# semis neg v. northwestern mv

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

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

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

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

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

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

### 1nc legalism k

#### The 1AC’s approach to drone legality de-politicizes conflict and oversells the value of restrictions

Trombly 12 (Dan, Associate Analyst @ Caerus Analytics, National Security/International Affairs Analyst, “The Drone War Does Not Take Place,” NOVEMBER 16, 2012, http://slouchingcolumbia.wordpress.com/2012/11/16/the-drone-war-does-not-take-place/)

I’ll try to make this a bit shorter than my usual fare on the subject, but let me be clear about something. As much as I and many others inadvertently use the term, there is no such thing as drone war. There is no nuclear war, no air war, no naval war. There isn’t really even irregular war. There’s just war. There is, of course, drone warfare, just as there is nuclear warfare, aerial warfare, and naval warfare. This is verging on pedantry, but the **use of language** does matter. The changing conduct and character of war should not be confused with its nature, as Colin Gray strives to remind us in so many of his writings. When we believe that some aspect of warfare changes the nature of war – whether we do so to despair its ethical descent or praise its technological marvels, or to try to objectively discern some new and irreversible reality – we lose sight of a logic that by and large endures in its political and conceptual character. Hence the title (with some, but not too much, apology to Baudrillard). There is no drone war, there is only the employment of drones in the various wars we fight under the misleading and conceptually noxious “War on Terror.” Why does this matter? **To imbue a weapons system with the political properties of the policy employing it** is fallacious, and to assume its mere presence institutes new political realities relies on a denial of facts and context. This remains the case with drones. The character of wars waged with drones is different – the warfare is different – but the nature of these wars do not change, and very often this argument **obscures the wider military operations occurring**. Long before the first drone strikes occurred in Somalia, America was very much at war there. Before their availability in that theater, the U.S. had deployed CIA and SOF assets to the region. It supported Ethiopia’s armies and it helped bankroll and coordinate proxy groups, whether they were Somali TFG units, militias, or private contractors. It bombarded select Somali targets with everything from naval guns to AC-130 gunships to conventional strike aircraft. It deployed JSOC teams to capture or kill Somalis. That at some point the U.S. acquired a new platform to conduct these strikes is not particularly relevant to the character of that war and even less to its nature. We sometimes assume drones inaugurate some new type of invincibility or some transcendental transformation of war as an enterprise of risk and mutual violence. We are incorrect to do so. The war in Somalia is certainly not risk free for the people who the U.S. employs or contracts to target these drones. It is not risk free for the militias, mercenaries, or military partners which follow up on the ground. Nor is it risk free for those who support the drones. Just ask Abu Talha al-Sudani, one of the key figures behind the 1998 U.S. Embassy bombings in Kenya and Tanzania, who sent operatives to case Camp Lemonier and launch a commando raid – one which looks, in retrospect, very much like the one that crippled Marine aviation at Camp Bastion recently – that might have killed a great many U.S. personnel on a base then and now critical to American operations in the Horn of Africa and Gulf of Aden. The existence of risk is an inherent product of an enemy whose will to fight we have not yet overcome. The degree of that inherent risk – whether it is negligible or great – is a product of relative military capabilities and war’s multifarious external contexts. Looked at through this lens, it’s not drones that reduce U.S. political and material risk, it’s the basic facts of the conflict. In the right context, most any kind of military technology can significantly mitigate risks. A 19th century ironclad fleet could shell the coast of a troublesome principality with basic impunity. When Dewey said, “You may fire when ready, Gridley,” at Manila Bay, according to most history and much legend he lost only one man – due to heatstroke! – while inflicting grievous casualties on his out-ranged and out-gunned Spanish foes. That some historians have suggested Dewey may have concealed a dozen casualties by fudging them in with desertions, which were in any case were a far greater problem than casualties since the Navy was still in the habit of employing foreign sailors expendable by the political standards of the day is even more telling. Yes, there are always risks and almost always casualties even in the most unfair fights, but just as U.S. policymakers wrote off Asian sailors, they write off the victims of death squads which hunt down the chippers, spotters, and informants in Pakistan or the contractors training Puntland’s anti-piracy forces. And no, not even the American spooks are untouchable, the fallen at Camp Chapman are testament to that. This is hardly unique to drones or today’s covert wars. The CIA’s secret air fleet in Indochina lost men, too, and the Hmong suffered mightily for their aid to the U.S. in the Laotian civil war. The fall of Lima Site 85, by virtue or demerit of policy, resonated little with the American public but deeply marks the intelligence community and those branches of the military engaging in clandestine action. The wars we wage in Pakistan, Yemen, and Somalia are not drone wars any more than our war in Laos was an air war simply because Operation Barrel Roll’s bombers elicit more attention than the much more vulnerable prop-driven spotting aircraft or Vang Pao’s men on the ground. There is a certain hubris in thinking we can limit war by limiting its most infamous weapons systems. The taboo and treaties against chemical weapons perhaps saved men (but not the Chinese at Wuhan, nor the Allied and innocents downwind of the SS John Harvey at Bari) from one of the Great War’s particular horrors, but they did nothing appreciable to check the kind of war the Great War was, or the hypersanguinary consequences of its sequel but a generation later. The Predators and Reapers could have never existed, and very likely the U.S. would still be seeking ways to carry out its war against al Qaeda and its affiliates under the auspices of the AUMF in all of today’s same theaters. More might die from rifles, Tomahawks, Bofors guns or Strike Eagles’ JDAMs than remotely-launched Griffins, and the tempo of strikes would abate. **But the same fundamental problems** – the opaque decisions to kill, the esoteric legal justifications for doing so, the obtuse objectives these further – would all remain. Were it not for the exaggerated and almost myopic focus on “killer robots,” the U.S. public would likely pay far less attention to the victims, excesses, and contradictions. But blaming drones qua drones for these problems, or fearing their proliferation at home, makes little more sense than blaming helicopters for Vietnam, or fearing airmobile assaults when DC MPD’s MD-500s buzz over my neighborhood. That concern that proliferation of a weapons system equates to proliferation of the outcomes associated with them, without regard to context, is equally misleading. Nobody in America should fear the expansion of the Chinese UAV fleet because, like the U.S. UAV fleet, it is merely going to expand their ability to do what similar aircraft were already doing. Any country with modern air defenses can make mincemeat of drone-only sorties, and for that reason China, which unlike Yemen and Pakistan would not consent to wanton U.S. bombing of its countryside, need not fear drones. For an enormous number of geographical, political, and military reasons, the U.S. ought fear the “drone war” coming home even less. Drones do not grant a country the ability to conduct the kind of wars we conduct against AQAM. The political leverage to build bases and clear airspaces, and the military and intelligence capabilities to mitigate an asymmetric countermeasure operation do. If another country gains that ability to conduct them against a smaller country, even, it is not because they lacked the ability to put weapons on planes, but because of **the full tapestry of national power** and military capabilities gave them such an ability. It was not asymmetry in basic technical ability that made the U.S. submarine blockade of Japan so much more effective than the Axis’s attempts to do the same against America’s shores, but the total scope of the assets in the field and context of their use. It was **not because of precedent or moral equivalence**, or lack thereof that the Axis could bomb Britain or lose the ability to do so, but because of the cumulative effect of military capabilities and the judgments guiding them. What might expand the battlefield of a “drone war” is much the same. America’s enemies do not refrain from attacking bases in CONUS or targeting dissidents in the U.S. (not that they have not before), they wait for an opportunity and practical reason to do so, and that has very little to do with drones in particular and even less the nature of the war itself. Fearing that the mere use of a weapons system determines the way in which our enemies will use it without regard to this context is not prophetic wisdom. It is quasi-Spenglerian hyperventilation that attributes the decision to use force to childlike mimesis rather than its fundamentally political purposes. Iran and Russia do not wait on drones to conduct extrajudicial targeted killings, and indeed drones would be of much less use to them in their own political contexts. **Focusing on drones** and the nature of targeted killings as some sort of inherent link ignores those contexts and ultimately **does a disservice to understanding** of wars past, present, and future, and by doing so, does little help – and possibly a great deal of harm – to understanding how to move forward.

#### The impact is militarism which outweighs

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(Thomas, International Studies Quarterly 46, The New Law of War: Legitimizing Hi-Tech and Infrastructural Violence)

The role of military lawyers in all this has, according to one study, “changed irrevocably” ~Keeva, 1991:59!. Although liberal theorists point to the broad normative contours that law lends to international relations, the Pentagon wields law with technical precision. During the Gulf War and the Kosovo campaign, JAGs opined on the legal status of multinational forces, the U.S. War Powers Resolution, rules of engagement and targeting, country fly-overs, maritime interceptions, treatment of prisoners, hostages and “human shields,” and methods used to gather intelligence. Long before the bombing began, lawyers had joined in the development and acquisition of weapons systems, tactical planning, and troop training. In the Gulf War, the U.S. deployed approximately 430 military lawyers, the allies far fewer, leading to some amusing but perhaps apposite observations about the legalistic culture of America ~Garratt, 1993!. Many lawyers reviewed daily Air Tasking Orders as well as land tactics. Others found themselves on the ground and at the front. According to Colonel Rup- pert, the idea was to “put the lawyer as far forward as possible” ~Myrow, 1996–97!. During the Kosovo campaign, lawyers based at the Combined Allied Operations Center in Vicenza, Italy, and at NATO headquarters in Brussels approved every single targeting decision. We do not know precisely how decisions were taken in either Iraq or Kosovo or the extent to which the lawyers reined in their masters. Some “corrections and adjustments” to the target lists were made ~Shot- well, 1993:26!, but by all accounts the lawyers—and the law—were extremely accommodating.¶ The exigencies of war invite professional hazards as military lawyers seek to “find the law” and to determine their own responsibilities as legal counselors. A 1990 article in Military Law Review admonished judge advocates not to neglect their duty to point out breaches of the law, but not to become military ombuds- men either. The article acknowledged that the JAG faces pressure to demonstrate that he can be a “force multiplier” who can “show the tactical and political soundness of his interpretation of the law” ~Winter, 1990:8–9!. Some tension between law and necessity is inevitable, but over the past decade the focus has shifted visibly from restraining violence to legitimizing it. The Vietnam-era perception that law was a drag on operations has been replaced by a zealous “client culture” among judge advocates. Commanding officers “have come to realize that, as in the relationship of corporate counsel to CEO, the JAG’s role is not to create obstacles, but to find legal ways to achieve his client’s goals—even when those goals are to blow things up and kill people” ~Keeva, 1991:59!. Lt. Col. Tony Montgomery, the JAG who approved the bombing of the Belgrade television studios, said recently that “judges don’t lay down the law. We take guidance from our government on how much of the consequences they are willing to accept” ~The Guardian, 2001!.¶ Military necessity is undeterred. In a permissive legal atmosphere, hi-tech states can meet their goals and remain within the letter of the law. As noted, humanitarian law is firmest in areas of marginal military utility. When opera- tional demands intrude, however, even fundamental rules begin to erode. The Defense Department’s final report to Congress on the Gulf War ~DOD, 1992! found nothing in the principle of noncombatant immunity to curb necessity. Heartened by the knowledge that civilian discrimination is “one of the least codified portions” of the law of war ~p. 611!, the authors argued that “to the degree possible and consistent with allowable risk to aircraft and aircrews,” muni- tions and delivery systems were chosen to reduce collateral damage ~p. 612!. “An attacker must exercise reasonable precautions to minimize incidental or collat- eral injury to the civilian population or damage to civilian objects, consistent with mission accomplishments and allowable risk to the attacking forces” ~p. 615!. The report notes that planners targeted “specific military objects in populated areas which the law of war permits” and acknowledges the “commingling” of civilian and military objects, yet the authors maintain that “at no time were civilian areas as such attacked” ~p. 613!. The report carefully constructed a precedent for future conflicts in which human shields might be deployed, noting “the presence of civilians will not render a target immune from attack” ~p. 615!. The report insisted ~pp. 606–607! that Protocol I as well as the 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons “were not legally applicable” to the Gulf War because Iraq as well as some Coalition members had not ratified them. More to the point that law follows practice, the report claimed that certain provisions of Protocol I “are not a codification of the customary practice of nations,” and thus “ignore the realities of war” ~p. 616!.¶ Nor can there be any doubt that a more elaborate legal regime has kept pace with evolving strategy and technology. Michael Ignatieff details in Virtual War ~2000! how targets were “developed” in 72-hour cycles that involved collecting and reviewing aerial reconnaissance, gauging military necessity, and coding antici- pated collateral damage down to the directional spray of bomb debris. A judge advocate then vetted each target in light of the Geneva Conventions and calcu- lated whether or not the overall advantage to be gained outweighed any expected civilian spillover. Ignatieff argues ~2000:198–199! that this elaborate symbiosis of law and technology has given birth to a “veritable casuistry of war.” Legal fine print, hand-in-hand with new technology, replaced deeper deliberation about the use of violence in war. The law provided “harried decision-makers with a critical guarantee of legal coverage, turning complex issues of morality into technical issues of legality.” Astonishingly fine discrimination also meant that unintentional civilian casualties were assumed to have been unintentional, not foreseen tragedies to be justified under the rule of double effect or the fog of war. The crowning irony is that NATO went to such lengths to justify its targets and limit collateral damage, even as it assured long-term civilian harm by destroy- ing the country’s infrastructure.¶ Perhaps the most powerful justification was provided by law itself. War is often dressed up in patriotic abstractions—Periclean oratory, jingoistic newsreels, or heroic memorials. Bellum Americanum is cloaked in the stylized language of law. The DOD report is padded with references to treaty law, some of it obscure, that was “applicable” to the Gulf War, as if a surfeit of legal citation would convince skeptics of the propriety of the war. Instances of humane restraint invariably were presented as the rule of law in action. Thus the Allies did not gas Iraqi troops, torture POWs, or commit acts of perfidy. Most striking is the use of legal language to justify the erosion of noncombatant immunity. Hewing to the legal- isms of double effect, the Allies never intentionally targeted civilians as such. As noted, by codifying double effect the law artificially bifurcates intentions. Har- vard theologian Bryan Hehir ~1996:7! marveled at the Coalition’s legalistic word- play, noting that the “briefers out of Riyadh sounded like Jesuits as they sought to defend the policy from any charge of attempting to directly attack civilians.”¶ The Pentagon’s legal narrative is certainly detached from the carnage on the ground, but it also oversimplifies and even actively obscures the moral choices involved in aerial bombing. Lawyers and tacticians made very deliberate decisions about aircraft, flight altitudes, time of day, ordnance dropped, confidence in intelligence, and so forth. By expanding military necessity to encompass an extremely prudential reading of “force protection,” these choices were calculated to protect pilots and planes at the expense of civilians on the ground, departing from the just war tradition that combatants assume greater risks than civilians. While it is tempting to blame collateral damage on the fog of war, much of that uncertainty has been lifted by technology and precision law. Similarly, in Iraq and in Yugoslavia the focus was on “degrading” military capabilities, yet a loose view of dual use spelled the destruction of what were essentially social, economic, and political targets. Coalition and NATO officials were quick to apologize for accidental civilian casualties, but in hi-tech war most noncombatant suffering is by design.¶ Does the law of war reduce death and destruction? International law certainly has helped to delegitimize, and in rare cases effectively criminalize, direct attacks on civilians. But in general humanitarian law has mirrored wartime practice. On the ad bellum side, the erosion of right authority and just cause has eased the path toward war. Today, foreign offices rarely even bother with formal declara- tions of war. Under the United Nations system it is the responsibility of the Security Council to denounce illegal war, but for a number of reasons its mem- bers have been extremely reluctant to brand states as aggressors. If the law were less accommodating, greater effort might be devoted to diplomacy and war might be averted. On the in bello side the ban on direct civilian strikes remains intact, but double effect and military demands have been contrived to justify unnecessary civilian deaths. Dual use law has been stretched to sanction new forms of violence against civilians. Though not as spectacular as the obliteration bombing to which it so often is favorably compared, infrastructural war is far deadlier than the rhetoric of a “clean and legal” conflict suggests. It is true that rough estimates of the ratio of bomb tonnage to civilian deaths in air attacks show remarkable reductions in immediate collateral damage. There were some 40.83 deaths per ton in the bombing of Guernica in 1937 and 50.33 deaths per ton in the bombing of Tokyo in 1945. In the Kosovo campaign, by contrast, there were between .077 and .084 deaths per ton. In Iraq there were a mere .034 ~Thomas, 2001:169!. According to the classical definition of collateral damage, civilian protection has improved dramatically, but if one takes into account the staggering long-term effects of the war in Iraq, for example, aerial bombing looks anything but humane.¶ For aerial bombers themselves modern war does live up to its clean and legal image. While war and intervention have few steadfast constituents, the myth of immaculate warfare has eased fears that intervening soldiers may come to harm, which polls in the U.S., at least, rank as being of great public concern, and even greater military concern. A new survey of U.S. civilian and military attitudes found that soldiers were two to four times more casualty-averse than civilians thought they should be ~Feaver and Kohn, 2001!. By removing what is perhaps the greatest restraint on the use of force—the possibility of soldiers dying—law and technology have given rise to the novel moral hazards of a “postmodern, risk-free, painless war” ~Woollacott, 1999!. “We’ve come to expect the immacu- late,” notes Martin Cook, who teaches ethics at the U.S. Army War College in Carlisle, PA. “Precision-guided munitions make it very much easier to go to war than it ever has been historically.” Albert Pierce, director of the Center for the Study of Professional Military Ethics at the U.S. Naval Academy argues, “standoff precision weapons give you the option to lower costs and risks . . . but you might be tempted to do things that you might otherwise not do” ~Belsie, 1999!.¶ Conclusion¶ The utility of law to legitimize modern warfare should not be underestimated. Even in the midst of war, legal arguments retain an aura of legitimacy that is missing in “political” justifications. The aspirations of humanitarian law are sound. Rather, it is the instrumental use of law that has oiled the skids of hi-tech violence. Not only does the law defer to military necessity, even when very broadly defined, but more importantly it bestows on those same military demands all the moral and psychological trappings of legality. The result has been to legalize and thus to justify in the public mind “inhumane military methods and their consequences,” as violence against civilians is carried out “behind the protective veil of justice” ~af Jochnick and Normand, 1994a:50!. Hi-tech states can defend hugely destructive, essentially unopposed, aerial bombardment by citing the authority of seemingly secular and universal legal standards. The growing gap between hi- and low-tech means may exacerbate inequalities in moral capital as well, as the sheer barbarism of “premodern” violence committed by ethnic cleansers or atavistic warlords makes the methods employed by hi-tech warriors seem all the more clean and legal by contrast.¶ This fusion of law and technology is likely to propel future American interventions. Despite assurances that the campaign against terrorism would differ from past conflicts, the allied air war in Afghanistan, marked by record numbers of unmanned drones and bomber flights at up to 35,000 feet, or nearly 7 miles aloft, rarely strayed from the hi-tech and legalistic script. While the attack on the World Trade Center confirmed a thousand times over the illegality and inhu- manity of terrorism, the U.S. response has raised further issues of legality and inhumanity in conventional warfare. Civilian deaths in the campaign have been substantial because “military objects” have been targeted on the basis of extremely low-confidence intelligence. In several cases targets appear to have been chosen based on misinformation and even rank rumor. A liberal reading of dual use and the authorization of bombers to strike unvetted “targets of opportunity” also increased collateral damage. Although 10,000 of the 18,000 bombs, missiles, and other ordnance used in Afghanistan were precision-guided munitions, the war resulted in roughly 1000 to 4000 direct civilian deaths, and, according to the UNHCR, produced 900,000 new refugees and displaced persons. The Pentagon has nevertheless viewed the campaign as “a more antiseptic air war even than the one waged in Kosovo” ~Dao, 2001!. General Tommy Franks, who commanded the campaign, called it “the most accurate war ever fought in this nation’s history” ~Schmitt, 2002!.9¶ No fundamental change is in sight. Governments continue to justify collateral damage by citing the marvels of technology and the authority of international law. One does see a widening rift between governments and independent human rights and humanitarian relief groups over the interpretation of targeting and dual-use law. But these disputes have only underscored the ambiguities of human- itarian law. As long as interventionist states dominate the way that the rules of war are crafted and construed, hopes of rescuing law from politics will be dim indeed.

