate in open discourse to bring about change. Second, given the lack of engagement of CRT by the community of legal scholars as a whole, the discourse that should be taking place at the highest scholarly levels has, by default, been displaced to faculty offices and, more generally, the streets and the airwaves.

#### our aff is offense against their role of the ballot – prevents the conversation from being steered towards communal outcomes like the aff

Levasseur, 01 [Assistant Professor of Communication Studies at West Chester University in West Chester, Pennsylvania. (David, Egocentric Argument and the Public Sphere: Citizen Deliberations on Public Policy and Policymakers, Rhetoric & Public Affairs 4.3 (2001) 407-43, Muse]

While the personal narratives from participants in the study certainly seemed to spark enthusiasm, such engagement came at a significant cost. As with other forms of egocentric argument, narratives that focus on the self are largely unable to steer the conversation towards more transcendent communal outcomes. A group discussion in Ohio reveals this characteristic of personal narratives. In this particular discussion, participants actively debated the issue of whether government should support labor unions: M1: I don't think the unions are going to be wiped out, first of all. And I'm not a proponent of unions. I'm basically anti-union, okay? . . . However, by the same token, unions have got to work the same way in being fair to companies, and I've seen situations where unions, because of some of the things they did, were a disgrace. Perry Power Plant--I know people who were told to go hide--I have nothing to do--go hide. That's WRONG! Okay, I've seen situations where a person, because he's in the union and he has this job classification, then he can't do anything else and he's sitting there for six and a half of his eight hours because he's only needed to do these two things, but he's got to be there because nobody else can do it because the unions state that you've got to have a person to do this and a person to do this and so on. M2: Well, that's his trade though. What do you do? M1: I'm an accountant but I do a lot of other things other than just accounting things. M2: Well, what if somebody came in and tried to take your job--take your livelihood? Something you've trained for, you're second, third generation of this particular . . . M1: Yeah, but I can't be allowed to sit around for six and a half hours out of the eight hours when I could be doing something else but I can't do it because . . . M2: No, that's not my point. [End Page 414] M1: Well, that's my point! If I could do something productive to help the company to help me to help the workers the other six and a half hours, but I'm not allowed to do that because that's not my job classification. Then I'm qualified, I can do it, but I'm not allowed. . . . M2: What about prevailing wage with unions? M1: What do you mean? M2: Well, usually non-union companies are--they gauge their pay scale to union companies with prevailing wage. So if one day, if the prevailing wage with union companies--if it falls and it's gone, then what do you think will happen to the rest of the wages? When the union prevailing wage is wiped out? In this discussion, participants actively debated the issue of whether government should support labor unions; however, they reached no mutual conclusions on the value of labor unions. Divergent opinions were shared, but no attempt at consensus building regarding the role of unions in the economy occurred. Consensus was difficult because when one focuses on self-experience, it is difficult to transcend those experiences. While the conversation raised a number of points on behalf of unions, the anti-union storyteller continued to return to his story. Habermas argues that the public sphere should constitute a discursive space where individuals "transcend the provinciality of their spatiotemporal contexts"--a space where citizens engage in "context transcending validity claims." 39 When citizens ground public policy discussions in personal narratives, they generally fail to transcend the limitations of their personal lives and move to a broader social outlook. It is also interesting to note that in this exchange about unions the personal narrative goes unchallenged. Rhetorical theorists have long recognized that narratives are susceptible to the charge of ungeneralizable evidence. For instance, Richard Whatley observed that one must take care in constructing arguments from examples, because examples are perceived as "exceptions to a general rule" and "will not prove the probability of the conclusion." 40 While such a perception may prove fatal in debates between experts in the technical sphere, they do not seem to have much impact in the deliberative practices of ordinary citizens. In the foregoing exchange, one participant recounted his personal experiences with union workers at the Perry Power Plant. He told the story of union workers who spent endless hours in idleness or in hiding. While one could certainly challenge the generalizability of such a story, the other group members did not offer such challenges. Instead, a pro-union participant shifted the ground of the debate to the alternative issue of "prevailing wage," where the discussion died. Perhaps such personal narratives are difficult to challenge because they establish expertise. Recent scholarly outcry suggests that experts have usurped the public [End Page 415] sphere. 41 Such lamentations are grounded in the fear that technical expertise undermines citizen deliberation by devaluing citizens' views. While this incursion by technical expertise did find its way into the group discussions (citizens citing outside "expert" sources), personally grounded expertise, such as the credibility established in the following exchange from a group in California, appeared far more often: M1: I think they should really look into the military spending. That is just amazing. I was in the military, and it's just a waste. People just rot in the military. It's just amazing how much unnecessary money is used in the military, and how many people that shouldn't have jobs are in the military. M2: That's the Republican job program. M3: I think you can say that about any government organization. In this exchange, a participant recounted his personal experience in the military. With the simple statement, "I was in the military," he established expertise in this realm of public affairs. Just as technical expertise quells discussion, personal expertise has similar effects. In this case, the assertion that "people rot in the military" went unchallenged, and the discussion of military spending quickly came to an end. Such personal credibility may also be less assailable than technical expertise because of its deeply personal nature. Arguments grounded in technical expertise can be challenged for their failure to satisfy certain argumentation standards within a specialized argument field. For instance, a social scientist's findings could be challenged based on a flaw in experimental design. Such a challenge takes issue with the findings; it does not fundamentally take issue with the individual. On the other hand, a challenge to one's lived experience is easily perceived as a challenge to one's life or to one's character. Such challenges can only suggest that one is disingenuous in his or her storytelling or that one's lived experience falls outside the norm. Such challenges seem out of place in a culture grounded in a liberal political tradition that suggests that one should not judge others. 42