#### Vote neg to interrupt the legal discourse of the 1ac

**Krasman 2012** - professor, Dr, Institute for Criminological Research, University of Hamburg (Susanne Krasmann, “Targeted Killing and Its Law: On a Mutually Constitutive Relationship,” Leiden Journal of International Law (2012), 25, pg. 67)

The legal debate on targeted killing, particularly that referring to the US practice, has increased immensely during the last decade and even more so very recently, obviously due to a ‘compulsion of legality’.87 Once this state practice of resorting to the use of lethal force has been recognized as systematically taking place, it needs to be dealt with in legal terms. Whether this is done in supportive or critical terms, the assertion of targeted killing as a legal practice commences at this point. This is due to the fact that the law, once invoked, launches its own claims. To insist on disclosing ‘the full legal basis for targeted killings’; on criteria, legal procedures, and ‘access to reliable information’ in order to render governmental action controllable; or on legal principles to be applied in order to estimate the necessity and proportionality of a concrete intervention at stake,88 not only involves **accepting targeted killing as a legitimate subject of debate in the first place**. It requires distinctions to be made between, for example, a legitimate and an illegitimate target. It invokes the production of knowledge and the establishment of pertinent rules. Indeterminate categories are to be determined and thus established as a new reading of positive law. The introduction of international human rights standards into the debate, for example, clearly allows limits to be set in employing the pre-emptive tactic. As Wouter Werner has shown with regard to the Israeli High Court of Justice’s decision on the legality of targeted killing operations,89 this may well lead, for example, to recognizing the enemy as being not ‘outlaws’ but, instead, combatants who are to be granted basic human rights. Subsequently, procedural rules may be established that restrict the practice and provide criteria for assessing the legality of concrete operations.90 At the same time, however, targeted killing is recognized as a legitimate tactic in the fight against terrorism and is being determined and implemented legally.91 When framed within the ‘theatre of war’, targeted killing categorically seems to be justifiable under the legal principles of necessity, proportionality, discrimination, and the avoidance of unnecessary suffering. This is true as long as one presupposes in general terms, as the juridical discourse usually does, both a well-considered proceeding along those principles92 and, accordingly, that targeted killing, by its very nature, is a ‘calculated, precise use of lethal force’.93 Procedural rules, like the ‘proportionality test’, that are essentially concerned with determination, namely with specifying criteria of intervention for the concrete case or constellation, certainly provide reliability by systematically inciting and provoking justifications. Their application therefore, we may say, contributes to clarifying a controversial norm- ative interpretation, but it will **never predict or determine** how deliberation and justification translate into operational action. The application of procedural rules does not only notoriously remain ‘indeterminate’,94 but also produces its own truth effects. The question of proportionality, for example, is intrinsically a relational one. The damage that targeting causes is to be related to the anticipated military advantage and to the expected casualties of non-targeted operations. Even if there are ‘substantial grounds to believe’ that such an operation will ‘encounter significant armed resistance’,95 this is a presumption that, above all, entails a virtual dimension: the alternate option will never be realized. According to a Foucauldian perspective, decisions always articulate within an epistemic regime and thus ‘eventualize’ on the political stage.96 There is, in this sense, no mere decision and no mere meaning; and, conversely, there is no content of a norm, and no norm, independent of its enforcement.97 To relate this observation to our problem at hand means that, rather than the legal principles’ guiding a decision, it is the decision on how to proceed that constitutes the meaning of the legal principle in question. The **legal reasoning, in turn, produces a normative reality of its own**, as we are now able to imagine, comprehend, and assess a procedure and couch it in legal terms. This is also noticeable in the case of the Osama bin Laden killing. As regards the initial strategy of justification, the question of resistance typically is difficult to establish ex post in legal terms. Such situations are fraught with so many possible instances of ambiguous behaviour and risk, and the identification of actual behav- iour as probably dangerous and suspicious may change the whole outcome of the event.98 But, once the public found itself with little alternative but to assume that the prospect of capturing the subject formed part of the initial order, it also had to assume that the intention was to use lethal force as a last resort. And, once the public accepts the general presumption that the United States is at war with the terrorist organization, legal reasoning about the operation itself follows and constitutes a rationale shaping the perception of similar future actions and the exercise of governmental force in general.99 Part of this rationale is the assumption, as the president immediately pointed out in his speech, that the threat of al Qaeda has not been extinguished with bin Laden. The identification of a threat that emanates from a network may give rise to the question of whether the killing of one particular target, forming part of a Hydra, makes any sense at all.100 Yet, it equally nourishes the idea that the fight against terrorism, precisely because of its elusiveness, is an enduring one, which is exactly the position the United States takes while considering itself in an armed conflict with the terrorist organization. Targeting and destroying parts of a network, then, do not destroy the entire network, but rather verify that it exists and is at work. The target, in this sense, is constituted by being targeted.101 Within the rationale of the security dispositif, there continue to be threats and new targets. Hence, at work is a transformation of laws through practice, rather than their amendment. Giorgio Agamben maintains that a legal norm, because abstract, does not stipulate its application.102 ‘Just as between language and world . . . there is no internal nexus’ between them. The norm, in this sense, exists independent of ‘reality’. This, according to Agamben, allows for the norm in the ‘state of exception’ both to be applied with the effect of ‘ceasing to apply’103 – ‘the rule, suspending itself, gives rise to the exception’104 – and to be suspended without being abolished. Although forming part of and, in fact, being the effect of applying the law, the state of exception, in Agamben’s view, disconnects from the norm. Within a perspective on law as practice, by contrast, there is no such difference between norm and reality. Even to ignore a pertinent norm constitutes an act that has a meaning, namely that the norm is not being enforced. It affects the norm. Targeted killing operations, in this sense, can never be extra-legal.105 On the contrary, provided that illegal practices come up systematically, they eventually will effectuate the transformation of the law. Equally, the exception from the norm not only suspends the norm, transforming it, momentarily or permanently, into a mere symbol without meaning and force, but at the same time also impinges upon the validity of that norm. Moreover, focus on the exception within the present context falls short of capturing a rather gradual transitional process that both resists a binary deciphering of either legal or illegal and is not a matter of suspending a norm. As practices deploying particular forms of knowledge, targeted killing and its law mutually constitute each other, thus re-enforcing a new security dispositif. **The appropriate research question** therefore is how positive law changes its framework of reference. Targeted killing, once perceived as illegal, now appears to be a legal practice on the grounds of a new understanding of international law’s own elementary concepts. The crux of the ‘compulsion of legality’ is that legality itself is a shifting reference. Seen this way, the United States does not establish targeted killing as a legal practice on the grounds of its internationally ‘possessing’ exceptional power. Rather the reverse; it is able to employ targeted killing as a military tactic, precisely because this is accepted by the legal discourse. As a practice, targeted killing, in turn, reshapes our understanding of basic concepts of international law. Any dissenting voice will now be heard with more difficulty, since targeted killing is a no longer an isolated practice but, within the now establishing security dispositif, appears to be appropriate and rational. **To counter the legal discourse**, then, would require to **interrupt it, rather than to respond to it**, and to move on to its political implications that are rather tacitly involved in the talk about threats and security, and in the dispute about targeted killing operations’ legality.

#### Reject their framework for solving the problem of indefinite detention in favor of investing in a more expansive definition of political community —legal accountability will fail without an interrogation of what life can be excluded from definitions of legally human

Butler 4—not Judy

(Judith, *Precarious Life* pg 86-92, dml)

So, these prisoners, who are not prisoners, will be tried, if they will be tried, according to rules that are not those of a constitutionally defined US law nor of any recognizable international code. Under the Geneva Convention, the prisoners would be entitled to trials under the same procedures as US soldiers, through court martial or civilian courts, and not through military tribunals as the Bush administration has proposed. The current regulations for military tribunals provide for the death penalty if all members of the tribunal agree to it. The President, however, will be able to decide on that punishment unilaterally in the course of the final stage of deliberations in which an executive judgment is made and closes the case. Is there a timeframe set forth in which this particular judicial operation will cease to be? In response to a reporter who asked whether the government was not creating procedures that would be in place indefinitely, "as an ongoing additional judicial system created by the executive branch," General Counsel Haynes pointed out that the "the rules [for the tribunals] ... do not have a sunset provision in them ... I'd only observe that the war, we think, will last for a while." One might conclude with a strong argument that government policy ought to follow established law. And in a way, that is part of what I am calling for. But there is also a problem with the law, since it leaves open the possibility of its own retraction, and, in the case of the Geneva Convention, extends "universal" rights only to those imprisoned combatants who belong to "recognizable" nation-states, but not to all people. Recognizable nation-states are those that are already signatories to the convention itself. This means that stateless peoples or those who belong to states that are emergent or "rogue" or generally unrecognized lack all protections. The Geneva Convention is, in part, a civilizational discourse, and it nowhere asserts an entitlement to protection against degradation and violence and rights to a fair trial as universal rights. Other international covenants surely do, and many human rights organizations have argued that the Geneva Convention can and ought to be read to apply universally. The International Committee of the Red Cross made this point publicly (February 8, 2002). Kenneth Roth, Director of Human Rights Watch, has argued strongly that such rights do pertain to the Guantanamo Prisoners (January 28, 2002), and the Amnesty International Memorandum to the US Government (April 15, 2002), makes clear that fifty years of international law has built up the assumption of universality, codified clearly in Article 9(4) of the International Covenant on Civil and Political Rights, ratified by the US in 1992. Similar statements have been made by the International Commission on Jurists (February 7, 2002) and the Organization for American States human rights panel made the same claim (March 13, 2002), seconded by the Center for Constitutional Rights (June ro, 2002). Exclusive recourse to the Geneva Convention, itself drafted in 1949, as the document for guidance in this area is thus in itself problematic. The notion of "universality" embedded in that document is restrictive in its reach: it counts as subjects worthy of protection only those who belong already to nation-states recognizable within its terms. In this way, then, the Geneva Convention is in the business of establishing and applying a selective criterion to the question of who merits protection under its provisions, and who does not. The Geneva Convention assumes that certain prisoners may not be protected by its statute. By clearly privileging those prisoners from wars between recognizable states, it leaves the stateless unprotected, and it leaves those from nonrecognized polities without recourse to its entitlements. Indeed, to the extent that the Geneva Convention gives grounds for a distinction between legal and illegal combatants, it distinguishes between legitimate and illegitimate violence. Legitimate violence is waged by recognizable states or "countries," as Rumsfeld puts it, and illegitimate violence is precisely that which is committed by those who are landless, stateless, or whose states are deemed not worth recognizing by those who are already recognized. In the present climate, we see the intensification of this formulation as various forms of political violence are called "terrorism," not because there are valences of violence that might be distinguished from one another, but as a way of characterizing violence waged by, or in the name of, authorities deemed illegitimate by established states. As a result, we have the sweeping dismissal of the Palestinian Intifada as "terrorism" by Ariel Sharon, whose use of state violence to destroy homes and lives is surely extreme. The use of the term, "terrorism," thus works to delegitimate certain forms of violence committed by non-state-centered political entities at the same time that it sanctions a violent response by established states. Obviously, this has been a tactic for a long time as colonial states have sought to manage and contain the Palestinians and the Irish Catholics, and it was also a case made against the African National Congress in apartheid South Africa. The new form that this kind of argument is taking, and the naturalized status it assumes, however, will only intensify the enormously damaging consequences for the struggle for Palestinian self-determination. Israel takes advantage of this formulation by holding itself accountable to no law at the very same time that it understands itself as engaged in legitimate self-defense by virtue of the status of its actions as state violence. In this sense, the framework for conceptualizing global violence is such that "terrorism" becomes the name to describe the violence of the illegitimate, whereas legal war becomes the prerogative of those who can assume international recognition as legitimate states. The fact that these prisoners are seen as pure vessels of violence, as Rumsfeld claimed, suggests that they do not become violent for the same kinds of reason that other politicized beings do, that their violence is somehow constitutive, groundless, and infinite, if not innate. If this violence is terrorism rather than violence, it is conceived as an action with no political goal, or cannot be read politically. It emerges, as they say, from fanatics, extremists, who do not espouse a point of view, but rather exist outside of "reason," and do not have a part in the human community. That it is Islamic extremism or terrorism simply means that the dehumanization that Orientalism already performs is heightened to an extreme, so that the uniqueness and exceptionalism of this kind of war makes it exempt from the presumptions and protections of universality and civilization. When the very human status of those who are imprisoned is called into question, it is a sign that we have made use of a certain parochial frame for understanding the human, and failed to expand our conception of human rights to include those whose values may well test the limits of our own. The figure of Islamic extremism is a very reductive one at this point in time, betraying an extreme ignorance about the various social and political forms that Islam takes, the tensions, for instance, between Sunni and Shiite Muslims, as well as the wide range of religious practices that have few, if any, political implications such as the da'wa practices of the mosque movement, or whose political implications are pacifist. If we assume that everyone who is human goes to war like us, and that this is part of what makes them recognizably human, or that the violence we commit is violence that falls within the realm of the recognizably human, but the violence that others commit is unrecognizable as human activity, then we make use of a limited and limiting cultural frame to understand what it is to be human. This is no reason to dismiss the term "human," but only a reason to ask how it works, what it forecloses, and what it sometimes opens up. To be human implies many things, one of which is that we are the kinds of beings who must live in a world where clashes of value do and will occur, and that these clashes are a sign of what a human community is. How we handle those conflicts will also be a sign of our humanness, one that is, importantly, in the making. Whether or not we continue to enforce a universal conception of human rights at moments of outrage and incomprehension, precisely when we think that others have taken themselves out of the human community as we know it, is a test of our very humanity. We make a mistake, therefore, if we take a single definition of the human, or a single model of rationality, to be the defining feature of the human, and then extrapolate from that established understanding of the human to all of its various cultural forms. That direction will lead us to wonder whether some humans who do not exemplify reason and violence in the way defined by our definition are still human, or whether they are "exceptional" (Haynes) or "unique" (Hastert), or "really bad people" (Cheney) presenting us with a limit case of the human, one in relation to which we have so far failed. To come up against what functions, for some, as a limit case of the human is a challenge to rethink the human. And the task to rethink the human is part of the democratic trajectory of an evolving human rights jurisprudence. It should not be surprising to find that there are racial and ethnic frames by which the recognizably human is currently constituted. One critical operation of any democratic culture is to contest these frames, to allow a set of dissonant and overlapping frames to come into view, to take up the challenges of cultural translation, especially those that emerge when we find ourselves living in proximity with those whose beliefs and values challenge our own at very fundamental levels. More crucially, it is not that "we" have a common idea of what is human, for Americans are constituted by many traditions, including Islam in various forms, so any radically democratic self-understanding will have to come to terms with the heterogeneity of human values. This is not a relativism that undermines universal claims; it is the condition by which a concrete and expansive conception of the human will be articulated, the way in which parochial and implicitly racially and religiously bound conceptions of human will be made to yield to a wider conception of how we consider who we are as a global community. We do not yet understand all these ways, and in this sense human rights law has yet to understand the full meaning of the human. It is, we might say, an ongoing task of human rights to reconceive the human when it finds that its putative universality does not have universal reach. The question of who will be treated humanely presupposes that we have first settled the question of who does and does not count as a human. And this is where the debate about Western civilization and Islam is not merely or only an academic debate, a misbegotten pursuit of Orientalism by the likes of Bernard Lewis and Samuel Huntington who regularly produce monolithic accounts of the "East," contrasting the values of Islam with the values of Western "civilization." In this sense, "civilization" is a term that works against an expansive conception of the human, one that has no place in an internationalism that takes the universality of rights seriously. The term and the practice of "civilization" work to produce the human differentially by offering a culturally limited norm for what the human is supposed to be. It is not just that some humans are treated as humans, and others are dehumanized; it is rather that dehumanization becomes the condition for the production of the human to the extent that a "Western" civilization defines itself over and against a population understood as, by definition, illegitimate, if not dubiously human. A spurious notion of civilization provides the measure by which the human is defined at the same time that a field of would-be humans, the spectrally human, the deconstituted, are maintained and detained, made to live and die within that extra-human and extrajuridical sphere of life. It is not just the inhumane treatment of the Guantanamo prisoners that attests to this field of beings apprehended, politically, as unworthy of basic human entitlements. It is also found in some of the legal frameworks through which we might seek accountability for such inhuman treatment, such that the brutality is continued-revised and displaced-in, for instance, the extra-legal procedural antidote to the crime. We see the operation of a capricious proceduralism outside of law, and the production of the prison as a site for the intensification of managerial tactics untethered to law, and bearing no relation to trial, to punishment, or to the rights of prisoners. We see, in fact, an effort to produce a secondary judicial system and a sphere of non-legal detention that effectively produces the prison itself as an extra-legal sphere maintained by the extrajudicial power of the state. This new configuration of power requires a new theoretical framework or, at least, a revision of the models for thinking power that we already have at our disposal. The fact of extra-legal power is not new, but the mechanism by which it achieves its goals under present circumstances is singular. Indeed, it may be that this singularity consists in the way the "present circumstance" is transformed into a reality indefinitely extended into the future, controlling not only the lives of prisoners and the fate of constitutional and international law, but also the very ways in which the future may or may not be thought.

### 1nc politics

#### Obama is using political capital to hammer the GOP on immigration – it will pass, but getting it to the floor is key

**Epstein, 10/17/13** (Reid, Politico, “Obama’s latest push features a familiar strategy” <http://www.politico.com/story/2013/10/barack-obama-latest-push-features-familiar-strategy-98512.html>)

President Barack Obama made his plans for his newly won political capital official — he’s going to hammer House Republicans on immigration.¶ And it’s evident from his public and private statements that Obama’s latest immigration push is, in at least one respect, similar to his fiscal showdown strategy: yet again, the goal is to boost public pressure on House Republican leadership to call a vote on a Senate-passed measure.¶ “The majority of Americans think this is the right thing to do,” Obama said Thursday at the White House. “And it’s sitting there waiting for the House to pass it. Now, if the House has ideas on how to improve the Senate bill, let’s hear them. Let’s start the negotiations. But let’s not leave this problem to keep festering for another year, or two years, or three years. This can and should get done by the end of this year.”¶ And yet Obama spent the bulk of his 20-minute address taking whack after whack at the same House Republicans he’ll need to pass that agenda, culminating in a jab at the GOP over the results of the 2012 election — and a dare to do better next time.¶ “You don’t like a particular policy or a particular president? Then argue for your position,” Obama said. “Go out there and win an election. Push to change it. But don’t break it. Don’t break what our predecessors spent over two centuries building. That’s not being faithful to what this country’s about.”¶ Before the shutdown, the White House had planned a major immigration push for the first week in October. But with the shutdown and looming debt default dominating the discussion during the last month, immigration reform received little attention on the Hill.¶ Immigration reform allies, including Obama’s political arm, Organizing for Action, conducted a series of events for the weekend of Oct. 5, most of which received little attention in Washington due to the the shutdown drama. But activists remained engaged, with Dream Act supporters staging a march up Constitution Avenue, past the Capitol to the Supreme Court Tuesday, to little notice of the Congress inside.¶ Obama first personally signaled his intention to re-emerge in the immigration debate during an interview Tuesday with the Los Angeles Univision affiliate, conducted four hours before his meeting that day with House Democrats.¶ Speaking of the week’s fiscal landmines, Obama said: “Once that’s done, you know, the day after, I’m going to be pushing to say, call a vote on immigration reform.”¶ When he met that afternoon in the Oval Office with the House Democratic leadership, Obama said that he planned to be personally engaged in selling the reform package he first introduced in a Las Vegas speech in January.¶ Still, during that meeting, Obama knew so little about immigration reform’s status in the House that he had to ask Rep. Xavier Becerra (D-Calif.) how many members of his own party would back a comprehensive reform bill, according to a senior Democrat who attended.¶ The White House doesn’t have plans yet for Obama to participate in any new immigration reform events or rallies — that sort of advance work has been hamstrung by the 16-day government shutdown.¶ But the president emerged on Thursday to tout a “broad coalition across America” that supports immigration reform. He also invited House Republicans to add their input specifically to the Senate bill — an approach diametrically different than the House GOP’s announced strategy of breaking the reform into several smaller bills.¶ White House press secretary Jay Carney echoed Obama’s remarks Thursday, again using for the same language on immigration the White House used to press Republicans on the budget during the shutdown standoff: the claim that there are enough votes in the House to pass the Senate’s bill now, if only it could come to a vote.¶ “When it comes to immigration reform … we’re confident that if that bill that passed the Senate were put on the floor of the House today, it would win a majority of the House,” Carney said. “And I think that it would win significant Republican votes.”

#### Consistent pressure and Dem unity are key to make Boehner allow a vote

**Sullivan, 10/24/13** (Sean, “John Boehner's next big test: Immigration” Washington Post Blogs, The Fix, lexis)

President Obama delivered remarks Thursday morning to renew his call for Congress to pass sweeping immigration reform. The prevailing sentiment in Washington is that it’s not going to happen this year, and may not even happen next year.

But because of the last few weeks, it just might get done by early next year. It’s all up to House Speaker John A. Boehner (R-Ohio), who by political necessity, must now at least consider leaning in more on immigration.

“Let’s see if we can get this done. And let’s see if we can get it done this year,” Obama said at the White House.

Fresh off a decisive defeat in the budget and debt ceiling showdown that cost the GOP big and won the party no major policy concessions from Democrats, Boehner was asked Wednesday about whether he plans to bring up immigration legislation during the limited time left on the 2013 legislative calendar. He didn’t rule it out.

“I still think immigration reform is an important subject that needs to be addressed. And I’m hopeful,” said Boehner.

The big question is whether the speaker’s hopefulness spurs him to press the matter legislatively or whether the cast-iron conservative members who oppose even limited reforms will dissuade him and extinguish his cautiously optimistic if noncommittal outlook.

Months ago, as House Republicans were slow-walking immigration after the Senate passed a broad bill, the latter possibility appeared the likelier bet. But times have changed. The position House Republicans adopted in the fiscal standoff badly damaged the party's brand. The GOP is reeling, searching desperately for a way to turn things around. That means Boehner, too, must look for ways to repair the damage.

And that's where immigration comes in. Even before the government shutdown showdown, a vocal part of the GOP (think Sen. John McCain) had been talking up the urgent need to do immigration reform or risk further alienating Hispanic voters. Now, amid hard times for the party driven by deeper skepticism from Democrats, independents and even some Republicans following the fiscal standoff, the political imperative is arguably even stronger.

The policy imperative already exists for some House Republicans -- perhaps enough of them that if Boehner allowed a vote, reform of some type could pass with a majority of House Democrats and a minority of House Republicans, as did last week's deal to end the government shutdown and raise the debt ceiling. (What specifically could pass and whether Obama could accept it is another question.)

What's not clear is whether Boehner would be willing to chart a path with less than majority GOP support again so soon after the last time and without his back against the wall as it was in the fiscal standoff.

This much we know: The White House and Senate Democrats will keep applying pressure on Boehner to act on immigration. Obama's planned remarks are the latest example of his plan. The speaker will be feeling external and internal pressure to move ahead on immigration.

But he will also feel pressure from conservatives to oppose it. Here's the thing, though: Boehner listened to the right flank of his conference in the fiscal fight, and that path was politically destructive for his party. That's enough to believe he will at least entertain the possibility of tuning the hard-liners out a bit more this time around.

#### **The plan’s a perceived loss – it saps capital and causes defections**

Loomis 7 Dr. Andrew J. Loomis is a Visiting Fellow at the Center for a New American Security, and Department of Government at Georgetown University, “Leveraging legitimacy in the crafting of U.S. foreign policy”, March 2, 2007, pg 36-37, http://citation.allacademic.com//meta/p\_mla\_apa\_research\_citation/1/7/9/4/8/pages179487/p179487-36.php

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

#### That wrecks Obama’s strategy

**Milbank, 10/18/13** – Washington Post Opinion Writer (Dana, “Now, lead from the front” Washington Post, <http://www.washingtonpost.com/opinions/dana-milbank-now-lead-from-the-front/2013/10/18/56c1fd42-37fe-11e3-8a0e-4e2cf80831fc_story.html>)

Obama got out in front of the shutdown and debt-ceiling standoff. He took a firm position — no negotiating — and he made his case to the country vigorously and repeatedly. Republicans miscalculated, assuming he would again give in. The result was the sort of decisive victory rarely seen in Washington skirmishes.¶ On Wednesday, Republicans surrendered. They opened the government and extended the debt limit with virtually no conditions. On Thursday, Obama rubbed their noses in it.¶ “You don’t like a particular policy or a particular president? Then argue for your position. Go out there and win an election,” Obama taunted from the State Dining Room. “Push to change it, but don’t break it. Don’t break what our predecessors spent over two centuries building.”¶ Obama said “there are no winners” after the two-week standoff, but his opponents, particularly his tea party foes, clearly lost the most; seven in 10 Americans thought Republicans put party ahead of country. These “extremes” who “don’t like the word ‘compromise’ ” were the obvious target of Obama’s demand that we all “stop focusing on the lobbyists and the bloggers and the talking heads on radio and the professional activists who profit from conflict.” (He did not mention newspaper columnists, so you are free to continue reading.)¶ The gloating was a bit unseemly, but the president is entitled to savor a victory lap. The more important thing is that Obama now maintain the forceful leadership that won him the budget and debt fights. In that sense, the rest of Obama’s speech had some worrisome indications that he was returning to his familiar position in the rear.¶ The agreement ending the shutdown requires Congress to come up with a budget by Dec. 13 . It’s a chance — perhaps Obama’s last chance — to tackle big issues such as tax reform and restructuring Medicare. The relative strength he gained over congressional Republicans during the shutdown left him in a dominant negotiating position. If he doesn’t use his power now to push through more of his agenda, he’ll lose his advantage. George W. Bush adviser Karl Rove called it the “perishability” of political capital.¶ But instead of being forceful, Obama was vague. He spoke abstractly about “the long-term obligations that we have around things like Medicare and Social Security.” He was similarly elliptical in saying he wants “a budget that cuts out the things that we don’t need, closes corporate tax loopholes that don’t help create jobs, and frees up resources for the things that do help us grow, like education and infrastructure and research.”¶ Laudable ideas all — but timidity and ambiguity in the past have not worked for Obama. The way to break down a wall of Republican opposition is to do what he did the past two weeks: stake out a clear position and stick to it. A plan for a tax-code overhaul? A Democratic solution to Medicare’s woes? As in the budget and debt fights, the policy is less important than the president’s ability to frame a simple message and repeat it with mind-numbing regularity.¶ If there’s going to be a big budget deal, the president eventually will have to compromise, perhaps even allowing some changes to his beloved Obamacare, which he didn’t mention while on his victory lap Thursday. Even then, forceful leadership may not be enough to prevail.¶ But he has a much better chance if he remains out in front. Otherwise, he’ll soon be knocked back on his behind.

#### Immigration reform is key to competitiveness --- a decline results without it.

**Marber**, 12/27/**2012** (Peter, 4 Ways to Increase Immigration, Cultivate Highly Skilled U.S. Workforce, National Journal, p. http://www.nationaljournal.com/thenextamerica/immigration/4-ways-to-increase-immigration-cultivate-highly-skilled-u-s-workforce-20121227)

Immigration, long the backbone of American innovation, entrepreneurism, and human talent, has become a dirty word in recent years. This is unfortunate, because strategically conceived and well-targeted immigration should be seen as a precision tool for America to insure the best, optimal human capital needed to compete in the 21st century. While official unemployment stands at 7.7%, the US is critically short in many STEM (science, technology, engineering, math) and healthcare areas. While the global economy has evolved, our immigration laws haven’t changed much since 1990. This is why we occasionally see tech titans like Bill Gates testify before Congress urging more visas for foreign students and scientists to help us remain competitive. According to Manpower Inc., the US ranked 5th globally in talent shortages, with 49% of employers surveyed experiencing critical problems versus the 34% average. There’s plenty of room in America for more people. The US has one of the lowest population densities in the world at 85 people per square mile versus 360 in China, 650 in the UK, and more than 900 in India. Many American cities have depopulated over the last generation or two; they have ample infrastructure that would welcome new families and skilled workers. New Orleans, Detroit, Cleveland, Rochester, and Buffalo, among others, have lost thousands of people yet still offer big city infrastructure, education and opportunities. And since the financial crisis, there is excess housing ready to be absorbed. Targeted immigration policies could be meshed with special economic zones and other incentives to revive cities, fill skills gaps, and restore greater long-term stability and competitiveness to our labor markets. Here are four new policies endorsed by non-partisan groups that are worth considering: Raising H-1B Caps. The H-1B temporary high-skilled visa is often the only option for foreign-born STEM graduates who want to stay in the US and work on cutting-edge research at American firms. But arbitrary caps on H-1Bs, currently 65,000 per year, fill quickly. Just a few years ago the cap was 195,000 but the US could ramp this up to 250,000 with the recently passed STEM Jobs Act. The act will add 50,000 new visas but in reality, the legislation merely hijacked the 55,000 “diversity” visa quota; no new visas were added. We need immigration increases, not shell games. Automatic residency for targeted graduates. One of the great American success stories has been our unrivaled research universities. For decades, the US has trained some of the world’s top innovators who have subsequently been sent back home to compete in the global marketplace. To keep this talent, we should grant green cards to foreign students who earn STEM (pdf) and other masters and doctorate degrees at our schools. Residency for healthcare professionals. According to the Association of American Medical Colleges, a shortage of doctors in the US was expected even before the 2010 Affordable Care Act added millions of people eligible for health care coverage. Currently, there will be a shortage of 90,000 doctors by 2020 but may grow to nearly 150,000 by the end of the following decade. Doctors require years of training and cannot be made quickly. Nurses, too, are in shortage. Entrepreneur visas. There is no US visa for foreign-born entrepreneurs who want to start companies that employ American workers. There has been new legislation, the Startup Visa Act of 2012, tying visas to job creation and revenue targets within a period of time. This is a great idea that shouldn’t be bogged down in politics. Immigration reform is simply acknowledging the competition for labor globally, and that America is no longer the only economic game in town. Besides home country opportunities, Australia, Canada, Ireland, the UK and Singapore, among others, have eased their visa processes to lure foreign students, innovators, and entrepreneurs. America’s success has always been hinged on cultivating productive human capital, and immigration is an important part of keeping our global edge.

#### Technical competitiveness is key to primacy—the impact is great power war

Baru 9 - Visiting Professor at the Lee Kuan Yew School of Public Policy in Singapore (Sanjaya, “Year of the power shift?,”

http://www.india-seminar.com/2009/593/593\_sanjaya\_baru.htm

In the modern era, the idea that strong economic performance is the foundation of power was argued most persuasively by historian Paul Kennedy. ‘Victory (in war),’ Kennedy claimed, ‘has repeatedly gone to the side with more flourishing productive base.’6 Drawing attention to the interrelationships between economic wealth, technological innovation, and the ability of states to efficiently mobilize economic and technological resources for power projection and national defence, Kennedy argued that nations that were able to better combine military and economic strength scored over others.

‘The fact remains,’ Kennedy argued, ‘that all of the major shifts in the world’s *military-power* balance have followed alterations in the *productive* balances; and further, that the rising and falling of the various empires and states in the international system has been confirmed by the outcomes of the major Great Power wars, where victory has always gone to the side with the greatest material resources.’7

**I**n Kennedy’s view the geopolitical consequences of an economic crisis or even decline would be transmitted through a nation’s inability to find adequate financial resources to simultaneously sustain economic growth and military power – the classic ‘guns vs butter’ dilemma.

### 1nc counterplan

#### The United States Federal Government should restrict the President's war making authority by limiting targeted killing and detention without charge within zones of active hostilities to areas that have been declared and by statutory codification of executive branch review policy for those practices; and in addition, by limiting targeted killing and detention without charge outside zones of active hostilities to reviewable operations guided by an individualized threat requirement, procedural safeguards, and by statutory codification of executive branch review policy for those practices.

\*pretty sure plan text is unchanged form quarters, but we will modify if their “cosmetic” change means anything serious for how it has changed.

#### Capture and prosecution feasibility requirements cause confusion and destroy implementation of LOAC and tank 0perational readiness – also backdoors in a “least harmful means” requirement

**Corn et al, 13 –** Geoffrey S. Corn, Laurie R. Blank, Chris Jenks, Eric Talbot Jensen. Professor Corn is Presidential Research Professor of Law, South Texas College of Law; Lieutenant Colonel (Retired), U.S. Army Judge Advocate General’s Corps; Professor Blank is Director, International Humanitarian Law Clinic, Emory University School of Law; Professor Jenks is Assistant Professor of Law and Criminal Justice Clinic Director, SMU Dedman School of Law; Lieutenant Colonel (Retired) U.S. Army Judge Advocate General's Corps; Professor Jensen is Associate Professor at Brigham Young Law School, Lieutenant Colonel (Retired), U.S. Army Judge Advocate General’s Corps (“Belligerent Targeting and the Invalidity of a Least Harmful Means Rule” 89 INT’L L. STUD. 536 (2013), SSRN)

Recently, however, some have forcefully asserted that the LOAC in-cludes an obligation to capture in lieu of employing deadly force whenever doing so presents no meaningful risk to attacking forces, even if the enemy belligerent is neither physically disabled nor manifesting surrender. The convergence of a number of influences seems to have fueled this theory, including the increasing emphasis on the humanitarian foundation of the LOAC,4 the renewed assertion by the International Committee of the Red Cross (ICRC) that the principle of humanity imposes a “capture instead of kill” rule whenever tactically feasible,5 the widely-cited Israeli High Court of Justice opinion analyzing the legality of targeted killings,6 and most recently the work of one scholar who claims to have discovered highly probative but heretofore overlooked evidence of state practice and opinio juris that conclusively establishes this obligation.7 Proponents of this obligation to capture rather than kill, or to use the least harmful means to incapacitate enemy belligerents, do not contest the general authority to employ deadly force derived from belligerent status determinations. Instead, they insist that the conditions that rebut this presumptive attack authority are broader than the traditional understanding of the meaning of hors de combat em-braced by military experts and include any situation where an enemy bellig-erent who has yet to be rendered physically incapable of engaging in hostili-ties may be subdued without subjecting friendly forces to significant risk of harm.8

This essay offers our collective and—we hope—comprehensive rebut-tal of this least harmful means LOAC interpretation. Our approach relies on three analytical pillars. First, Section II reviews the fundamental princi-ples of the LOAC that permit status-based attacks against enemy belliger-ents with combat power highly likely to cause death unless and until the enemy is rendered physically incapable of participating in hostilities. This section also explains how the corporate notion of “enemy”—fundamentally different from the concept of individualized threat that dominates human rights law’s perspective on the use of force—contributes to an effective understanding of attack authority. Section II also analyzes the consequences of presumption-based use-of-force authority.

After briefly exploring the LOAC’s foundational components relating to a potential least harmful means rule—both core treaty provisions and customary principles—Section III thoroughly analyzes the affirmative pro-hibitions on the use of force that the LOAC—and specifically Additional Protocol I—does require. This section then highlights what Additional Protocol I does not require. In particular, this section demonstrates that the fact that Additional Protocol I—by any account the most humanitarian-oriented LOAC treaty ever developed—did not impose any affirmative least harmful means obligation vis-à-vis belligerents undermines any asser-tion that any such obligation may be derived from the positive LOAC. In-deed, the logical inference derived from the absence of any such positive obligation, coupled with the clearly limited scope of the protection provid-ed by the LOAC principle of proportionality, rebuts the assertion that a least harmful means obligation can be found in the interstitial regions of the positive LOAC.

Finally, and perhaps most importantly, Section IV emphasizes how this least harmful means concept, especially when derived from an expanded interpretation of the meaning of the concept of hors de combat, is fundamentally inconsistent with the tactical, operational, and strategic objectives that dictate employment of military power. The LOAC, and its presumption-based rules regarding use-of-force authority, serves the interests of all armed forces by providing a modicum of clarity in the midst of the chaos of armed hostilities.9 A least harmful means rule introduces extraordinary operational complexities, running the gamut from training to implementa-tion to accountability. Effective implementation of LOAC depends on the clarity of the legal principles, their application during the heat of battle, and their credible application post-hoc in investigations and prosecutions. Commanders and their forces can best adhere to the law and carry out its central tenets when the law and the obligations it imposes are predictable and **operationally logical**. Clarity and predictability in the form of bright line rules also bolster the law’s equally important role with regard to sol-diers’ moral—not just physical—well-being. Restraint, when and where appropriate, is certainly central to the effective execution of combat opera-tions and the development of morally grounded warriors. But **ill-conceived demands to extend restraint** beyond the scope of well-settled tactical and operational logic actually subjects soldiers to unjustified moral hazard.