### AT: DADT

#### Ignorance of strategic and tactical ends merely entrenches the status quo and denies other more progressive strategies – tactical disruptions are preferable to moral ones

Smith 2012 (Andrea, “The Moral Limits of the Law: Settler Colonialism and the Anti-Violence Movement” settler colonial studies 2, 2 (2012) Special Issue: Karangatia: Calling Out Gender and Sexuality in Settler Societies)

Aside from Derrick Bell, because racial and gender justice legal advocates are so invested in the morality of the law, there has not been sustained strategising on what other possible frameworks may be used. Bell provides some possibilities, but does not specifically engage alternative strategies in a sustained fashion. Thus, it may be helpful to look for new possibilities in an unexpected place, the work of anti-trust legal scholar Christopher Leslie. Again, the work of Leslie may seem quite remote from scholars and activists organizing against the logics of settler colonialism. But it may be the fact that Leslie is not directly engaging in social justice work that allows him to disinvest in the morality of the law in a manner which is often difficult for those who are directly engaged in social justice work to do. This disinvestment, I contend is critical for those who wish to dismantle settler colonialism to rethink their legal strategies. In ‘Trust, Distrust, and Anti-Trust’, Christopher Leslie explains that while the economic impact of cartels is incalculable, cartels are also unstable.18 Because cartel members cannot develop formal relationships with each other, they must develop partnerships based on informal trust mechanisms in order to overcome the famous ‘prisoners’ dilemma’. The prisoner’s dilemma, as described by Leslie, is one in which two prisoners are arrested and questioned separately with no opportunity for communication between them. There is enough evidence to convict both of minor crimes for a one year sentence but not enough for a more substantive sentence. The police offer both prisoners the following deal: if you confess and implicate your partner, and your partner does not confess, you will be set free and your partner will receive a ten-year sentence. If you confess, and he does as well, then you will both receive a five-year sentence. In this scenario, it becomes the rational choice for both to confess because if the first person does not confess and the second person does, the first person will receive a ten-year sentence. Ironically, however, while both will confess, it would have been in both of their interests not to confess. Similarly, Leslie argues, cartels face the prisoners’ dilemma. If all cartel members agree to fix a price, and abide by this price fixing, then all will benefit. However, individual cartel members are faced with the dilemma of whether or not they should join the cartel and then cheat by lowering prices. They fear that if they do not cheat, someone else will and drive them out of business. At the same time, by cheating, they disrupt the cartel that would have enabled them to all profit with higher prices. In addition, they face a second dilemma when faced with anti-trust legislation. Should they confess in exchange for immunity or take the chance that no one else will confess and implicate them? Cartel members can develop mechanisms to circumvent pressures. Such mechanisms include the development of personal relationships, frequent communication, goodwill gestures, etc. In the absence of trust, cartels may employ trust substitutes such as informal contracts and monitoring mechanisms. When these trust and trust substitute mechanisms break down, the cartel members will start to cheat, thus causing the cartel to disintegrate. Thus, Leslie proposes, anti-trust legislation should focus on laws that will strategically disrupt trust mechanisms. Unlike racial or gender justice advocates who focus on making moral statements through the law, Leslie proposes using the law for strategic ends, **even if the law makes a morally suspect statement.** For instance, in his article, ‘Anti-Trust Amnesty, Game Theory, and Cartel Stability’, Leslie critiques the federal Anti-Trust’s 1993 Corporate Lenience Policy that provided greater incentives for cartel partners to report on cartel activity. This policy provided ‘automatic’ amnesty for the first cartel member to confess, and decreasing leniency for subsequent confessors in the order to which they confessed. Leslie notes that this amnesty led to an increase of amnesty applications.19 However, Leslie notes that the effectiveness of this reform is hindered by the fact that the ringleader of the cartel is not eligible for amnesty. This policy seems morally sound. Why would we want the ringleader, the person who most profited from the cartel, to be eligible for amnesty? The problem, however, with attempting to make a moral statement through the law is that it is counter-productive if the goal is to actually break up cartels. If the ringleader is never eligible for amnesty, the ringleader becomes inherently trustworthy because he has no incentive to ever report on his partners. Through his inherent trustworthiness, the cartel can build its trust mechanisms. Thus, argues Leslie, the most effective way to destroy cartels is to render all members untrustworthy by granting all the possibility of immunity. While Leslie’s analysis is directed towards policy, it also suggests an alternative framework for pursuing social justice through the law, to employ it for its strategic effects rather than through the moral statements it purports to make. It is ironic that an anti-trust scholar such as Leslie displays less ‘trust’ in the law than do many anti-racist/anti-colonial activists and scholars who work through legal reform.20 It also indicates that it is possible to engage legal reform more strategically if one no longer trusts it. As Beth Richie notes, the anti-violence movement’s primary strategy for addressing gender violence was to articulate it as a crime.21 because it is presumed that the best way to address a social ill is to call it a ‘crime’, this strategy is then deemed the correct moral strategy. When this strategy backfires and does not end violence, and in many cases increases violence against women, it becomes difficult to argue against this strategy because it has been articulated in moral terms. If, however, we were to focus on legal reforms chosen for their strategic effects, it would be easier to change the strategy should our calculus of its strategic effects suggest so. **We would** also **be less complacent about the** legal **reforms we advocate** as has happened with most of the laws that have been passed on gender violence. Advocates presume that because they helped pass a ‘moral’ law, then their job is done. If, however, the criteria for legal reforms are their strategic effects, we would then be continually monitoring the operation of these laws to see if they were having the desired effects. For instance, since the primary reason women do not leave battering relationships is because they do not have another home to go, what if our legal strategies shifted from criminalising domestic violence to advocating affordable housing? While the shift from criminalisation may seem immoral, women are often removed from public housing under one strike laws in which they lose access to public housing if a ‘crime’ (including domestic violence) happens in their residence, whether or not they are the perpetrator. If our goal was actually to keep women safe, we might need to creatively rethink what legal reforms would actually increase safety.