#### Turns and solves the case

Corn, ’13 [Geoffrey Corn, South Texas College of Law, Professor of Law and Presidential Research Professor, J.D., 2013, Geography of Armed Conflict: Why it is a Mistake to Fish for the Red Herring http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2179720]

Seeking to identify some legally mandated geographic boundary for armed conflict of any type is, thus, a genuine Red Herring.23 Armed conflict is a threat driven concept, arising when the threat necessitates resort to combat power, and extending to wherever the operational and tactical opportunity to produce a militarily valuable effect on the enemy arises. There are examples of States choosing not to expand the scope of conflicts simply because such an opportunity arose. However, other factors impact such decisions, and it would be an error to equate decisions to refrain from exercising authority with an inherent legal prohibition against such exercise.

The scope of TAC—like that of any armed conflict—must be threat driven for a reason. Admittedly, there exists a perceived and actual risk of an overzealous and overbroad assertion of LOAC–based authority to attack and disable threat operatives inherent in the combined effect of TAC as a theory of armed conflict typology and a threat–driven scope interpretation. Nonetheless, States must avoid attempts to identify or impose some per se geographic limitations on this type of armed conflict. Any authority overreach (invoking the power to incapacitate through an application of LOAC principles), triggered by extending the concept of armed conflict to transnational non-State threats, will be more effectively mitigated by focusing on the traditional dynamics of lawful wartime action and tailoring or adjusting traditional sources of LOAC authority to meet the unique challenges of this type of armed conflict. Chief among these particular challenges are, one, ensuring that the targeting process adequately accounts for the complexity of threat identification in this inherently unconventional environment; and two, ensuring that preventive detention processes sufficiently address the unique scope and nature of this type of armed conflict. Focusing on these two practical challenges will produce a better balance between national security realities and the individual interests of potential objects of State action than would be achieved by attempting to confine that action to an arbitrary “hot zone.”

#### Key to regulate emerging military tech

Stewart, ‘11 [Darren M Stewart, Colonel, British Army; Director, Military Department, International Institute of Humanitarian Law (IIHL), “New Technology and the Law of Armed Conflict”, International Law Studies, Volume 87]

Over the centuries LOAC, in its various guises, has always had as its focus the regulation of armed conflict so as to protect the victims of war.2 During the nineteenth century, in response to both the development of military technology

and the prevailing social mores of the time, LOAC rules started to become formalized and began to reflect the format that we are familiar with today.

One of the notable features of LOAC has been its evolutionary flexibility. This flexibility has allowed LOAC to evolve in a manner that adapts to the developments in both technological capabilities (means) and tactics (methods) employed in armed conflict. This has included specific measures to ban weapons3 and tactics4 when seen as appropriate. More important, LOAC has demonstrated its flexibility through the defining principles underpinning its operation. These principles— military necessity, humanity, distinction and proportionality—are of an enduring quality and provide a benchmark against which developments in technology and tactics can be assessed as to their lawfulness. When applied in the context of prevailing international mores, LOAC proves itself both flexible and responsive to changes in the armed conflict paradigm.

The changing character of weapons systems and their impact on the law is neither one-dimensional nor negative. In fact, technological advances in weaponry frequently work to enhance application of LOAC, particularly in the areas of distinction and proportionality. Challenges usually arise when such developments raise wider questions as to what are the acceptable ethical limits in the application of technology to military purposes. In this context LOAC, operating as a system regulating what is inherently a human activity within a prevailing set of international mores, becomes an important consideration.

#### Extinction

Masciulli 11—Professor of Political Science @ St Thomas University [Joseph Masciulli, “The Governance Challenge for Global Political and Technoscientific Leaders in an Era of Globalization and Globalizing Technologies,” Bulletin of Science, Technology & Society February 2011 vol. 31 no. 1 pg. 3-5]

What is most to be feared is enhanced global disorder resulting from the combination of weak global regulations; the unforeseen destructive consequences of converging technologies and economic globalization; military competition among the great powers; and the prevalent biases of short-term thinking held by most leaders and elites. But no practical person would wish that such a disorder scenario come true, given all the weapons of mass destruction (WMDs) available now or which will surely become available in the foreseeable future. As converging technologies united by IT, cognitive science, nanotechnology, and robotics advance synergistically in monitored and unmonitored laboratories, we may be blindsided by these future developments brought about by technoscientists with a variety of good or destructive or mercenary motives. The current laudable but problematic openness about publishing scientific results on the Internet would contribute greatly to such negative outcomes.

To be sure, if the global disorder-emergency scenario occurred because of postmodern terrorism or rogue states using biological, chemical, or nuclear WMDs, or a regional war with nuclear weapons in the Middle East or South Asia, there might well be a positive result for global governance. Such a global emergency might unite the global great and major powers in the conviction that a global concert was necessary for their survival and planetary survival as well. In such a global great power concert, basic rules of economic, security, and legal order would be uncompromisingly enforced both globally and in the particular regions where they held hegemonic status. That concert scenario, however, is flawed by the limited legitimacy of its structure based on the members having the greatest hard and soft power on planet Earth.

At the base of our concerns, I would argue, are human proclivities for narrow, short-term thinking tied to individual self-interest or corporate and national interests in decision making. For globalization, though propelled by technologies of various kinds, “remains an essentially human phenomenon . . . and the main drivers for the establishment and uses of disseminative systems are hardy perennials: profit, convenience, greed, relative advantage, curiosity, demonstrations of prowess, ideological fervor, malign destructiveness.” These human drives and capacities will not disappear. Their “manifestations now extend considerably beyond more familiarly empowered governmental, technoscientific and corporate actors to include even individuals: terrorists, computer hackers and rogue market traders” (Whitman, 2005, p. 104).

In this dangerous world, if people are to have their human dignity recognized and enjoy their human rights, above all, to life, security, a healthy environment, and freedom, we need new forms of comprehensive global regulation and control. Such **effective global leadership** **and governance** with robust enforcement powers **alone can adequately respond to destructive current global problems, and prevent new ones**. However, successful human adaptation and innovation to our current complex environment through the social construction of effective global governance will be a daunting collective task for global political and technoscientific leaders and citizens. For our global society is caught in “the whirlpool of an accelerating process of modernization” that has for the most part “been left to its own devices” (Habermas, 2001, p. 112). We need to progress in human adaptation to and innovation for our complex and problematical global social and natural planetary environments through global governance. I suggest we need to begin by ending the prevalent biases of short-termism in thinking and acting and the false values attached to the narrow self-interest of individuals, corporations, and states.

### 1nc allies

#### US-EU intel legal confrontation now

Henry Farrell, WaPo, 10/23/13, The Merkel phone tap scandal paves the way toward E.U.-U.S. confrontation, www.washingtonpost.com/blogs/monkey-cage/wp/2013/10/23/the-merkel-phone-tap-scandal-paves-the-way-toward-e-u-u-s-confrontation/?wprss=rss\_politics&clsrd

According to German news magazine, Spiegel, there is some evidence that the United States has tried to tap German Chancellor Angela Merkel’s cellphone. The evidence seems strong enough to have caused Merkel to make an angry phone call to Obama to complain. The administration, in response, has said that the United States “is not monitoring and will not monitor the communications of Chancellor Merkel.” It has declined to comment on whether it has monitored her phone communications in the past.

It’s likely that Germany is being hypocritical in complaining about the phone tap. The transcripts of the Wikileaks diplomatic cables reveal that Merkel has been privately very sympathetic to U.S. surveillance in the past. Almost certainly, Merkel would not be making angry and well publicized phone calls if the scandal hadn’t already become public. Now that it is public, she has to. The scandal is equivalent to the scandal that would erupt in the United States, if it was discovered that France had been tapping into President Obama’s blackberry.

Yet as Martha Finnemore and my arguments about hypocrisy suggest, the interesting question isn’t whether the German government is entirely sincere. It’s whether these revelations are making it tougher for the United States to have its cake and eat it too. And there is good reason to believe that they will make direct confrontation between Europe and the United States more likely.

On Monday, the European Parliament agreed on new privacy legislation, which included a provision that forbade businesses from giving personal information to U.S. authorities without informing European authorities, and the European citizen affected. The United States had previously successfully lobbied to get this provision deleted; it was reinstated as a result of the Snowden scandal. The European Parliament doesn’t get sole final say on this legislation — it now has to negotiate with Europe’s member states. U.S. politicians and lobbyists have been hoping that they can persuade enough member states to quietly delete the provision yet again.

This has suddenly become a lot harder. Merkel would probably personally like to see the provision deleted. Yet it is going to be very hard for her to push that argument, without looking like a sellout to the German public. The French wiretapping scandal is similarly going to harden public opposition in France. Disagreements over spying are usually handled discreetly through back channels. Not this time.

Thus — even if Merkel doesn’t want it (and she has done her best in her public statement to limit the controversy by only demanding that U.S. spying stops) — this latest scandal is plausibly going to lead to a major confrontation between the European Union and the United States over NSA spying, in which the two sides make incompatible legal demands. If this happens, Google, Facebook, and other companies that operate across both jurisdictions will be caught in the crossfire. It’s possible that Europe and the United States will find some way to fudge this and avoid confrontation, but it’s hard for me to see how.

#### Dispute is escalating—it collapses relations and overwhelms any increased trust from the plan

EuroNews, staff writer, 10/26/13, Europe-US trust, shattered by NSA spying, could take decades to rebuild, www.euronews.com/2013/10/26/europe-us-trust-shattered-by-nsa-spying-could-take-decades-to-rebuild/

The document, from 2006, does not give names but says the NSA encourages senior officials of the administration and government to share their contact details with the agency. One unnamed official alone is said to have passed on 200 numbers. It has set another cat among the pigeons, **sparking** a **fresh escalation in the simmering diplomatic crisis between Washington and its allies**. It is becoming increasingly difficult for Barack Obama to limit the consequences of this incessant flow of revelations and counter the lingering Cold War atmosphere it has created. The bugging of Chancellor Angela Merkel’s mobile phone is particularly embarrassing. Friends don’t do this sort of thing, Berlin says, while the US has been desperately emphasising the importance of its friendship with Germany, insisting that a few lines in the press are not going to undermine that. Our Washington correspondent Stefan Grobe asked the head of one of Germany’s largest private non-profit organisations, the Bertelsmann Foundation, to help gauge the potential for worsening relations between that country and the United States. Legal specialist and political analyst Annette Heuser responded on the transatlantic NSA spying scandal. The foundation’s executive director in the US capital, Heuser said: “The question is not only whether the Chancellor’s cell phone has been bugged or whether the German government has been bugged. The general question is whether friends can put up with operations like these. The answer is: definitely not. The Obama administration is not doing itself any favours by downplaying the whole affair and saying: ‘We won’t do it any more’ and that is it. We are witnessing the beginning of a foreign policy tsunami that is going to bother American and European transatlantic policy for quite some time.” And this is the president whom many in Europe wanted for the US; so their feelings were hurt when, swiftly following his 2008 election victory, Obama immediately showed the Europeans that he just was not that into them. He was more attentive to Asia – perhaps taking Europe’s good nature for granted. Our Bertelsmann expert said: “I believe that there is a tendency here in the US and in this administration not to take relations with Europeans seriously, and to believe that scandals and problems can easily be brushed away**. This is a fundamental mistake**. We have also noticed that the Obama administration, like no other US administration in post-war history, has lost the ability to understand the Europeans and to read them accurately. This is a huge problem for transatlantic relations. Until now, there has been a deep-rooted trust between Europeans and Americans – especially between Germans and Americans – but this scandal now contributes to a situation in which this trust is being eroded and is no longer an essential part of these relations.” In 2011, Chancellor Merkel was the first European leader Obama invited to dinner at the White House. It served a double function, to honour her and to somewhat wash away the bitterness in many people’s mouths that the Bush administration had left. According to Annette Heuser: “This scandal will have very important consequences for the future of transatlantic relations. Until now, we have always said that the lowest point in these relations, especially between Germany and the US, was the struggle over the Iraq war in 2003. It was the question of whether to intervene militarily in Iraq. The German government at the time, under Gerhard Schroeder, clearly opted against it. But that was merely a question of military strategy. What we are seeing right now is much more fundamental; we are dealing with trust. This **trust is disappearing from transatlantic relations and will take decades to rebuild.”**

#### Multiple alt causes

McGill, School of Graduate and Continuing Studies in Diplomacy – Norwich U, and Gray, Campbell University, ‘12

(Anna-Katherine and David, “Challenges to International Counterterrorism Intelligence Sharing,” Global Security Studies, Summer, Volume 3, Issue 3)

Indeed, in the aftermath of 9/11 the US saw not only its NATO counterparts rise to action but also a new enthusiasm from its traditional bilateral relationships in improving counterterrorism coordination and more specifically intelligence sharing. Still, the rallying of support for the US following the attacks is not enough to overcome longstanding political and institutional hurdles to counterterrorism intelligence sharing. Although the US shares many political and cultural values with its traditional allies, their views diverge on issues like the invasion of Iraq, personal data protection, and the treatment or punishment of terrorists. The Invasion of Iraq The invasion of Iraq provides a perfect example of how the national interests of one nation can threaten the interests of its allies and more specifically, how policies in one arena can affect cooperation in another. According to US Senator Byrd, a major critic of the Bush administration, the invasion of Iraq “split traditional alliances, possibly crippling, for all time, international order-keeping entities like the United Nations and NATO” (qtd in Gardner 16). The central concerns arising from the 2003 Iraq invasion were the use of “preemptive” or “preventative” (depending on who you ask) strikes, unilateral action, and ultimately questionable motives. Consequently, bilateral cooperation from Germany, France, and NATO ally Turkey has taken a major hit. France argued against military intervention in favor of enforced inspections and diplomacy. Furthermore, it refuted that the US invasion of Iraq did not constitute collective security and therefore was not an obligation of NATO’s article V. Hall Gardner explains that while France has always been a reluctant ally, Germany and Turkey “represented the most loyal NATO allies during the Cold War” (3). As a result of the Iraq invasion, however, these two nations “bitterly questioned US policies and actions for very different reasons” (Gardner 3). For Germany, the use of preventative military strikes set a dangerous precedent for state behavior. They feared that should this become the norm, “it would undermine international law and concepts of national sovereignty dating back to Westphalia” (Gardner 3). Turkey, on the other hand, feared that the US invasion of Iraq would run directly counter to its national interests in regards to the Kurds of northern Iraq. While these countries have remained committed to the counterterrorism effort, the public row over the Iraq invasion shaped global public opinion of the US led war on terrorism and likely lessened domestic support for aiding the Americans in future CT endeavors. The fallout from US actions and its greater presence in the Middle East has arguably made it a larger target to terrorist organization which portray the US as a global crusader. By default, those who supported and contributed to the invasion of Iraq are also greater targets of transnational terrorist networks like al Qaeda. Additionally, the use of ultimately false intelligence on Iraqi position of WMD to justify the invasion heightened criticism of the US intelligence community and thus hurt their reputation in producing credible intelligence analysis. Personal data protection Personal data is critical to counterterrorism efforts because it “often provide[s] the only evidence of connections between members of terrorist groups and the types of activities that they are conducting” (Bensehal 48). However, Europe has shown resistance to freely sharing this type of information with its American counterparts since many of the US’s European allies have much more stringent views on the protection of personal data. In the EU, there are safeguards at the national and regional level that regulate the storage and sharing of personal data information. These laws are a product of Europe’s historical experience with fascism and thus its sensitivity to the abuse of such information as travel records or communications (Bensahel, 48). In “The Counterterror Coalitions: Europe, NATO, and the European Union” Nora Bensahel explains “by contrast, the United States protects personal information through legal precedents and procedures rather than [unified] legislation” which the Europeans find insufficient (48). The EU’s concerns over the US’s protection of personal data caused them to withhold information from the US and created a substantial challenge to their combined counterterrorism efforts. Following 9/11 the heightened political will to overcome such issues enabled the US and the EU to compromise on this issue but there are lingering limits to EU willingness to share personal data with the US. In the wake of the attacks, the US and Europol signed an agreement to permit the sharing of personal data. Although it increased operational effectiveness and intelligence sharing this agreement is limited to law enforcement operations which excludes personal data found in commercial activities. Furthermore, provisions in the agreement state that “personal information can be used only for the specific investigation for which it was requested” (Bensahel, 48). If the suspect is being investigated for murder and is discovered to have ties to a smuggling ring the US must submit a separate request to use the murder information in the case regarding the smuggling activities. The Rights of the Accused The US and the EU have also had substantial disagreements on the treatment and punishment of accused terrorists. This tension hinges on such issues as the use of the death penalty and “extraordinary rendition”. Fortunately, the death penalty issue was resolved with the passage of an multilateral treaty on extradition however the US has not fully recovered from the backlash of criticism and mistrust from its practice of “extraordinary rendition”. Prior to a May 2002 summit, the US and EU were at a disagreement over the death penalty. The EU’s aversion to capital punishment led it to not only hesitate from sharing information but deny requests for extradition unless the US would guarantee that the individual in question would not face the death penalty. The 2002 summit did however bring both the US and EU to at least agree in principle to a treaty on extradition and Mutual Legal Assistance Treaty (MLAT) and both parties ratified the treaties in 2003. The extradition treaty allowed for a blanket policy for European nations to “grant extradition on the condition that the death penalty will not be imposed” and the MLAT provided enhanced capability to gather and exchange information (Bensahel 49). The CIA’s use of “extraordinary rendition”, the practice of transporting a suspect to a third country for interrogation, has also stoked the ire of many traditional allies. Critics charge that this tactic quite simply allows the CIA to sidestep international laws and obligations by conducting interrogations in nations with poor human-rights records. In 2003, an Italian magistrate formally indicted 13 CIA agents for allegedly kidnapping an Italian resident and transporting him to a third country for interrogation. Ultimately 22 CIA agents and one US military officer were convicted in absentia of crimes connected to the abduction (Stewart, 1). The case not only heightened criticism of the US in Italy but challenged U.S. strategic communications aimed at reducing anti-Americanism worldwide (Reveron 462). According to Julianne Smith, director of the Europe program at the Center for Strategic and International Studies (CSIS), “[extraordinary rendition] makes it extremely difficult [for European governments] to stand shoulder-to-shoulder with the U.S.” (Heller 1).

#### No impact to NATO failure

**Schmidt 7** John R. Schmidt is the senior analyst for Europe in the Bureau of Intelligence and Research at the Department of State, served as director of the NATO office at the State Department and as director for NATO affairs at the National Security Council, “Last Alliance Standing? NATO after 9/11,” Washington Quarterly, Winter, 2007

The real problem is that the United States does not really know what it wants from NATO. It continues to perceive the alliance through what is essentially a Cold War prism, as the key mechanism through which the United States attempts to project influence in Europe. The successes of the NATO enlargement process, which addressed genuine security concerns among newly freed former Communist states, and of NATO involvement in the Balkans have only helped to sustain this perception. Current U.S. efforts to give NATO a more global reach also reflect the same perception of NATO preeminence, with the alliance moving out from its European core to embrace the wider world. It is undeniably a grand vision, but it is also clearly **at odds with reality**. The notion of giving pride of place to a military alliance made sense during the Cold War, but it does not make sense today when the most critical threats are more varied and diffuse. NATO is of limited use as a diplomatic actor, which is why the United States has never really used it in this capacity. Other vehicles and partners are preferred for U.S. diplomatic activity, the EU increasingly among them, and this is unlikely to change. Even in the military sphere, NATO is no longer the primary instrument of choice and has at best only a circumscribed, if still important, role to play.