### AT: Impact Calculus

#### 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.

### AT: James

#### Virilio is wrong

**Sokal and Bricmont 98** – \*Professor of Physics at NYU AND \*\*Belgian theoretical physicist, philosopher of science and a professor at the Université catholique de Louvain (December 1998, Alan and Jean, “Fashionable Nonsense: Postmodern Intellectuals' Abuse of Science”, Library of Congress Cataloging-in-Publication Data, pg. 169-170)

The writings of Paul Virilio revolve principally around the themes of technology, communication, and speed. They contain a plethora of references to physics, particularly the theory of relativity. Though Virilio's sentences are slightly more meaningful than those of Deleuze-Guattari, what is presented as "science" is a mixture of monumental confusions and wild fantasies. Furthermore, his analogies between physics and social questions are the most arbitrary imaginable, when he does not simply become intoxicated with his own words. We confess our sympathy with many of Virilio's political and social views; but the cause is not, alas, helped by his pseudo-physics. Let us start with a minor example of the astonishing erudition vaunted by Le Monde: Recent MEGALOPOLITAN hyperconcentration (Mexico City, Tokyo ... ) being itself the result of the increased speed of economic exchanges, it seems necessary to reconsider the importance of the notions of ACCELERATION and DECELERATION (what physicists call positive and negative velocities [vitesses positive et negative selon les physiciens]) ... (Virilio 1995, p. 24, capitals in the original 220) Here Virilio mixes up velocity (vitesse) and acceleration, the two basic concepts of kinematics (the description of motion), which are introduced and carefully distinguished at the beginning of every introductory physics course. 221 Perhaps this confusion isn't worth stressing; but for a purported specialist in the philosophy of speed, it is nonetheless a bit surprising.

#### Discourse doesn’t shape reality, it describes it

**Rodwell, 05** (Jonathan, PhD student at Manchester Met. researching U.S. Foreign Policy, 49th parallel, Spring, “Trendy but empty: A Response to Richard Jackson”,

http://www.49thparallel.bham.ac.uk/back/issue15/rodwell1.htm)

The larger problem is that without clear causal links between materially identifiable events and factors any assessment within the argument actually becomes nonsensical. Mirroring the early inability to criticise, if we have no traditional causational discussion how can we know what is happening? For example, Jackson details how the rhetoric of anti-terrorism and fear is obfuscating the real problems. It is proposed that the real world killers are not terrorism, but disease or illegal drugs or environmental issues. The problem is how do we know this? It seems we know this because there is evidence that illustrates as much – Jackson himself quoting to Dr David King who argued global warming is a greater that than terrorism. The only problem of course is that discourse analysis has established (as argued by Jackson) that King’s argument would just be self-contained discourse designed to naturalise another arguments for his own reasons. Ultimately it would be no more valid than the argument that excessive consumption of Sugar Puffs is the real global threat. It is worth repeating that I don’t personally believe global terrorism is the world’s primary threat, nor do I believe that Sugar Puffs are a global killer. But without the ability to identify real facts about the world we can simply say anything, or we can say nothing. This is clearly ridiculous and many post-structuralists can see this. Their argument is that there “are empirically more persuasive explanations.”[xi] The phrase ‘empirically persuasive’ is however the final undermining of post-structural discourse analysis. It is a seemingly fairly obvious reintroduction of traditional methodology and causal links. It implies things that can be seen to be right regardless of perspective or discourse. It again goes without saying that logically in this case if such an assessment is possible then undeniable material factors about the word are real and are knowable outside of any cultural definition. Language or culture then does not wholly constitute reality. How do we know in the end that the world not threatened by the onslaught of an oppressive and dangerous breakfast cereal? Because empirically persuasive evidence tells us this is the case. The question must then be asked, is our understanding of the world born of evidential assessment, or born of discourse analysis? Or perhaps it’s actually born of utilisation of many different possible explanations.

### Disch

#### We’re not the view from nowhere—the dichotomy they’re drawing makes them equally suspect—because it claims a privileged insight on reality

**DISCH ‘93** (Lisa J.; Professor of Political Theory – University of Minnesota, “More Truth Than Fact: Storytelling as Critical Understanding in the Writings of Hannah Arendt,” Political Theory 21:4, November)

What Hannah Arendt called “my old fashioned storytelling”7 is at once the most elusive and the most provocative aspect of her political philosophy. The apologies she sometimes made for it are well known, but few scholars have attempted to discern from these “scattered remarks” as statement of epistemology or method.8 Though Arendt alluded to its importance throughout her writings in comments like the one that prefaces this essay, this offhandedness left an important question about storytelling unanswered: how can thought that is “bound” to experience as its only “guidepost” possibly be critical? I discern an answer to this question in Arendt’s conception of storytelling, which implicitly redefines conventional understandings of objectivity and impartiality. Arendt failed to explain what she herself termed a “rather unusual approach”9 to political theory because she considered methodological discussions to be self-indulgent and irrelevant to real political problems.10 This reticence did her a disservice because by failing to explain how storytelling creates a vantage point that is both critical and experiential she left herself open to charges of subjectivism.11 As Richard Bernstein has argued, however, what makes Hannah Arendt distinctive is that she is neither a subjectivist nor a foundationalist but, rather, attempts to move “beyond objectivism and relativism.”12 I argue that Arendt’s apologies for her storytelling were disingenuous; she regarded it not as an anachronistic or nostalgic way of thinking but as an innovative approach to critical understanding. Arendt’s storytelling proposes an alternative to the model of impartiality defined as detached reasoning. In Arendt’s terms, impartiality involves telling oneself the story of an event or situation form the plurality of perspectives that constitute it as a public phenomenon. This critical vantage point, not from outside but from within a plurality of contesting standpoints, is what I term “situated impartiality.” Situated impartial knowledge is neither objective disinterested nor explicitly identified with a single particularistic interest. Consequently, its validity does not turn on what Donna Haraway calls the “god trick,” the claim to an omnipotent, disembodied vision that is capable of “seeing everything from nowhere.”13 But neither does it turn on a claim to insight premised on the experience of subjugation, which purportedly gives oppressed peoples a privileged understanding of structures of domination and exonerates them of using power to oppress. The two versions of standpoint claims – the privileged claim to disembodied vision and the embodied claim to “antiprivilege” from oppression – are equally suspect because they are simply antithetical. Both define knowledge positionally, in terms of proximity to power; they differ only in that they assign the privilege of “objective” understanding to opposite poles of the knowledge/power axis. Haraway argues that standpoint claims are insufficient as critical theory because they ignore the complex of social relations that mediate the connection between knowledge and power. She counters that any claim to knowledge, whether advanced by the oppressed or their oppressors, is partial. No one can justifiably lay claim to abstract truth, Haraway argues, but only to “embodied objectivity,” which she argues “means quite simply situated knowledges.”14 There is a connection between Arendt’s defense of storytelling and Haraway’s project, in that both define theory as a critical enterprise whose purpose is not to defend abstract principles or objective facts but to tell provocative stories that invite contestation form rival perspectives.15

#### Their argument elevates whiteness to an all-pervasive force that explains all oppression – that re-inscribes its inevitability---specific analysis of racism is crucial

Margaret L. Andersen 3, Professor of Sociology and Women's Studies and Vice Provost for Academic Affairs at the University of Delaware, 2003, “Whitewashing Race: A Critical Perspective on Whiteness,” in White Out: The Continuing Significance of Racism, ed Doane & Bonilla-Silva, p. 28