#### Even if the plan makes NATO more cohesive, financial pressure means it can’t operate effectively

**Atlantic Council, 8/7/13** – The Atlantic Council of Canada, independent, non-profit, non-governmental organization, founded in 1966 to promote knowledge and understanding of international peace and security and the North Atlantic Treaty Organization (“NATO Dollars and Sense,” <http://atlantic-council.ca/portfolio/nato-dollars-and-sense/> //Red)

This national conversation has emerged only two weeks after NATO Supreme Allied Commander Europe Philip Breedlove made an impassioned call for funding to Alliance members. In an attempt to save national defense expenditures from widespread austerity cuts, the US Air Force General underlined the importance of stable, long-term funding, so that the Alliance is prepared to face unknown and diverse challenges in the future. “**NATO is at its most cohesive yet**,” he said, “**but must ensure that spending cuts do not erode the power of an alliance** facing tasks as diverse as a new training mission in Afghanistan and protecting Turkey’s border with Syria.” He explained further, “Right now we [NATO] **are at the height of our ability to operate together**, our **cohesiveness is high**, our **tactics, techniques and procedures are** as **good as they have ever been.** My concern is that we do not lose the edge…clearly we need the budget to do that, so we are emphasizing with our NATO partners that defense spending is important.” It is true that after thirteen years of war in Afghanistan, the extent of cohesion and interoperability between NATO allies has undeniably improved. **However, the cost of this war**, in dollars and in lives, **has also motivated NATO’s pending withdrawal. Many contributing countries consider their debt to the alliance paid and look forward to the dividends of peace.** Four years after the financial crisis of 2008/2009, most **NATO members remain burdened by public debt and high unemployment** rates. Forecasted growth rates offer little comfort to cash-strapped treasuries and incumbent politicians. Though Canada fared the financial crisis better than many of its allies, it is by no means immune to this trend. The federal government posted a 2.7 billion dollar deficit in the first two months of its 2013-2014 fiscal year (beginning April 1). With a 2015 federal election in mind, Prime Minister Harper has made it clear that he wants federal finances back in black by then. Though the conservative party once promised stable and predictable funding for the Canadian Armed Forces, the army has seen a **22% cut in funding since 2010**. The Royal Canadian Navy has similarly seen an 11% decrease. The spokesman for Canadian Defense Minister Peter MacKay told the National Post in March 2013, “After years of unprecedented growth, and following the end of the combat mission in Afghanistan, it is necessary for the government to balance military needs with taxpayer interests.” These cuts make headlines, though perhaps indirectly. They explain why the Canadian Forces will no longer boast a brand new fleet of Lockheed Martin F-35 fighters, and why Prime Minister Harper has refocused his Arctic lens on development, as opposed to protecting Canadian sovereignty. Photo-ops north of the 66th seem quite unnecessary in the absence of an actual threat. In short, after thirteen years of war and a global financial crisis, Canada and its NATO allies have been forced to **re-evaluate their defense priorities and economize accordingly.** As a network for, and product of, these member countries, NATO must do the same. Last week, General Breedlove named failing states, restive populations and “ungoverned spaces” as the key issues facing the world. However, he insisted that NATO must be prepared to counter any threat, from counter-insurgency to “the more conventional defensive or offensive fights that NATO’s history was centered on.” Given pressing fiscal realities, the General’s comments are **unfortunately idealistic.** With fewer resources at NATO’s disposal, attempting to cover all bases means that member countries will be relatively more vulnerable to their most likely threats. Rather than challenging the fiscal constraints of its member states, NATO HQ would do better to articulate how it intends to accommodate them.

#### Open trade is locked in—no protectionism

**Kim 13**

Soo Yeon Kim, of the National University of Singapore, associate professor of music at Nazareth College of Rochester, New York, Fellow of the Transatlantic Academy, based at the German Marshall Fund of the United States, The Monkey Cage, January 30, 2013, " Protectionism During Recessions: Is This Time Different?", http://themonkeycage.org/blog/2013/01/30/protectionism-during-recessions-is-this-time-different/

There is widespread agreement regarding the critical role of international institutions as “firewalls” against protectionism during this recession. Economic and non-economic international institutions have served as conveyors of information and mechanisms of commitment and socialization. Their informational function enhances the transparency and accountability of states’ trade policies, and they mitigate uncertainty when it is running high. Specialized international institutions devoted to trade, such as the WTO and preferential trade agreements (PTAs), also lock in commitments to liberal trade through legal obligations that make defections costly, thus creating accountability in the actions of its members. Equally important, international institutions are also arenas of socialization that help propagate important norms such as the commitment to the liberal trading system and cooperative economic behavior. In this connection, the degree to which a particular country was embedded in the global network of economic and non-economic international institutions has been found to be strongly correlated with fewer instances of protectionist trade measures.¶ Information provided to date by international institutions, with the exception of the GTA project, largely agree that states have not resorted to large-scale protectionism during this recession, in spite of the fact that the “great trade collapse” at the beginning of the current crisis was steeper and more sudden than that of its Great Depression predecessor. The WTO Secretariat, in addition to its regular individual reports on members’ trade policies under the Trade Policy Review Mechanism (TPRM), has issued more than a dozen reports on member states’ trade policies during the crisis. At the request of the G-20 countries, which pledged not to adopt protectionist trade measures at the onset of the crisis in 2008, the WTO, the OECD, and UNCTAD have produced joint reports on the trade and investment measures of the world’s largest trading states. They, too, find that G-20 countries had largely adhered to their commitment not to raise trade and investment barriers. In the World Bank’s Temporary Trade Barriers (TTB) project, an important and unique data collection that includes information on pre-crisis and crisis trade policy behavior, Bown finds that temporary trade barriers such as safeguards, countervailing and antidumping duties saw only a slight increase of usage by developed countries, in the neighborhood of 4%. In contrast, emerging market economies were the heavy users of TTBs, whose usage rose by almost 40% between 2008 and 2009.¶ As scholarly insights accumulate on the current recession and its impact on protectionism (or lack thereof), two questions emerge for further research. First, to what extent have governments employed policy substitutes that have the same effect as trade protectionism? International institutions may appear to have been successful in preventing protectionism, but governments may well have looked elsewhere to defend national economies. This question can be seen in the broader context of the “open economy trilemma,” in which governments may achieve only two of three macroeconomic policy objectives: stable exchange rates, stable prices, and open trade. Irwin argues that governments that abandoned the gold standard during the Great Depression were less protectionist, and their economies also suffered less from the recession. Existing scholarship also indicates that governments are likely to employ policy substitutes, opting for monetary autonomy when facing trade policy constraints, for example, due to membership in a preferential trade agreement. Moreover, at the time of writing, the International Monetary Fund (IMF) has announced that it has dropped its objections to capital controls, albeit cautiously and only under certain conditions, thus potentially providing another policy alternative for governments to achieve economic stability during this crisis. Future research may further extend the application to policy substitutes that are deployed during economic downturns.¶ Finally, why did firms not push for more protection? Protectionist policies are not adopted by governments in a political vacuum. In order to adopt trade defense measures such as anti-dumping duties, governments first conduct investigations to assess the extent of injury. Such investigations are initiated when firms apply for them through the domestic political process. If indeed governments did not appeal extensively or unusually to protectionist trade policies, the explanation to a significant degree lies in firm behavior. A distinguished body of research exists in this area that is due for a revisit in the age of extensive international supply chains, from Schattschneider’s classic examination of the domestic pressures that led to the Smoot-Hawley Act to Helen Milner’s study of export-dependent firms that resisted protectionism during the crisis of the 1920s and the 1970s. Milner rightly pointed out that “firms are central,” and over the years the export-dependent, multinational firm has evolved in tandem with the increasing complexity of the international supply chain. Today’s firm is not only heavily export-dependent but equally import-dependent in its reliance on intermediate inputs, whether through intra-firm trade or from foreign firms. The extensive international supply chain thus often puts exporting and importing firms on the same side of the political debate, especially when they are members of large multinational firms. Moreover, the study of firm-level behavior must extend beyond the developed world to consider firms in emerging market economies, which have been the heavy users of trade defense measures during the current recession. How the internationalization of production, driven by investment and trade in intermediate goods, restrained multinational firms from pushing for more protection remains an important question for further research.

#### Deterrence and rapid response check solve cyber

**Fox 11**—Assistant Editor, InnovationNewsDaily (Stuart, 2 July 2011, “Why Cyberwar Is Unlikely ,” http://www.securitynewsdaily.com/cyberwar-unlikely-deterrence-cyber-war-0931/, RBatra)

In the two decades since cyberwar first became possible, there hasn't been a single event that politicians, generals and security experts agree on as having passed the threshold for strategic cyberwar. In fact, the attacks that have occurred have fallen so far short of a proper cyberwar that many have begun to doubt that cyberwarfare is even possible. The reluctance to engage in strategic cyberwarfare stems mostly from the uncertain results such a conflict would bring, the lack of motivation on the part of the possible combatants and their **shared inability to defend against counterattacks**. Many of the systems that an aggressive cyberattack would damage are actually as valuable to any potential attacker as they would be to the victim. The five countries capable of large-scale cyberwar (Israel, the U.S., the U.K., Russia and China) have **more to lose if a cyberwar were to escalate** into a shooting war than they would gain from a successful cyberattack. "The half-dozen countries that have cyber capability are deterred from cyberwar because of the fear of the American response. **Nobody wants this to spiral out of control,"** said James Lewis, senior fellow and director of technology and public policy at the Center for Strategic and International Studies in Washington, D.C. "The countries that are capable of doing this don't have a reason to," Lewis added. "Chinese officials have said to me, 'Why would we bring down Wall Street when we own so much of it?' They like money almost as much as we do." Big deterrent: retaliation Deterrence plays a major factor in preventing cyberwar. Attacks across the Internet would favor the aggressor so heavily that no country has developed an effective defense. Should one country initiate a cyberattack, the victim could quickly counter-attack, leaving both countries equally degraded, Lewis told InnovationNewsDaily. Even if an attacker were to overcome his fear of retaliation, the low rate of success would naturally give him pause. Any cyberattack would target the types of complex systems that could collapse on their own, such as electrical systems or banking networks. But experience gained in fixing day-to-day problems on those systems would allow the engineers who maintain them to **quickly undo damage caused by even the most complex cyberattack**, said George Smith, a senior fellow at Globalsecurity.org in Alexandria, Va. "You mean to tell me that the people who work the electrical system 24 hours a day don't respond to problems? What prevents people from turning the lights right back on?" Smith told SecurityNewsDaily. "And attacks on the financial system have always been a non-starter for me. I mean, [in 2008] the financial system attacked the U.S.!"

### 1nc overreach advantage

#### Scenario A

#### Drones empirically don’t cause arms races

Joshi and Stein ’13 [Shashank Joshi, Research Fellow at the Royal United Services Institute and a PhD candidate at the Department of Government, Harvard University, & Aaron Stein, Associate Fellow at the Royal United Services Institute, a researcher at the Istanbul-based Centre for Economics and Foreign Policy Studies and a PhD candidate at King’s College London, 2013, Survival: Global Politics and Strategy, Volume 55, Issue 5, “Emerging Drone Nations,” Taylor and Francis, accessed 10/12/13]

Just weeks after Nazi Germany began to use the V-1 missile to attack the United Kingdom in 1944, the United States began work on a pilotless bomber to attack targets deep inside German-held territory. The programme was beset with problems, and converted B-17 and B-24 bombers were only able to fly 13 unsuccessful test missions.1 Nevertheless, the emergence of long-range missile technology, as well as these early tests in pilotless and remotely piloted aircraft, paved the way for the introduction of modern unmanned aerial vehicles and remotely piloted air systems, collectively and more commonly referred to as drones.2

Beginning in the 1950s, the US Air Force began to experiment with drones for high-altitude reconnaissance of Soviet missile, nuclear and mil- itary facilities. As the programme matured, the air force tested an SR-71 Blackbird-type drone for high-speed flights over China, developed a drone for use in Vietnam and, eventually, created a larger platform that served as a test bed for many of the systems comprising the current Global Hawk, Predator and Reaper drones.3

**Drones do not, therefore, represent a radically new technology**. They are but one strand in the remarkable trajectory of airpower development since the Second World War. The idea of using self-guiding or, more commonly, remotely guided aircraft to minimise the risk to pilots, to collect intelligence and to destroy targets has been at the centre of every drone programme for the past six decades.

Drones do not have, and have never had, a monopoly on these roles: manned aircraft, cruise missiles and special forces continue to be used in striking valuable targets in contested areas. Cruise missiles were used to target al-Qaeda in Yemen in 2009, and special forces to kill Osama bin Laden in Pakistan in 2011. Moreover, the great majority of drones around the world are neither armed, nor as large and capable as manned aircraft.4

#### No arms race – too many barriers

Joshi and Stein ’13 [Shashank Joshi, Research Fellow at the Royal United Services Institute and a PhD candidate at the Department of Government, Harvard University, & Aaron Stein, Associate Fellow at the Royal United Services Institute, a researcher at the Istanbul-based Centre for Economics and Foreign Policy Studies and a PhD candidate at King’s College London, 2013, Survival: Global Politics and Strategy, Volume 55, Issue 5, “Emerging Drone Nations,” Taylor and Francis, accessed 10/12/13]

As with all shifts in military technology, a nation’s ability to use drones as effective military instruments depends on the context of their broader technological status, local political conditions and, above all, the strategic and operational context into which the new technology is being introduced. As Michael Horowitz explains in his book, The Diffusion of Military Power: Causes and Consequences for International Politics, past military innovations such as the all-big-gun steel battleship, aircraft carriers, nuclear weapons and the use of suicide terror by non-state actors have spread through the international system in uneven ways, depending on nations’ abilities to fund and adapt to these changes.7

We argue that there are at least five key challenges that states will have to grapple with as they adapt to building and operating drones: cost, human and material infrastructure, the problem of air superiority, the develop- ment of a doctrinal and legal framework, and the impact on proliferation. The United States has not escaped any of these challenges but it does have notable advantages – some of which have come from operational experi- ence, and others of which inhere in its military preponderance.

#### No impact to global drone prolif and it’s impossible to solve

Alejandro Sueldo 12, J.D. candidate and Dean’s Fellow at the University of California, Berkeley, School of Law and a PhD candidate at the Department of War Studies at King’s College London of the University of London, 4/11/12, “The coming drone arms race,” <http://dyn.politico.com/printstory.cfm?uuid=70B6B991-ECA7-4E5F-BE80-FD8F8A1B5E90>

Of particular concern are the legal and policy challenges posed if other states imitate the U.S. targeted killing program. For Washington is setting a precedent whereby states can send drones, often over sovereign borders, to kill foreigners or their own citizens, who are deemed threats.

Other states may also follow Washington’s example and develop their own criteria to define imminent threats and use drones to counter them.

Washington will find it increasingly difficult to protest other nations’ targeted killing programs — particularly when the United States has helped define this lethal practice. U.S. opposition will prove especially difficult when other states justify targeted killings as a matter of domestic affairs.

Should enough states follow the U.S. example, the practice of preemptively targeting and killing suspected threats may develop into customary international law.

Such a norm, however, which requires consistent state practice arising out of a sense of legal obligation, now looks unlikely. While targeted killing policies are arguably executed by states citing a legal obligation to protect themselves from imminent threats, widespread state practice is still uncommon.

But international law does not forbid drones. And given the lack of an international regime to control drones, state and non-state actors are free to determine their future use.

This lack of international consensus about how to control drones stems from a serious contradiction in incentives. Though drones pose grave challenges, they also offer states lethal and non-lethal capabilities that are of great appeal. Because the potential for drone technology is virtually limitless, states are now unwilling to control how drones evolve.

#### No drone prolif – countries won’t integrate into existing military apparatuses,

**Gilli and Gilli 13** [Andrea Gilli & Mauro Gilli, “Attack of the Drones: Should we fear the proliferation of unmanned aerial vehicles?”, Paper prepared for the 2013 APSA Annual Conference, Chicago (IL), Aug 31- Sept 3 2013, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2299962>]

From our analysis, we reach the opposite conclusion. Drones production and¶ employment is significantly more complicated and costly than many claim. More¶ precisely, at the platform level, for three out of the four types of drones we¶ investigate, UAVs require specific technical and industrial competences that are long,¶ difficult and expensive to develop and to maintain. Second, drones require some¶ advanced components and modules that in three out of four cases are expensive or¶ difficult either to produce or to access: from sensors to engines and munitions.¶ Finally, with the exception of very small drones, UAVs’ military value depends on¶ their integration into a broader architecture, what in military jargon is called the¶ battle-networks: the entire set of satellite, air and ground installations permitting realtime¶ and constant intelligence sharing. However, building and maintaining such¶ battle-networks is both expensive and challenging.10 In sum, the available evidence¶ suggests that the types of drones casting the most salient military threats are unlikely¶ to spread as quickly and easily as many claim.11

#### US norms mean nothing

**Anderson 11** [Kenneth, 10/9/2011, “What Kind of Drones Arms Race Is Coming?” http://opiniojuris.org/2011/10/09/what-kind-of-drones-arms-race-is-coming/]

By asserting that “we’re” creating it, this is a claim that there is an arms race among states over military drones, and that it is a consequence of the US creating the technology and deploying it — and then, beyond the technology, changing the normative legal and moral rules in the international community about using it across borders. In effect, the combination of those two, technological and normative, forces other countries in strategic competition with the US to follow suit. It sounds like it must be true. But is it? There are a number of reasons to doubt that moves by other countries are an arms race in the sense that the US “created” it or could have stopped it, or that something different would have happened had the US not pursued the technology or not used it in the ways it has against non-state terrorist actors. Here are a couple of quick reasons why I don’t find this thesis very persuasive, and what I think the real “arms race” surrounding drones will be. Unmanned aerial vehicles have clearly got a big push from the US military in the way of research, development, and deployment. But the reality today is that the technology will transform civil aviation, in many of the same ways and for the same reasons that another robotic technology, driverless cars (which Google is busily plying up and down the streets of San Francisco, but which started as a DARPA project), will eventually have an important place in ordinary ground transport. UAVs will eventually move into many roles in ordinary aviation, because it is cheaper, relatively safer, more reliable — and it will eventually include cargo planes, crop dusting, border patrol, forest fire patrols, and many other tasks. There is a reason for this — the avionics involved are simply not so complicated as to be beyond the abilities of many, many states. Military applications will carry drones many different directions, from next-generation unmanned fighter aircraft able to operate against other craft at much higher G stresses to tiny surveillance drones. But the flying-around technology for aircraft that are generally sizes flown today is not that difficult, and any substantial state that feels like developing them will be able to do so. But the point is that this was happening anyway, and the technology was already available. The US might have been first, but it hasn’t sparked an arms race in any sense that absent the US push, no one would have done this. That’s just a fantasy reading of where the technology in general aviation was already going; Zenko’s ‘original sin’ attribution of this to the US opening Pandora’s box is not a credible understanding of the development and applications of the technology. Had the US not moved on this, the result would have been a US playing catch-up to someone else. For that matter, the off-the-shelf technology for small, hobbyist UAVs is simple enough and available enough that terrorists will eventually try to do their own amateur version, putting some kind of bomb on it. Moving on from the avionics, weaponizing the craft is also not difficult. The US stuck an anti-tank missile on a Predator; this is also not rocket science. Many states can build drones, many states can operate them, and crudely weaponizing them is also not rocket science. The US didn’t spark an arms race; this would occur to any state with a drone. To the extent that there is real development here, it lies in the development of specialized weapons that enable vastly more discriminating targeting. The details are sketchy, but there are indications from DangerRoom and other observers (including some comments from military officials off the record) that US military budgets include amounts for much smaller missiles designed not as anti-tank weapons, but to penetrate and kill persons inside a car without blowing it to bits, for example. This is genuinely harder to do — but still not all that difficult for a major state, whether leading NATO states, China, Russia, or India. The question is whether it would be a bad thing to have states competing to come up with weapons technologies that are … more discriminating.