Conceptually, one of the major problems in the whiteness literature is the reification of whiteness as a concept, as an experience, and as an identity. This practice not only leads to conceptual obfuscation but also impedes the possibility for empirical analysis. In this literature, "whiteness" comes to mean just about everything associated with racial domination. As such, whiteness becomes a slippery and elusive concept. Whiteness is presented as any or all of the following: identity, self-understanding, social practices, group beliefs, ideology, and a system of domination. As one critic writes, "If historical actors are said to have behaved the way they did mainly because they were white, then there's little room left for more nuanced analysis of their motives and meanings" (Stowe 1996:77). And Alastair Bonnett points out that whiteness "emerges from this critique as an omnipresent and all-powerful historical force. Whiteness is seen to be responsible for the failure of socialism to develop in America, for racism, for the impoverishment of humanity. With the 'blame' comes a new kind of centering: Whiteness, and White people, are turned into the key agents of historical change, the shapers of contemporary America" (1996b:153). Despite noting that there is differentiation among whites and warning against using whiteness as a monolithic category, most of the literature still proceeds to do so, revealing a reductionist tendency. Even claiming to show its multiple forms, most writers essentialize and reify whiteness as something that directs most of Western history (Gallagher 2000). Hence while trying to "deconstruct” whiteness and see the ubiquitousness of whiteness, the literature at the same time reasserts and reinstates it (Stowe 1996:77). For example, Michael Eric Dyson suggests that whiteness is identity, ideology, and institution (Dyson, quoted in Chennault 1998:300). But if it is all these things, it becomes an analytically useless concept. Christine Clark and James O'Donnell write: "to reference it reifies it, to refrain from referencing it obscures the persistent, pervasive, and seemingly permanent reality of racism" (1999:2). Empirical investigation requires being able to identify and measure a concept— or at the very least to have a clear definition—but since whiteness has come to mean just about everything, it ends up meaning hardly anything.

## 1ar

### nayar

#### Exclusive emphasis on postmodern micro-politics misses the key sources of power --- only multi-faceted coalitional politics prevent degeneration into narcissism and defeat

Best and Kellner, 01 (Steven, Prof Philosophy, UT El Paso and Douglass, Philosophy Chair, Postmodern Politics and the Battle for the Future, Democracy and Nature: The International Journal of Inclusive Democracy, Vol. 7, No. 1)