#### No escalation—great powers don’t want it

**Kucera 10**—regular contributor to U.S. News and World Report, Slate and EurasiaNet (Joshua, Central Asia Security Vacuum, 16 June 2010, http://the-diplomat.com/2010/06/16/central-asia%E2%80%99s-security-vacuum/)

Note – CSTO = Collective Security Treaty Organization

Yet when brutal violence broke out in one of the CSTO member countries, Kyrgyzstan, just days later, the group didn’t respond rapidly at all. Kyrgyzstan’s interim president, Roza Otunbayeva, even asked Russia to intervene, but Russian President Dmitry Medvedev responded that Russians would only do so under the auspices of the CSTO. And nearly a week after the start of the violence—which some estimate has killed more than 1000 people and threatens to tear the country apart—the CSTO has still not gotten involved, but says it is ‘considering’ intervening. ‘We did not rule out the use of any means which are in the CSTO’s potential, and the use of which is possible regardless of the development of the situation in Kyrgyzstan,’ Russian National Security Chief Nikolai Patrushev said Monday. On June 10-11, another regional security group, the Shanghai Cooperation Organisation, held its annual summit in Tashkent, Uzbekistan. The SCO has similar collective security aims as the CSTO, and includes Russia, China and most of the Central Asian republics, including Kyrgyzstan. But despite the violence that was going on even as the SCO countries’ presidents met in Uzbekistan, that group also didn’t involve itself in the conflict, and made only a tepid statement calling for calm. Civil society groups in Kyrgyzstan and Uzbekistan (much of the violence is directed toward ethnic Uzbeks in Kyrgyzstan, and the centre of the violence, the city of Osh, is right on the border of Uzbekistan) called on the United Nations to intervene. And Otunbayeva said she didn’t ask the US for help. Even Uzbekistan, which many in Kyrgyzstan and elsewhere feared might try to intervene on behalf of ethnic Uzbeks, has instead opted to stay out of the fray, and issued a statement blaming outsiders for ‘provoking’ the brutal violence. The violence has exposed a security vacuum in Central Asia that no one appears interested in filling. In spite of all of the armchair geopoliticians who have declared that a ‘new Great Game’ is on in Central Asia, the **major powers seem** distinctly **reluctant to expand their spheres of influence there**. Why? It’s possible that, amid a tentative US-Russia rapprochement and an apparent pro-Western turn in Russian foreign policy, **neither side wants to antagonize** the other. The United States, obviously, also is overextended in Iraq and Afghanistan and has little interest in getting in the middle of an ethnic conflict in Kyrgyzstan. It’s possible that the CSTO Rapid Reaction Force isn’t ready for a serious intervention as would be required in Kyrgyzstan. (It’s also possible that Russia’s reluctance is merely a demure gesture to ensure that they don’t seem too eager to get involved; only time will tell.)

#### No war—mutual interest and pressure for restraint

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

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

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

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

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

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

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

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

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

#### Lawsuits not effective

**Hossain, ’13** JD Candidate (http://www.firstamendmentstudies.org/wp/pdf/2nd\_pl\_hossain.pdf)//CC

If a plaintiff chooses a viable cause of action, two government immunities are likely to come into play against their favor in U.S. drones litigation: qualified immunity and sovereign immunity. Even if a Bivens remedy is recognized by the court, victims of drones attacks will need to overcome qualified immunity, the lowest form of immunity that all public officials enjoy from constitutional tort claims.130 Qualified immunity protects government officials from liability for civil damages so long as their conduct does not violate “clearly established law” that a reasonable person would have known.131 Because most targeted killing victims are foreign nationals who are not entitled to constitutional protections, until their rights are clearly established, federal officials will be immune from most potential Bivens suits from drone attacks.132 In addition, defendants could reasonably claim that they had authority under established laws of war, and where these military judgments are unclear, the court would likely defer to the executive.133 Judge Bates did not reach the issue of qualified immunity in Al-Aulaqi v. Obama. Also, in the United States, the federal government may not be sued unless it has waived sovereign immunity or consented to suit. If a plaintiff seeks damages for personal injury or property damages from the government, they must show that Congress has waived the government’s sovereign immunity for such claims.134 The two principal statutes that allow for waivers of sovereign immunity from damages are the Federal Tort Claims Act (FTCA) and the Tucker Act, but neither provides a basis for monetary compensation for drones victims.135 Furthermore, it will be difficult for non-citizen drone survivor or next of friend to bring a suit under the Westfall Act even by means of the Alien Tort Statute, in which a plaintiff must be an alien, because the FTCA would bar an ATS suit against American officials, although suits against alien officials can go forward.136 Judge Bates did not find Al-Aulaqi’s arguments to overcome sovereign immunity to be persuasive.137 Standing Deciding the proper cause of action and overcoming government immunities are just two of the obstacles facing targeted killing plaintiffs. The principal reason why Nasser Al-Aulaqi’s claim against the government failed was due to the judge’s decision that he had not established standing to represent his son. To establish standing, a plaintiff must “demonstrate a concrete and particularized injury resulting from a defendant’s allegedly illegal conduct.”138 An interest in a problem is insufficient for standing, so unless an organization has a client who him or herself was a target of a drone strike, those opposed to U.S. targeted killing will probably be unable to challenge this policy in federal court.139 Representing such a client is difficult both because the Obama administration’s targeted killing list is secret and because al-Qaeda members will be unwilling to turn themselves into U.S. authority in order to seek relief.140 Furthermore, in the case of an anticipated attack, standing requires the harm suffered by a plaintiff to be actual or imminent, not merely speculative, and again, this information is classified.141 Judge Bates specifically determined that Nasser Al-Aulaqi did not have third party standing to sue on his son’s behalf because a) he was unable to show that Anwar Al-Aulaqi was unable to vindicate his own rights by peaceably turning himself in, and b) because of Anwar Al-Aulaqi’s apparent disinterest in seeking access to American courts.142 The district court judge provided two ways Anwar Al-Aulaqi could have established standing: 1) he could have surrendered to American authorities and express a desire to assert his constitutional rights in U.S. courts, or 2) he could have remained and hiding and “[communicated] with attorneys via Internet” or videoconference.143 Judge Bates’ solutions have been criticized as “illusory.”144 First, while turning himself in would likely allow Al-Aulaqi to live, “managing to avoid assassination is not the same as challenging the government’s right to assassinate in the first place.”145 Second, there is “no evidence in the record that Al-Awlaki had any direct access to videoconferencing equipment or the Internet…in the ‘remote mountains of Yemen.’”146 These suggestions are thus likely untenable for potential targeted killing plaintiffs to establish standing. Political Question Doctrine The second reason that Al-Aulaqi’s case was dismissed was because it invited the Court to address questions reserved for the executive branch. Judge Bates cited the six factors the Supreme Court presented in Baker v. Carr, each of which can involve a political question: [1] a textually demonstrable constitutional commitment of the issue to a coordinate political department; or [2] a lack of judicially discoverable and manageable standards for resolving it; or [3] the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or [4] the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or [5] an unusual need for unquestioning adherence to a political decision already made; or [6] the potentiality of embarrassment from multifarious pronouncements by various departments on one question.147 The judge also cited to the D.C. Circuit’s opinion in El-Shifa Pharmaceutical Industries Co. v. United States, 148 in holding that “the courts cannot assess the merits of the President’s decision to launch an attack on a foreign target,” 149 even with the target is a U.S. citizen. Judge Bates’ analysis has been criticized, however, because El-Shifa involved “a one-off use of force against a wholly foreign threat identified by the executive branch. It did not involve the review of the executive’s prosecution of an armed conflict authorized by Congress,” the latter typically not being a political question, but review of executive conduct.150 Despite the conclusion that this presents “circular logic,”151 it is accepted that the textbook political question case is one in which plaintiffs are challenging a military or foreign policy decision constitutionally committed to Congress and the President, which implicates nearly every Baker factor.152 Because courts lack discoverable standards for deciding these issues, they have refused to review political questions that similar to those that may be implicated in targeted killing.153 States Secrets Privilege If a suit survives all the preceding barriers to challenging targeted killing in a U.S. court, the states secrets doctrine will likely be its “death knell.”154 The common law privilege allows the government to prevent disclosure of evidence that may entail a reasonable danger of revealing national security secrets. States secrets may keep plaintiffs not only from introducing vital evidence to their case, e.g. if one has been placed on a kill list or whether a drone attack had sound basis through intelligence sources, 155 but could also result in dismissal of their suit altogether.

#### no internal link – Goldsmith is about CIA suits, SOF is under the DoD, your author

Jim Thomas 13, Vice President and Director of Studies at the Center for Strategic and Budgetary Assessments, and Chris Dougherty is a Research Fellow at the Center for Strategic and Budgetary Assessments, 2013, “BEYOND THE RAMPARTS THE FUTURE OF U.S. SPECIAL OPERATIONS FORCES,” http://www.csbaonline.org/wp-content/uploads/2013/05/SOF-Report-CSBA-Final.pdf

From the crucible of more than a decade of continuous combat operations, Special Operations Forces (SOF) have emerged as one of the most cost-effective “weapons systems” in the U.S. military arsenal and a major source of strategic advantage for the nation. This report explores how the United States might capitalize on and ex- tend this strategic advantage well into the future. As America winds down combat operations in Iraq and Afghanistan, a confluence of challenges—both domestic and foreign—drives the need to reexamine U.S. strategy and, along with it, the fundamental purposes of the Armed Forces, including SOF. The United States' precarious fiscal situation will undoubtedly lead to tighter defense spending in the coming years. As resources contract, however, the number of national securi- ty problems facing the nation is increasing. These include rising volatility in the Middle East, the spread of violent extremism to Africa, nuclear proliferation and the threat of mass-casualty terrorism, the diffusion of advanced military technol- ogies, the return of great-power competitions, and the resurgence of proxy wars.

#### Regional actors will neutralize any impact

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

#### The brooks internal link is laughable – they don’t have a card that it will be used now – speculates about a strategy that should happen, but no uniqueness

#### Special ops impact empirically denied

FEICKERT 7/15/11 (Andrew; Specialist in Military Ground Forces – Congressional Research Service, “U.S. Special Operations Forces (SOF): Background and Issues for Congress,” <http://www.fas.org/sgp/crs/natsec/RS21048.pdf>)

Special Operations Forces (SOF) play a significant role in U.S. military operations, and the Administration has given U.S. SOF greater responsibility for planning and conducting worldwide counterterrorism operations. U.S. Special Operations Command (USSOCOM) has close to 60,000 active duty, National Guard, and reserve personnel from all four services and Department of Defense (DOD) civilians assigned to its headquarters, its four components, and one sub-unified command. The 2010 Quadrennial Defense Review (QDR) directs increases in SOF force structure, particularly in terms of increasing enabling units and rotary and fixed-wing SOF aviation assets and units. USSOCOM Commander Admiral Eric T. Olson, in commenting on the current state of the forces under his command, noted that since September 11, 2001, USSOCOM manpower has nearly doubled, the budget nearly tripled, and overseas deployments have quadrupled; because of this high level of demand, the admiral added, SOF is beginning to show some “fraying around the edges,” and one potential way to combat this is by finding ways to get SOF “more time at home.”

Vice Admiral William McRaven has been recommended by the Secretary of Defense for nomination to replace Admiral Olson, who is retiring this year, as USSOCOM Commander. Vice Admiral McRaven’s concerns included impacts on readiness as a result of high operational tempo for USSOCOM forces. High operational tempo is having a negative impact on language and cultural training and also has made it difficult for SOF personnel to attend requisite schools and training that are necessary to maintain proficiency in a variety of areas. In addition, a lack of access to U.S. based rotary/tilt wing aircraft needed to train air crews and SOF ground forces is also having a detrimental impact on training.

## 2nc

### at: radin

#### The US is broadening the interpretation of the LOAC to be not state centric – it doesn’t impede US operations and is gaining greater support

**Radin, 13** –Visiting Research Scholar at the Naval War College, Newport Rhode Island; PhD candidate, Asia Pacific Centre for Military Law, University of Melbourne Law School. (Sasha, “Global Armed Conflict? The Threshold of Extraterritorial Non-International Armed Conflicts” 89 INT’L L. STUD. 696 (2013))

This interpretation of Common Article 3 has been challenged in recent years for several reasons. Armed groups have grown in strength and ac-quired an ability to act against States across multiple borders. At the same time, an increased recognition that internal conflicts often spill over into neighboring countries exists. These developments highlight the incon-sistency between traditional State-centric, territorially bound views en-trenched in the law of armed conflict and realities on the ground. Moreo-ver, the long-standing resistance of States, which has permeated the devel-opment, codification and enforcement of NIAC law, to concede to the ap-plication of Common Article 3 may be shifting for some States. The Unit-ed States in its current global armed conflict against Al Qaeda is leading this move towards a wider application, rather than avoidance, of the law of armed conflict.

Some scholars have identified the development of international human rights law and its accompanying restrictions to be an impetus for this shift.69 They suggest that as a result of the increasing constraints of human rights law, characterizing a situation as one of armed conflict actually allows States more flexibility in how they may lawfully deal with armed groups (in terms of targeting and detention).70 An additional contributing factor may be that in these situations the majority of the violence does not take place in the territory of the State fighting the armed group, but occurs on a sec-ond State’s territory. As such, the fear of the fighting State that it might appear to lack an ability to maintain law and order is no longer present. This set of circumstances has evoked reaction and led to renewed debate within the international law community as to the conditions for the ap-plicability of Common Article 3.71 One of the challenges today is if and how Common Article 3 applies extraterritorially.

#### It’s the predominant trend and is led by the US

**Radin, 13** –Visiting Research Scholar at the Naval War College, Newport Rhode Island; PhD candidate, Asia Pacific Centre for Military Law, University of Melbourne Law School. (Sasha, “Global Armed Conflict? The Threshold of Extraterritorial Non-International Armed Conflicts” 89 INT’L L. STUD. 696 (2013)) **NIAC = Noninternational Armed Conflict**

The final alternative put forth—and one increasingly gaining ac-ceptance—is that Common Article 3 and relevant customary international law pertaining to NIACs may be applied to extraterritorial conflicts. Those who hold this view do not consider it necessary to create a new category of conflict.30 Rather, they maintain that the existing law may be interpreted to apply extraterritorially. This approach thus moves away from the traditional understanding that the applicability of Common Article 3 is limited to in-ternal armed conflicts. Today, this standpoint reflects the predominant trend. It was the position taken by the U.S. Supreme Court in Hamdan and has been advanced by numerous commentators.31

### loac links

#### The plan divorces LOAC from operational concerns

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

Two central concerns, however, arise from the prospective application of Daskal’s suggested legal framework: (­) how the lack of strategic clarity trickles down to affect operational and tactical clarity, and (­) the long-term consequences for the development and implementation of the law of armed conflict (LOAC). This Response highlights these concerns as a counterpoint to the idea of a new set of rules based on shifting geographical combat zones, even in light of the potential procedural benefits such new rules and frameworks might engender. In essence, it is important to recognize that LOAC’s constituents, as it were, include not only the strategic and policylevel decisionmakers and the suspected enemy operatives they seek to combat, but also the individual soldiers tasked with carrying out the mission and, in a broader sense, all those who will implement LOAC in the future or employ its authorities and benefit from its protections. Exploring and accounting for the purposes and functionality of LOAC from all angles is therefore a critical aspect of any discussion of LOAC’s applicability with regard to either geographical application or the formulation of situationdependent rules or parameters. Indeed, the application of LOAC—where and when it applies, and how it applies to different categories of persons and objects—is fundamental not only to the execution of military operations, but also to the planning of and training for operations, and to the enforcement of accountability for violations of the law. Divorcing considerations of LOAC’s geographical reach or its applications in different geographical areas from these three components thus introduces substantial concerns about feasibility, operational effectiveness and predictability, and risks severing the debate from LOAC’s fundamental purposes and objectives. Lost in the current discourse as well is the fact that “armed conflict” is a legal term of art, one introduced to avoid the political manipulations enabled by the earlier use of the word “war,”3 while “battlefield” is an operational euphemism for the place where armed hostilities are taking place and does not even appear as a defined term in military doctrine.4 And yet “armed conflict” and “battlefield” have become linked and have even begun to morph into a legal conception of the “battlefield” that is not based in LOAC, which does not provide specific geographic parameters for armed conflict.

#### The CP is the middle ground

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

II. OPERATIONAL CLARITY AND THE DEVELOPMENT OF THE LAW: CASUALTIES OF A HYBRID RULES-BASED FRAMEWORK

As Daskal aptly describes, the primary contours of the debate over the scope of the battlefield are shaped by the territorially prescribed view on one side and the broadly conceived “global battlefield” on the other.17 From a policy standpoint, the latter poses the risk of spiraling violence and a degradation of sovereignty; the former offers terrorists and other armed groups an unnecessary bonus of safe haven simply by crossing an international border. In an earlier piece, I have argued for a middle ground, based on an understanding of the relevant legal parameters that can offer guidance in analyzing the geographic space of conflict.18 In this sense, I firmly agree with the motivation behind Daskal’s effort to transcend the “impasse” seemingly created by a dichotomous, all-or-nothing view of the geography of conflict. However, attempting to navigate these thorny questions through new binding legal frameworks that copy and borrow from two or more distinct legal regimes poses a separate set of concerns, with the risk of more comprehensive long-term consequences.

This Part highlights two of these concerns, specifically within the context of one overarching question: would a new law of war framework apply only to conflicts with terrorist groups or to all LOAC-triggering situations? To the extent that this new framework would become the dominant framework for all conflict situations, the operational and law-development concerns discussed in this Part loom large. However, if the new framework were to apply only in the event of conflicts like that between the U.S. and al Qaeda—a conflict between a state and a transnational terrorist group— two equally significant questions arise. First, how—and by whom—would the determination be made as to whether a particular conflict situation fits within the regular LOAC framework or the new rules-based framework? The risk of additional layers of complexity, legal challenge, and uncertainty as a result of having to make this additional determination first would be great and poses a significant concern. Second, would there thus be two different standards for training and for enforcement, depending on the framework under which a particular unit was operating? Here the consequences for clarity and predictability are quite simply enormous.