The emphasis on local struggles and micropower, cultural politics which redefine the political, and attempts to develop political forms relevant to the problems and developments of the contemporary age is extremely valuable, but there are also certain limitations to the dominant forms of postmodern politics. While an emphasis on micropolitics and local struggles can be a healthy substitute for excessively utopian and ambitious political projects, one should not lose sight that **key sources** of political power and oppression are precisely the big targets aimed at by modern theory, including capital, the state, imperialism, and patriarchy. Taking on such major targets involves **coalitions and multi-front struggle**, often requiring a **politics of alliance** and solidarity that cuts across group identifications to mobilize sufficient power to struggle against, say, the evils of capitalism or the state. Thus, while today we need the expansion of localized cultural practices, they attain their real significance only within the struggle for the transformation of society as a whole. Without this systemic emphasis, cultural and identity politics remain confined to the margins of society and are in danger of degenerating into narcissism, hedonism, aestheticism, or personal therapy, where they **pose no danger and are immediately coopted** by the culture industries. In such cases, the political is merely the personal, and the original intentions of the 1960s goal to broaden the political field are inverted and perverted. Just as economic and political demands have their referent in subjectivity in everyday life, so these cultural and existential issues find their ultimate meaning in the demand for a new society and mode of production. Yet we would insist that it is not a question of micro vs macropolitics, as if it were an either/or proposition, but rather both dimensions are important for the struggles of the present and future.[15] Likewise, we would argue that we need to combine the most affirmative and negative perspectives, embodying Marcuse's declaration that critical social theory should be both more negative and utopian in reference to the status quo.[16] There are certainly many things to be depressed about is in the negative and cynical postmodernism of a Baudrillard, yet without a **positive political vision** merely citing the negative might lead to apathy and depression that only benefits the existing order. For a dialectical politics, however, positive vision of what could be is articulated in conjunction with critical analysis of what is in a multioptic perspective that focuses on the forces of domination as well as possibilities of emancipation. While postmodern politics and theory tend to polarize into either the extremely negative or excessively affirmative, key forms of postmodern literature have a more dialectical vision. Indeed, some of the more interesting forms of postmodern critique today are found in fictional genres such as cyberpunk and magical realism. Cyberpunk, a subgenre within science fiction, brings science fiction down to earth, focusing not on the intergalactic battles in the distant future, but the social problems facing people on earth in the present.[17] Cyberpunk writers such as Bruce Sterling and William Gibson offer an unflinching look at a grim social reality characterized by transnational capitalist domination, Social Darwinist cultural settings, radical environmental ruination, and the implosion of the body and technology, such that humans become more and more machine like and machines increasingly become like human beings. Yet cyberpunk novels foreground this nightmare world in order to warn us that it is an immanent possibility for the near future, in order to awaken readers to a critical reflection on technology and social control, and to offer hope for alternative uses of technology and modes of social life. Similarly, magical realism examines the wreckage of centuries of European colonialism, but also maintains a positive outlook, one that embraces the strength and creativity of the human spirit, social solidarity, and spiritual and political transcendence. Like cyberpunk novels, magical realism incorporate various aesthetic forms and conventions in an eclectic mixture that fuses postmodernism with social critique and models of resistance. But it is also a mistake, we believe, to ground one's politics in either modern or postmodern theory alone. Against one-sided positions, we advocate a version of reconstructive postmodernism that we call a politics of alliance and solidarity that builds on both modern and postmodern traditions. Unlike Laclau and Mouffe who believe that postmodern theory basically provides a basis for a new politics, and who tend to reject the Enlightenment per se, we believe that the Enlightenment continues to provide resources for political struggle today and are skeptical whether postmodern theory alone can provide sufficient assets for an emancipatory new politics. Yet the Enlightenment has its blindspots and dark sides (such as its relentless pursuit of the domination of nature, and naive belief in "progress," so we believe that aspects of the postmodern critique of Enlightenment are valid and force us to rethink and reconstruct Enlightenment philosophy for the present age. And while we agree with Habermas that a reconstruction of the Enlightenment and modernity are in order, unlike Habermas we believe that postmodern theory has important contributions to make to this project. Various forms of postmodern politics have been liberatory in breaking away from the abstract and ideological universalism of the Enlightenment and the reductionist class politics of Marxism, but they tend to be **insular and fragmenting**, focusing solely on the experiences and political issues of a given group, even splintering further into distinct subgroups such as divide the feminist community. Identity politics are often structured around simplistic binary oppositions such as Us vs. Them and Good vs. Bad that pit people against one another, making alliances, consensus, and compromise difficult or **impossible**. This has been the case, for example, with tendencies within radical feminism and ecofeminism which reproduce essentialism by stigmatizing men and "male rationality" while exalting women as the bearers of peaceful and loving value and as being "closer to nature."[18] Elements in the black nationalist liberation movement in the 1960s and the early politics of Malcolm X were exclusionist and racist, literally demonizing white people as an evil and inferior race. Similarly, the sexual politics of some gay and lesbian groups tend to exclusively focus on their own interests, while the mainstream environmental movement is notorious for resisting alliances with people of color and grass roots movements.[19] Even though each group needs to assert their identity as aggressively as possible, postmodern identity politics should avoid falling into **seriality and sheer fragmentation**. These struggles, though independent of one another, **should be articulated within counterhegemonic alliances**, and attack power formations on **both** the micro- and macro-levels. Not all universalistic appeals are ideological in the sense criticized by Marx; there are **common grounds** of experience, common concerns, and common forms of oppression that different groups share which should be articulated -- concerns such as the degradation of the environment and common forms of oppression that stem from capitalist exploitation and alienated labor.

### sullivan

#### Political systems historically constituted by white supremacy are not inevitably oppressive and don’t require abolishing America---setting the goal of the alternative as ending America and white supremacy entirely is politically ineffective---reforming whiteness to resolve the impacts of oppression is better

Sullivan 8 – Shannon Sullivan, Head of Philosophy and Professor of Philosophy, Women's Studies, and African and African American Studies at Pennsylvania State University, Spring 2008, “Whiteness as Wise Provincialism: Royce and the Rehabilitation of a Racial Category,” Transactions of the Charles S. Peirce Society: A Quarterly Journal in American Philosophy, Vol. 44, No. 2