A. Operational Clarity and Predictability

A central focus of debate for more than a decade has been how to apply LOAC to conflicts with terrorist groups—from how to define the conflict to how to implement the principle of distinction to the content of law of war detention. The very application of LOAC to military operations against terrorist operatives or groups depends, as the essential preliminary consideration, on the existence of an armed conflict. 19 Notwithstanding the complexities of these determinations in the context of efforts to combat transnational terrorist groups, LOAC continues to rely on clear and objective standards to assess when the law applies. Effective implementation of LOAC depends on the clarity of the legal principles, their application during the heat of battle, and their credible application post hoc in investigations and prosecutions. Moreover, commanders and their troops can best adhere to the law and carry out its central tenets when the law and the obligations it imposes are predictable and operationally logical.

The introduction of a new law of war framework for certain types of conflicts—in which the application of relevant rules depends not on established standards but on a new set of considerations drawn from multiple legal regimes—will affect the application of LOAC at all levels: training, implementation, and enforcement. First, a new framework will have implications for training generally, but the implications go well beyond the need to develop new training methods and modules. Rather, the military will have to explore and assess how to train commanders, lawyers, and troops to comply with a legal framework based on a more complex set of considerations than that established by LOAC, including factors drawn from U.S. constitutional law and other international law regimes. At this stage of training and planning, another challenge will be that of drafting and implementing rules of engagement for operations governed by the legal standards at issue here. Rules of engagement (ROE) distill law, strategy, and policy into tactical instructions for military personnel regarding when and against whom they can use force.20 LOAC forms the outer boundaries of lawfulness for conduct during armed conflict and thus is the outer framework for the rules of engagement; each military operation then has specifically designed rules of engagement to meet the operation’s particular needs. At one level, a new framework based on different legal obligations in different geographical locales does not have significant consequences for the development of ROE because there can be many specific considerations in any conflict situation that drive particularized ROE. Nonetheless, the rapidly changing nature of a conflict with terrorist groups—the nature and geographical location of the threat, and the available responses—will mean that the parameters of this new framework will also be changing—a recipe for extraordinary challenges with regard to developing and training for effective ROE.

Second, implementation in the context of a new law of war framework as proposed, based on distinctions between various zones of security needs and the shifting procedural obligations that result, poses even more significant concerns. Pragmatically, threat and the concomitant need to respond to that threat will always be the primary consideration driving the strategic, operational, and tactical calculus: “Armed conflict is a threat-driven concept, arising when the threat necessitates resort to combat power, and extending to wherever the operational and tactical opportunity to produce a militarily valuable effect on the enemy arises.”21 Divorcing a geographic analysis from this fundamental nature of military operations and decisionmaking can make the law less practical in the immediate sense, and can also, as explained below, hinder the development of the law going forward. During military operations, the law plays an essential protective role not only for those uninvolved in the conflict, but—just as importantly—for those who are fighting.22 Beyond specific provisions that protect soldiers, sailors, airmen, and Marines (such as the obligation to care for the wounded, 23 the prohibition on weapons that cause superfluous injury,24 and the protections provided for prisoners of war25), the law accomplishes this key purpose by striving for clarity and predictability. At the most basic level, soldiers need to know when and against whom they can use force. Uncertainty regarding that most fundamental aspect of wartime conduct places an extraordinary burden on the soldier and places him or her in grave danger beyond that already inherent in the nature of conflict. It may well be possible that a new law of war framework with binding rules that depend on a security calculus drawn from different geographic zones can offer more guidance for a policymaker or other decisionmaker at the highest strategic level. For the men and women directly facing the enemy, however, it muddies the waters by introducing additional considerations to the tactical and operational decisionmaking process, a process that is measured in seconds, if not less.26

More broadly, the balance between military necessity and humanity, highlighted in Part I, is most vital in the direct implementation of LOAC during military operations. Military necessity provides the authority for a party to a conflict to use all force—within the bounds of the law—necessary to achieve the complete submission of the enemy.27 This authority extends beyond the neutralization or elimination of immediate threats to the broader purpose of defeating the enemy as an entity itself, rather than the individuals who comprise the enemy force. For this reason, the law envisions a robust and broad power to attack and disable the enemy based on the presumption that, by nature of being part of the enemy, all members of the enemy force pose a threat.28 ROE then provide parameters for and limits on that power in some situations, depending on the strategic, political, and operational needs of the mission at hand.29 If the law would now be relied upon to provide those parameters—as seems to be the effect of proposed law of war frameworks such as that which Daskal suggests—the law would apply differently in different conflicts and in different geographic areas related to the same conflict. Operationally, this effect has the potential to be a recipe for uncertainty and unpredictability, and divorces legal authority from operational practice and necessity. No less, such a framework raises the question of how the decisions are to be made regarding where different authorities can be used and where different procedural obligations must be fulfilled, all the while recognizing that conflict is a fluid and shifting environment, driven by threat perception, operational needs, the conduct of the enemy, and a range of other factors.

### impact

#### AND, our impact is a million times greater than nuclear war

Ćirković 8—Professor of Physics @ University of Novi Sad in Serbia and Senior Research Associate at the Astronomical Observatory of Belgrade [Milan M. Ćirković Ph.D. (Fellow of the Institute for Ethics and Emerging Technologies), “How can we reduce the risk of human extinction?,” Institute for Ethics and Emerging Technologies, September 17, 2008, pg. http://ieet.org/index.php/IEET/print/2606]

The risks from anthropogenic hazards appear at present larger than those from natural ones. Although great progress has been made in reducing the number of nuclear weapons in the world, humanity is still threatened by the possibility of a global thermonuclear war and a resulting nuclear winter. We may face evengreater risks from emerging technologies. Advances in synthetic biology might make it possible to engineer pathogens capable of extinction-level pandemics. The knowledge, equipment, and materials needed to engineer pathogens are more accessible than those needed to build nuclear weapons. And unlike other weapons, pathogens are self-replicating, allowing a small arsenal to become exponentially destructive. Pathogens have been implicated in the extinctions of many wild species. Although most pandemics “fade out” by reducing the density of susceptible populations, pathogens with wide host ranges in multiple species can reach even isolated individuals. The intentional or unintentional release of engineered pathogens with high transmissibility, latency, and lethality might be capable of causing human extinction. While such an event seems unlikely today, the likelihood may increase as biotechnologies continue to improve at a rate rivaling Moore’s Law.

Farther out in time are technologies that remain theoretical but might be developed this century. Molecular nanotechnology could allow the creation of self-replicating machines capable of destroying the ecosystem. And advances in neuroscience and computation might enable improvements in cognition that accelerate the invention of new weapons. A survey at the Oxford conference found that concerns about human extinction were dominated by fears that new technologies would be misused. These emerging threats are especially challenging as they could become dangerous more quickly than past technologies, outpacing society’s ability to control them. As H.G. Wells noted, “Human history becomes more and more a race between education and catastrophe.”

Such remote risks may seem academic in a world plagued by immediate problems, such as global poverty, HIV, and climate change. But as intimidating as these problems are, they do not threaten human existence. In discussing the risk of nuclear winter, Carl Sagan emphasized the astronomical toll of human extinction:

A nuclear war imperils all of our descendants, for as long as there will be humans. Even if the population remains static, with an average lifetime of the order of 100 years, over a typical time period for the biological evolution of a successful species (roughly ten million years), we are talking about some 500 trillion people yet to come. By this criterion, **the stakes are** one million times greater **for extinction than for** the more modest **nuclear wars that kill “only” hundreds of millions** of people. There are many other possible measures of the potential loss—including culture and science, the evolutionary history of the planet, and the significance of the lives of all of our ancestors who contributed to the future of their descendants. Extinction is the undoing of the human enterprise.

There is a discontinuity between risks that threaten 10 percent or even 99 percent of humanity and those that threaten 100 percent. For disasters killing less than all humanity, there is a good chance that the species could recover. If we value future human generations, then reducing extinction risks should dominate our considerations. Fortunately, most measures to reduce these risks also improve global security against a range of lesser catastrophes, and thus deserve support regardless of how much one worries about extinction.

#### The least-harmful-means standard devastates military readiness – voluntary adoption in rules of engagement by military commanders avoids it

**Corn, 13** - Professor of Law, South Texas College of Law, Lieutenant Colonel, U.S. Army (Retired) (Geoffrey, Hearing addressing the Law of Armed Conflict, TheUse of Military Force, And the 2001 Authorization for Use of Military Force, 5/15, <http://www.lawfareblog.com/wp-content/uploads/2013/05/Corn_05-16-13.pdf>)

If a least harmful means rule did exist within the LOAC, or if such a rule were to be imposed, it would present significant and potentially crippling impediments in the implementation of that obligation. From training, to execution of operations, to investigation and accountability for violations of the law, no aspect of the intersection between law and military opera-tions would be untouched or unhindered by the rule’s consequences. Fur-thermore, although proponents of a least harmful means rule argue that it fulfills the LOAC’s core humanitarian purpose, such a rule has an equally opposite effect of undermining the LOAC’s role in protecting soldiers from the corrosive psychological and moral effects of combat.

1. Training

The first and most obvious of these challenges is translating the rule into training and the ROE applicable to a declared hostile force. Proponents of the least harmful means rule cite the practice of including such a restriction in ROE to rebut any assertion that such a challenge is in any way signifi-cant.230 These proponents fail to appreciate, however, two significant fac-tors that undermine this argument. First, even if it is operationally feasible to implement such a restriction in one tactical environment, this does not mean it is feasible in all tactical environments. Relying on the counterinsur-gency context as a touchstone of feasibility therefore lacks credibility. What is necessary, rather, is to consider implementation of such a rule in every tactical context associated with the full range of operations that occur in armed conflict. Second, ROE are never effectively implemented simply by enunciating the relevant restriction on the use of force in an order, di-rective, or ROE card. Rather, these restrictions are only as effective as the training that prepares soldiers to implement them. Accordingly, training for a combat environment is indelibly linked to the effectiveness of any ROE or other imposition of battlefield regulation.

In considering this latter impediment, it is essential to note that if a least harmful means obligation were recognized, the obligation would not be context-specific, like ROE for a particular conflict or mission, but would require adherence in all conflict situations. As a result, this least harmful means rule would have to become an element of the baseline train-ing for all members of the armed forces. From the inception of all combat training, an effective method would have to be developed to incorporate compliance with this obligation into the combat instincts that military train-ing seeks to instill in the soldier.

Certainly, the LOAC’s protection for individuals rendered hors de combat means that limitations on the legality of using force in combat are already an aspect of such training. The symmetry between the clarity provided by the rules of presumption associated with status-based targeting authority and such training is essential, however. The explicit indicia that trigger hors de combat status discussed above, coupled with the requirement that the non-disabled belligerent operative bears the burden to affirmatively mani-fest surrender, facilitates a baseline standard of training and development that is effective for all soldiers, from the newly-minted private to the senior attack aircraft pilot. Injecting a least harmful means rule into this equation would compromise the efficacy of this warrior development process. By demanding the exercise of case-by-case judgment when engaged in hostili-ties with a declared hostile opponent, it would significantly increase the burden on the attacking force to assess when the enemy belligerent oppo-nent fell within the protections afforded to those considered hors de combat. In contrast, leaving any least harmful means limitation within the policy realm provides the military commander the flexibility to tailor it to the mis-sion, enemy, terrain, troops available, time and civilian considerations231 applicable during a given operation.

### norms/drone arms races

#### Global drone norms are impossible

McGinnis, senior professor – Northwestern Law, ‘10

(John O. 104 Nw. U. L. Rev. Colloquy 366)

It is hard to overstate the extent to which advances in robotics, which are driven by AI, are transforming the United States military. During the Afghanistan and Iraq wars, more and more Unmanned Aerial Vehicles (UAVs) of different kinds were used. For example, in 2001, there were ten unmanned "Predators" in use, and at the end of 2007, there were 180. n42 Unmanned aircraft, which depend on substantial computational capacity, are an increasingly important part of our military and may prove to be the [\*374] majority of aircraft by 2020. n43 Even below the skies, robots perform im-portant tasks such as mine removal. n44 Already in development are robots that would wield lasers as a kind of special infantryman focused on killing snipers. n45 Others will act as paramedics. n46 It is not an exaggeration to predict that war twenty or twenty-five years from now may be fought predominantly by robots. The AI-driven battlefield gives rise to a different set of fears than those raised by the potential autonomy of AI. Here, the concern is that human malevolence will lead to these ever more capable machines wreaking ever more havoc and destruction. III. THE FUTILITY OF THE RELINQUISHMENT OF AI AND THE PROHIBITION OF BATTLEFIELD RO-BOTS Joy argues for "relinquishment"--i.e., the abandonment of technologies that can lead to strong AI. Those who are concerned about the use of AI technology on the battlefield would focus more specifically on weapons powered by AI. But whether the objective is relinquishment or the constraint of new weaponry, any such program must be translated into a specific set of legal prohibitions. These prohibitions, at least under current technology and current geopolitics, are certain to be ineffective. Thus, nations are unlikely to unilaterally relinquish the technology behind accelerating compu-tational power or the research to further accelerate that technology. Indeed, were the United States to relinquish such technology, the whole world would be the loser. The United States is both a flourishing commercial republic that benefits from global peace and prosperity, and the world's hegemon, capable of supplying the public goods of global peace and security. Because it gains a greater share of the prosperity that is afforded by peace than do other nations, it has incentives to shoulder the burdens to maintain a global peace that benefits not only the United States but the rest of the world. n47 By relinquishing the power of AI, the United States would in fact be giving **greater incentives** to rogue nations to develop it. Thus, the only realistic alternative to unilateral relinquishment would be a global agreement for relinquishment or regulation of AI-driven weaponry. But such an agreement would face the same insuperable obstacles nuclear disarma-ment has faced. As recent events with Iran and North Korea demonstrate, n48 it seems difficult if not impossible to per-suade rogue nations [\*375] to relinquish nuclear arms. Not only are these weapons a source of geopolitical strength and prestige for such nations, but verifying any prohibition on the preparation and production of these weapons is a task beyond the capability of international institutions. The verification problems are far greater with respect to the technologies relating to artificial intelligence. Relative-ly few technologies are involved in building a nuclear bomb, but arriving at strong artificial intelligence has many routes and still more that are likely to be discovered. Moreover, building a nuclear bomb requires substantial infrastruc-ture. n49 Artificial intelligence research can be **done in a garage**. Constructing a nuclear bomb requires very substantial resources beyond that of most groups other than nation-states. n50 Researching artificial intelligence is done by institu-tions no richer than colleges and perhaps would require even less substantial resources.

#### No drone prolif—capabilities and costs

Zenko, Douglas Dillon fellow in the Center for Preventive Action – CFR, ‘13

(Micah, “U.S. Drone Strike Policies”, Council Special Report No. 65, January)

There are also few examples of armed drone sales by other countries. After the United States, Israel has the most developed and varied drone capabilities; according to the Stockholm International Peace Research Institute (SIPRI), Israel was responsible for 41 percent of drones exported between 2001 and 2011.57 While Israel has used armed drones in the Palestinian territories and is not a member of the MTCR, it has pre- dominantly sold surveillance drones that lack hard points and electrical engineering. Israel reportedly sold the Harop, a short-range attack drone, to France, Germany, Turkey, and India. Furthermore, Israel allows the United States to veto transfers of weapons with U.S.-origin technology to select states, including China.58 Other states invested in developing and selling **surveillance drones** have reportedly refrained from selling fully armed versions. For example, the UAE spent five years building the armed United-40 drone with an associated Namrod missile, but there have been no reported deliveries.59 A March 2011 analysis by the mar- keting research firm Lucintel projected that a “fully developed [armed drone] product will take another decade.”60 Based on current trends, it is unlikely that most states will have, within ten years, the complete system architecture required to carry out distant drone strikes that would be harmful to U.S. national interests. However, those candidates able to obtain this technology will most likely be states with the financial resources to purchase or the industrial base to manufacture tactical short-range armed drones with limited firepower that lack the precision of U.S. laser-guided munitions; the intelligence collection and military command-and-control capabilities needed to deploy drones via line-of-sight communications; and cross- border adversaries who currently face attacks or the threat of attacks by manned aircraft, such as Israel into Lebanon, Egypt, or Syria; Russia into Georgia or Azerbaijan; Turkey into Iraq; and Saudi Arabia into Yemen. When compared to distant U.S. drone strikes, these contingen- cies do not require system-wide infrastructure and host-state support. Given the costs to conduct manned-aircraft strikes with minimal threat to pilots, it is questionable whether states will undertake the significant investment required for armed drones in the near term.

#### No arms race – too many barriers

Joshi and Stein ’13 [Shashank Joshi, Research Fellow at the Royal United Services Institute and a PhD candidate at the Department of Government, Harvard University, & Aaron Stein, Associate Fellow at the Royal United Services Institute, a researcher at the Istanbul-based Centre for Economics and Foreign Policy Studies and a PhD candidate at King’s College London, 2013, Survival: Global Politics and Strategy, Volume 55, Issue 5, “Emerging Drone Nations,” Taylor and Francis, accessed 10/12/13]

As with all shifts in military technology, a nation’s ability to use drones as effective military instruments depends on the context of their broader technological status, local political conditions and, above all, the strategic and operational context into which the new technology is being introduced. As Michael Horowitz explains in his book, The Diffusion of Military Power: Causes and Consequences for International Politics, past military innovations such as the all-big-gun steel battleship, aircraft carriers, nuclear weapons and the use of suicide terror by non-state actors have spread through the international system in uneven ways, depending on nations’ abilities to fund and adapt to these changes.7

We argue that there are at least five key challenges that states will have to grapple with as they adapt to building and operating drones: cost, human and material infrastructure, the problem of air superiority, the develop- ment of a doctrinal and legal framework, and the impact on proliferation. The United States has not escaped any of these challenges but it does have notable advantages – some of which have come from operational experi- ence, and others of which inhere in its military preponderance.

### nsa thumper

#### Triggers the adv.

Ingrid Wuerth, Vanderbilt Law School Professor, 10/25/13, Dispatch from Berlin on a Diplomatic Disaster, www.lawfareblog.com/2013/10/dispatch-from-berlin-on-a-diplomatic-disaster/

A diplomatic disaster for the United States is currently unfolding in Berlin. The revelation that the NSA may have monitored cell phone conversations and text messages of Chancellor Angela Merkel has led to popular outrage in Germany, as well as unusually pointed language from the Chancellor and other government officials. The U.S. Ambassador was not merely asked but summoned (“einbestellt”) to the German foreign office—a strong verb used until now (if at all) only for the Syrian and Iranian ambassadors. The Chancellor’s phone conversation with President Obama did nothing to ease the tension. Merkel declared such practices totally unacceptable: Between friends and partners such as the United States and Germany, the monitoring of communications by government leaders is a grave breach of trust, her press secretary emphasized. The Obama administration, other than saying the Chancellor’s phone is not now and will not in the future be monitored, has offered nothing: neither apology, nor explanation of what happened in the past, nor any sort of suggestion for future cooperation or discussion of a collective solution.