It is commonly acknowledged today, at least in academic circles, that racial essences do not exist. Racial categories, including whiteness, are historical and political products of human activity, and for that reason the human racial landscape has changed [End Page 236] over time and likely will continue to change in the future. In the wake of this acknowledgement, critical race theorists and philosophers of race debate whether whiteness must be eliminated for racial oppression to be ended. Given whiteness’s history as a category of violent racial exclusion, eliminativists and “new abolitionists” have argued that it must be abolished. If “whiteness is one pole of an unequal relationship, which can no more exist without oppression than slavery could exist without slaves,” then as long as whiteness endures, so does racial oppression.2 In contrast, critical conservationists have claimed even though it has an oppressive past, whiteness could entail something other than racism and oppression. Moreover, since lived existential categories like whiteness cannot be merely or quickly eliminated, white people should work to transform whiteness into an anti-racist category. I count myself as a critical conservationist, but I also acknowledge the force of eliminativist arguments. If whiteness necessarily involves racist oppression, then attempting to transform whiteness into an anti-racist category would be a fool’s game at best, and a covert continuance of white supremacy at worst. My goal here is not to rehearse the disagreement between new abolitionists and critical conservationists; excellent work explaining the details of their positions already exists.3 I instead approach that disagreement by asking the pragmatic question of whether a rehabilitated version of whiteness can be worked out concretely. What would a non-oppressive, anti-racist whiteness look like? What difference would or could it make to the lives of white and non-white people? If the question of how to transform whiteness cannot be answered in some practical detail—if it’s not a difference that makes a difference—then critical conservatism would amount to a hopeful, but ultimately harmful abstraction that makes no difference in lived experience and that damages anti-racist movements. In that case, abolitionism would appear to be the only alternative to ongoing white supremacy and privilege. I propose turning to Josiah Royce for help with these issues, more specifically to his essay on “Provincialism.”4 This turn is not as surprising as it might initially seem given that Royce wrote explicitly about race in “Race Questions and Prejudices.”5 In that essay, Royce issued an anti-racist, anti-essentialist challenge to then-current scientific studies of race, especially anthropology and ethnology, which claim to prove the superiority of white people, and he even briefly but explicitly names whiteness a possible threat to the future of humanity. 6 I focus here on “Provincialism,” however, because even though the essay never explicitly discusses race, it can help explain the ongoing need for the category of whiteness and implicitly offers a wealth of useful suggestions for how to transform it. “Provincialism” is an exercise in critical conservation of the concept of provincialism, and while not identical, provincialism and whiteness share enough in common that “wise” provincialism can serve [End Page 237] as a model for developing “wise” whiteness.7 Royce’s essay thus can be of great help to critical philosophers of race wrestling with questions of whether and how to transformatively conserve whiteness. Exploring similarities and differences between wise provincialism and wise whiteness, I use Royce’s analyses of provincialism to shed light on why whiteness should be rehabilitated rather than discarded and how white people today might begin living whiteness as an anti-racist category.

### psych

#### Psychoanalysis is cookie cutter and has been disproven

Todd Dufresne 6, Professor of Philosophy and founding Director of The Advanced Institute for Globalization & Culture at Lakehead University, Killing Freud, googlebooks

\*card modified for ableist language

TD: I tried to make the heterogeneity of opinion about Freuds death drive theory work on a few levels, one being a pointed criticism of the arbitrary nature of criticism in the history of psychoanalysis. In this respect the apparent dissensus about the fundamentals of psychoanalysis is a scandal. For this dissensus implies that for over one hundred years smart people haven't been able to derive any conclusions about Freuds so-called discoveries — that the verdict is still out. But that's untrue! Informed critics know very well that Freud fabricated his findings and was motivated by factors other than science and objectivity. So why do so few people know, or care to know, about these sometimes stunning facts? In no small measure, and as you were just hinting, the pundits and critics themselves are to blame. In Tales I tried to expose the irreconcilable absurdity of Freud commentary over the last hundred years, from Reich and Marcuse to Lacan and Derrida. It’s obviously not the case that these people are ignorant. It is rather the case that these critics, like Freud before them, are motivated by special interests; for example, by Marxist, structuralist, or posr-structuralist interests. And because their works are dogmatically attached (blind) to intractable problems in Freuds work, including basic facts, they have the effect of damaging (blinding )nearly everyone who reads them. We love to be dazzled, even by the spectacle of crushed glass. AG: But what is a 'basic feet', and who is in a position to know one when he or she sees one? Isn't this where the post-modernist appreciation of Freud comes in? TD: That's a lot of questions to answer all at once! First of all, yes, the posties' - post-modernists and post-structuralists - have generally embraced the idea that history is just a kind of fiction. I am sympathetic to this idea and am willing to entertain it up to a point. I have written about fiction and history in psychoanalysis precisely because, given the pre-eminent role of fantasy in the field, one has a tough time distinguishing between fact and fiction, history and case study. I think this is an interesting and amusing state of affairs, and have even written a short story that is meant as a sendup of the kind of historical work that we all read. But 1 attempt this work in an ironical spirit, believing that there are indeed facts — even if psychoanalysis has made it seem near impossible for us to know them.

This, then, is a problem for psychoanalysis - but not really for me. Naturally, though, I do worry about being too cavalier about facts in history. Is it really the case that the opinion of, say, a Holocaust denier is equal to another who believes that three million Jews, rather than six million, were killed in concentration camps? One says it didn't happen at all, while another questions the interpretation of facts. I reject the idea that truth is relative at the level of basic facts, and to this extent echo something Borch-Jacobsen once said454: namely, any relativist who ignores the facts risks becoming a dogmatist. And he's right. So when posties say, for example, that the fabricated foundations of psychoanalysis don't matter - primarily, they claim, because psychoanalysis is only interested in fantasy they are being absurd dogmatists. But this response is still not very satisfactory, since it doesn't address your first two questions: namely, what is a basic fact, and how can we purport to know one? I would suggest, loosely following the historian R. G. Collingwood, that there are two kinds of history: one that barely deserves the name as it was once practised long ago; and modern history. The first is what Collingwood rightly calls 'scissor and paste' history, and is more or less concerned with recording dates, names and events: for example, on the ides of March Caesar crossed the Rubicon. The second is interpretive history, and is concerned with the interpretation of dates, names and events: for example, on the ides of March Caesar crossed the Rubicon because he was a megalomaniac, or because he wanted to defeat his enemies, or because he was a compulsive bed-wetter, and so on. How does this distinction between basic and interpretive history help us? Well, because the majority of Freud scholarship is so obviously an interpretive history. The posties know this better than anyone, and are absolutely right to conclude that such interpretation, like analysis, is interminable. We can engage in debate about motives forever. However, there is a fundamental problem here in the case of psychoanalysis. Why? Because all historical interpretation, even the freewheeling interpretive history of post-modernists, is based on the scissor and paste' history of mere dates, names and events. And this is where the posties drop the ball. For almost all of the best critiques of Freud made over the last thirty years — the kind I associate with the creation of Critical Freud Studies - have begun by examining basic facts about dates, names and events. What these critics have found is that the history of Freud interpretation is the history of misinterpretation of a fundamental kind. Namely, it is interpretation of 'facts' or 'events that never happened. For example, they have found that Freud, during the period of 'discovery' and subsequent abandonment of the Seduction Theory, exaggerated his results and, when necessary, simply made them up. AG: He said he crossed the Rubicon when he didn't? TD: Worse. Not only didn't he cross the Rubicon, to extend the analogy, but it turns out in this case that the Rubicon itself doesn't exist! It's all a myth. And so, while the posties inevitably berate Cioffi, Crews and others for their naive belief in facts, they have simply fallen into the rabbit hole that Freud dug for them. For his part, Borch-Jacobscn replies that it is really these nay-savers who are being naive. I would only repeat my suspicion that our gullible colleagues have risked their egos on baseless interpretations that they are now incapable of retracting. Of course, the stakes are now very high. For if the critics are right, then the majority of Freud interpretation is utterly worthless. And it is worthless in at least two ways: as history and as interpretation. At best, these groundless interpretations are a kind of literary garbage — works of unwitting fiction along the lines of Medieval discussions of angels/" Sure these works tell us a lot about the beliefs of a certain period, in this case the twentieth century, but they don't work the way the authors intended them. For me, they are cautionary tales — what Lacan would call 'poubellications', or published trash. AG: If empiricism is just a theory, isn't a 'basic fact' just an interpretation among others? TD: That is true and a little bit clever, but a degree of certainty is all I am after. I'm not saying that we can't get our basic facts wrong, which we obviously do. It is rather that we must be willing to revise our interpretations on the basis of the basic facts we do have. I don't blame Freud scholars for making a mess of everything with their erroneous interpretations. Freud misled everyone, beginning with himself and his closest followers. Psychoanalysis is a con-game, after all. That said, short of sticking our heads in the sand, we must confront the basic facts and rewrite the history of psychoanalysis anew.

### at: speed

#### Perm solves

**Scheuerman 8** [William, “Chapter 15: No Time for Citizenship?” From “High-speed Society: Social Acceleration, Power, and Modernity,” 2008, Google Books]

Despite its understandable appeal, this approach remains flawed: social¶ acceleration constitutes an essential presupposition of open, critical, experimental,¶ and pluralistic political and social orders. As William Connolly¶ aptly notes in chapter 14 of this volume, speed can jeopardize freedom, yet¶ “the crawl of slow time contains injuries, dangers, and repressive tendencies¶ too. **It may be wise**, therefore, **to explore speed as an ambiguous** **medium¶ that contains** some **positive possibilities**.” A radical program of social deceleration¶ risks unduly reducing the impressive array of choices for advancing¶ the self-chosen life plans many of us now enjoy. We might minimize¶ busyness, but only at the cost of losing too many of our liberties. To be sure,¶ we need to think hard about how we can make social acceleration consistent¶ with a decent social order, and we need to strive to discard its least attractive¶ features. Nonetheless, we need to start from the assumption that elements¶ of social speed constitute indispensable components of modernity, rather¶ than unambiguously negative pathologies to be discarded at will. A slowpaced¶ society might reduce busyness and thereby provide greater time for¶ active citizenship, but citizenship in such a society would likely reproduce¶ the worst elements of every static and unchanging social order: it too would¶ prove parochial and perhaps even suffocating from the perspective of those¶ of us accustomed to the liberties of modern liberal democracy.