Maybe all of this will blow over quickly—just a headline-grabbing news story, made even better by the emerging details of the Chancellor’s two very different cellphones (one secure, one not) and questions about German helicopters flown over the U.S. consulate in Frankfurt in September. But it may not. Chancellor Merkel’s tone is sharp and that of minority parties in Parliament is even sharper. Those parties have been critical of Merkel for failing to react more strongly to prior revelations about the NSA. Mostly, however, the two center parties (Merkel’s CDU and the SPD) are united, rather than divided by their criticism of the United States. **The current dispute goes may have deep roots** as well. Roger Cohen has a nice piece up at the New York Times, detailing the German (and European) perception that the Obama administration has been dismissive, including with respect to possible military intervention in Syria.

The Federal Republic of Germany has traditionally been more willing than the United States to sacrifice some civil liberties in order to protect democratic values—their “streitbare” or “aggressive” democracy prohibits, for example, certain political parties that lean extremely far right or left. But totalitarian East Germany—in which spying on and on behalf of the government was very widespread—has left its mark on the popular culture. Listening in on other people’s private phone conversations brings to mind an immediate past of repression and brutality for the Germans. And today the United States is seen as presenting a serious threat to the civil liberties of all Germans, not just Chancellor Merkel. The comparison of Obama to East German state security is explicit. Although U.S.-German relations suffered during the invasion of Iraq, that was widely blamed on the Republican presidency of George W. Bush. With the Democrat Obama at the helm, however, localizing the blame is no longer so easy. U.S.-German relations may be at their lowest point since the end of World War II. Even if the German government wanted to overlook U.S. snooping (to avoid too much scrutiny of their own activities), the domestic political costs of looking the other way now have increased here as they have in France and Brazil.

What are the potential costs for U.S. foreign policy? In the short term, there is discussion in Europe of conditioning further European-U.S. bilateral trade negotiations upon a satisfactory solution to the problem of U.S. government data collection from Europe. Moreover, **data sharing** of various sorts **could be limited**; German or **European laws could substantially ramp up data privacy protection**, at potential cost to U.S. businesses; German prosecutors and the German Parliament may take up the issue. And, finally of course, **there is a cost to U.S. soft power.**

#### Outweighs the aff

Josh Gerstein, Politico, 10/26/13, NSA disclosures put U.S. on defense, dyn.politico.com/printstory.cfm?uuid=0A829B73-DCF3-4A66-9221-C8EEDDEE02F7

**The NSA spying controversy is quickly transforming from a** domestic **headache** for the Obama administration **into a global public relations fiasco** for the United States government.

After months of public and congressional debate over the National Security Agency’s collection of details on U.S. telephone calls, a series of **reports** about alleged spying on foreign countries and their leaders **has unleashed an** angry global reaction **that appears likely to** swamp the debate about gathering of metadata within American borders.

While prospects for a legislative or judicial curtailment of the U.S. call-tracking program are doubtful, damage from public revelations about NSA’s global surveillance is already evident and seems to be growing.

Citing the snooping disclosed by former NSA contractor Edward Snowden, Brazil’s president canceled a state visit to the U.S. set for this week. Leaders in France and Italy and Germany have lodged heated protests with Washington, with the Germans announcing plans to dispatch a delegation to Washington to discuss the issue. Boeing airplane sales are in jeopardy. And the European Union is threatening to slap restrictions on U.S. technology firms that profit from tens of millions of users on the Continent.

“Europe is talking about this. Some people in Europe are upset and may take steps to block us,” former Rep. Jane Harman (D-Calif.) said in a telephone interview from Rome on Friday. “The reaction of retail politicians is to mirror the upset of the people who elected them.”

“Confidence between countries and confidence between governments are important and sometime decisive and there’s almost no confidence between the United States of America and Europe” now, former German intelligence chief Hansjörg Geiger said. “I’m quite convinced there will be an impact…. It will be a real impact and not only the [intelligence] services will have some turbulence.”

Some analysts see immediate trouble for U.S.-European arrangements to share information about airline passengers, financial transactions and more.

“The bigger problems are not in Berlin or Paris, but in the future out of Brussels,” said Michael Leiter, former head of the National Counterterrorism Center. “At the EU, I expect them to be very, very resistant to any increase — and to have problems even with maintenance—of some of the information sharing we have now…..All of this complicates those discussions exponentially.”

## 1nr

### interruption alt (calkivic)/fw

#### Refusal opens up space, shapes pragmatism – this argument is offense and proves we solve the AFf

Calkivik 10 – PhD in Poli Sci @ Univ Minnesota (Emine Asli, 10/2010, "DISMANTLING SECURITY," PhD dissertation submitted to Univ Minnesota for Raymond Duvall, http://conservancy.umn.edu/bitstream/99479/1/Calkivik\_umn\_0130E\_11576.pdf)

It is this self-evidence of security even for critical approaches and the antinomy stemming from dissident voices reproducing the language of those they dissent from that constitutes the starting point for this chapter, where I elaborate on the meaning of dismantling security as untimely critique. As mentioned in the vignette in the opening section, the suggestion to dismantle security was itself deemed as an untimely pursuit in a world where lives of millions were rendered brutally insecure by poverty, violence, disease, and ongoing political conflicts. Colored by the tone of a call to conscience in the face of the ongoing crisis of security, it was not the time, interlocutors argued, for self-indulgent critique. I will argue that it is the element of being untimely, the effort, in the words of Walter Benjamin, “to brush history against the grain” that gives critical thinking its power.291 It might appear as a trivial discussion to bring up the relation between time and critique because conceptions of critical thinking in the discipline of International Relations already possess the notion that critical thought needs to be untimely. In the first section, I will tease out what this notion of untimeliness entails by visiting ongoing conversations within the discipline about critical thought and political time. Through this discussion, I hope to clarify what sets apart dismantling security as untimely critique from the notion of untimeliness at work in critical international relations theory. The latter conception of the untimely, I will suggest, paradoxically calls on critical thought to be “on time” in that it champions a particular understanding of what it means for critical scholarship to be relevant and responsible for its times. This notion of the untimely demands that critique be strategic and respond to political exigency, that it provide answers in this light instead of raising more questions about which questions could be raised or what presuppositions underlie the questions that are deemed to be waiting for answers. After elaborating in the first section such strategic conceptions of the untimeliness of critical theorizing, in the second section I will turn to a different sense of the untimely by drawing upon Wendy Brown’s discussion of the relation between critique, crisis, and political time through her reading of Benjamin’s “Theses on the Philosophy of History.”292 In contrast to a notion of untimeliness that demands strategic thinking and punctuality, Brown’s exegesis provides a conception of historical materialism where critique is figured as a force of disruption, a form of intervention that reconfigures the meaning of the times and “contest[s] the very senses of time invoked to declare critique ‘untimely’.”293 Her exposition overturns the view of critique as a self-indulgent practice as it highlights the immediately political nature of critique and reconfigures the meaning of what it means for critical thought to be relevant.294 It is in this sense of the untimely, I will suggest, that dismantling security as a critique hopes to recover. I should point out that in this discussion my intention is neither to construct a theory of critique nor to provide an exhaustive review and evaluation of the forms of critical theorizing in International Relations. Rather, my aim is to contribute to the existing efforts that engage with the question of what it means to be critical apart from drawing the epistemological and methodological boundaries so as to think about how one is critical.295 While I do not deny the importance of epistemological questions, I contend that taking time to think about the meaning of critique beyond these issues presents itself as an important task. This task takes on additional importance within the context of security studies where any realm of investigation quickly begets its critical counterpart. The rapid emergence and institutionalization of critical terrorism studies when studies on terrorism were proliferating under the auspices of the so-called Global War on Terror provides a striking example to this trend. 296 Such instances are important reminders that, to the extent that epistemology and methodology are reified as the sole concerns in defining and assessing critical thinking297 or “wrong headed refusals”298 to get on with positive projects and empirical research gets branded as debilitating for critical projects, what is erased from sight is the political nature of the questions asked and what is lost is the chance to reflect upon what it means for critical thinking to respond to its times. In his meditation on the meaning of responding and the sense of responsibility entailed by writing, Jean-Luc Nancy suggests that “all writing is ‘committed.’” 299 This notion of commitment diverges from the programmatic sense of committed writing. What underlies this conception is an understanding of writing as responding: writing is a response to the voice of an other.In Nancy’s words, “[w]hoever writes responds” 300 and “makes himself responsible to in the absolute sense.”301 Suggesting that there is always an ethical commitment prior to any particular political commitment, such a notion of writing contests the notion of creative autonomy premised on the idea of a free, self-legislating subject who responds. In other words, it discredits the idea of an original voice by suggesting that there is no voice that is not a response to a prior response. Hence, to respond is configured as responding to an expectation rather than as an answer to a question and responsibility is cast as an “anticipated response to questions, to demands, to still-unformulated, not exactly predictable expectations.”302 Echoing Nancy, David Campbell makes an important reminder as he suggests that as international relations scholars “we are always already engaged,” although the sites, mechanisms and quality of engagements might vary.303 The question, then, is not whether as scholars we are engaged or not, but what **the nature of this engagement** is. Such a re-framing of the question is intended to highlight the political nature of all interpretation and the importance of developing an “ethos of political criticism that is concerned with assumptions, limits, their historical production, social and political effects, and the possibility of going beyond them in thought and action.”304 Taking as its object assumptions and limits, their historical production and social and political effects places the relevancy of critical thought and responsibility of critical scholarship on new ground. It is this ethos of critique that dismantling security hopes to recover for a discipline where security operates as the foundational principle and where critical thinking keeps on contributing to security’s impressing itself as a self-evident condition. Critical Theory and Punctuality Within the context of International Relations, critical thought’s orientation toward its time comes out strongly in Kimberley Hutchings’s formulation.305 According to Hutchings, no matter what form it takes, what distinguishes critical international relations theory from other forms of theorizing is “its orientation towards change and the possibility of futures that do not reproduce the hegemonic power of the present.”306 What this implies about the nature of critical thought is that it needs to be not only diagnostic, but also self-reflexive. In the words of Hutchings, “all critical theories lay claim to some kind of account not only of the present of international politics and its relation to possible futures, but also of the role of critical theory in the present and future in international politics.” 307 Not only analyzing the present, but also introducing the question of the future into analysis places political time at the center of critical enterprise and makes the problem of change a core concern. It is this question of change that situates different forms of critical thinking on a shared ground since they all attempt to expose the way in which what is presented as given and natural is historically produced and hence open to change. With their orientation to change, their efforts to go against the dominant currents and challenge the hegemony of existing power relations by showing how contemporary practices and discourses contribute to the perpetuation of structures of power and domination, critical theorists in general and critical security studies specialists in particular take on an untimely endeavor. It is this understanding of the untimely aspect of critical thinking that is emphasized by Mark Neufeld, who regards the development of critical approaches to security as “one of the more hopeful intellectual developments in recent years.”308 Despite nurturing from different theoretical traditions and therefore harboring “fundamental differences between modernist and postmodernist commitments,” writes Neufeld, scholars who are involved in the critical project nevertheless “share a common concern with calling into question ‘prevailing social and power relationships and the institutions into which they are organized.’” 309 The desire for change—through being untimely and making the way to alternative futures that would no longer resemble the present—have led some scholars to emphasize the utopian element that must accompany all critical thinking. Quoting Oscar Wilde’s aphorism—a map of the world that does not include Utopia is not even worth glancing at, Ken Booth argues for the need to restore the role and reputation of utopianism in the theory and practice of international politics. 310 According to Booth, what goes under the banner of realism—“ethnocentric self-interest writ large”311 — falls far beyond the realities of a drastically changed world political landscape at the end of the Cold War. He describes the new reality as “an egg-box containing the shells of sovereignty; but alongside it a global community omelette [sic] is cooking.”312 Rather than insisting on the inescapability of war in the international system as political realists argue, Booth argues for the need and possibility to work toward the utopia of overcoming the condition of war by banking on the opportunities provided by a globalizing world. The point that critical thought needs to be untimely by going against its time is also emphasized by Dunne and Wheeler, who assert that, regardless of the form it takes, “critical theory purport[s] to ‘think against’ the prevailing current” and that “[c]ritical security studies is no exception” to this enterprise.313 According to the authors, the function of critical approaches to security is to problematize what is taken for granted in the disciplinary production of knowledge about security by “resist[ing], transcend[ing] and defeat[ing]**…**theories of security, which take for granted who is to be secured (the state), how security is to be achieved (by defending core ‘national’ values, forcibly if necessary) and from whom security is needed (the enemy).”314 While critical theory in this way is figured as untimely, I want to suggest that this notion of untimeliness gets construed paradoxically in a quite timely fashion. With a perceived disjuncture between writing the world from within a discipline and acting in it placed at the center of the debates, the performance of critical thought gets evaluated to the extent that it is punctual and in synch with the times. Does critical thought provide concrete guidance and prescribe what is to be done? Can it move beyond mere talk and make timely political interventions by providing solutions? Does it have answers to the strategic questions of progressive movements? Demanding that critical theorizing come clean in the court of these questions, such conceptions of the untimely demand that critique respond to its times in a responsible way, where being responsible is understood in stark contrast to a notion of responding and responsibility that I briefly discussed in the introductory pages of this chapter (through the works of Jean-Luc Nancy and David Campbell). Let me visit two recent conversations ensuing from the declarations of the contemporary crisis of critical theorizing in order to clarify what I mean by a timely understanding of untimely critique. The first conversation was published as a special issue in the Review of International Studies (RIS), one of the major journals of the field. Prominent figures took the 25th anniversary of the journal’s publication of two key texts—regarded as canonical for the launching and development of critical theorizing in International Relations—as an opportunity to reflect upon and assess the impact of critical theory in the discipline and interrogate what its future might be. 315 The texts in question, which are depicted as having shaken the premises of the static world of the discipline, are Robert Cox’s 1981 essay entitled on “Social Forces, States, and World Orders”316 and Richard Ashley’s article, “Political Realism and Human Interests.”317 In their introductory essay to the issue, Rengger and Thirkell-White suggest that the essays by Cox and Ashley—followed by Andrew Linklater’s Men and Citizens in the Theory of International Relations318 —represent “the breach in the dyke” of the three dominant discourses in International Relations (i.e., positivists, English School, and Marxism), unleashing “a torrent [that would] soon become a flood” as variety of theoretical approaches in contemporary social theory (i.e., feminism, Neo-Gramscianism, poststructuralism, and post-colonialism) would get introduced through the works of critical scholars.319 After elaborating the various responses given to and resistance raised against the critical project in the discipline, the authors provide an overview and an assessment of the current state of critical theorizing in International Relations. They argue that the central question for much of the ongoing debate within the critical camp in its present state—a question that it cannot help but come to terms with and provide a response to—concerns the relation between critical thought and political practice. As they state, the “fundamental philosophical question [that] can no longer be sidestepped” by critical International Relations theory is the question of the relation between “knowledge of the world and action in it.”320 One of the points alluded to in the essay is that forms of critical theorizing, which leave the future “to contingency, uncertainty and the multiplicity of political projects” and therefore provide “less guidance for concrete political action”321 or, again, those that problematize underlying assumptions of thought and “say little about the potential political agency that might be involved in any subsequent struggles”322 may render the critical enterprise impotent and perhaps even suspect. This point comes out clearly in Craig Murphy’s contribution to the collection of essays in the RIS’s special issue. 323 Echoing William Wallace’s argument that critical theorists tend to be “monks,”324 who have little to offer for political actors engaged in real world politics, Murphy argues that the promise of critical theory is “partially kept” because of the limited influence it has had outside the academy towards changing the world.Building a different world, he suggests, requires more than isolated academic talk; that it demands not merely “words,” but “deeds.”325 This, according to Murphy, requires providing “knowledge that contributes to change.”326 Such knowledge would emanate from connections with the marginalized and would incorporate observations of actors in their everyday practices. More importantly, it would create an inspiring vision for social movements, such as the one provided by the concept of human development, which, according to Murphy, was especially powerful “because it embodied a value-oriented way of seeing, a vision, rather than only isolated observations.”327 In sum, if critical theory is to retain its critical edge, Murphy’s discussion suggests, it has to be in synch with political time and respond to its immediate demands. The second debate that is revelatory of this conception of the timing of critical theory—i.e., that critical thinking be strategic and efficient in relation to political time—takes place in relation to the contemporary in/security environment shaped by the so-called Global War on Terror. The theme that bears its mark on these debates is the extent to which critical inquiries about the contemporary security landscape become complicit in the workings of power and what critique can offer to render the world more legible for progressive struggles.328 For instance, warning critical theorists against being co-opted by or aligned with belligerence and war-mongering, Richard Devetak asserts that critical international theory has an urgent “need to distinguish its position all the more clearly from liberal imperialism.”329 While scholars such as Devetak, Booth,330 and Fierke331 take the critical task to be an attempt to rescue liberal internationalism from turning into liberal imperialism, others announce the “crisis of critical theorizing” and suggest that critical writings on the nature of the contemporary security order lack the resources to grasp their actual limitations, where the latter is said to reside not in the realm of academic debate, but in the realm of political practice.332 It is amidst these debates on critique, crisis, and political time that Richard Beardsworth raises the question of the future of critical philosophy in the face of the challenges posed by contemporary world politics.333 Recounting these challenges, he provides the matrix for a proper form of critical inquiry that could come to terms with “[o]ur historical actuality.”334 He describes this actuality as the “thick context” of modernity (“an epoch, delimited by the capitalization of social relations,” which imposes its own philosophical problematic—“that is, the attempt, following the social consequences of capitalism, to articulate the relation between individuality and collective spirit”335 ), American unilateralism in the aftermath of the attacks on September 11, 2001, and the growing political disempowerment of people worldwide. Arguing that “contemporary return of religion and new forms of irrationalism emerge, in large part, out of the failure of the second response of modernity to provide a secular solution to the inequalities of the nation-state and colonization,”336 he formulates the awaiting political task for critical endeavors as constructing a world polity to resist the disintegration of the world under the force of capital.It is with this goal in mind that he suggests that “responsible scholarship needs to rescue reason in the face irrational war”337 and that intellectuals need to provide “the framework for a world ethical community of law, endowed with political mechanisms of implementation in the context of a regulated planetary economy.”338 He suggests that an aporetic form of thinking such as Jacques Derrida’s—a thinking that “ignores the affirmative relation between the determining powers of reason and history”339 —would be an unhelpful resource because such thinking “does not open up to where work needs to be done for these new forms of polity to emerge.”340 In other words, critical thinking, according to Beardsworth, needs to articulate and point out possible political avenues and to orient thought and action in concrete ways so as to contribute to progressive political change rather than dwelling on the encounter of the incalculable and calculation and im-possibility of world democracy in a Derridean fashion. In similar ways to the first debate on critique that I discussed, critical thinking is once again called upon to respond to political time in a strategic and efficient manner. As critical inquiry gets summoned up to the court of reason in Beardsworth’s account, its realm of engagement is limited to that which the light of reason can be shed upon, and its politics is confined to mapping out the achievable and the doable in a given historical context without questioning or disrupting the limits of what is presented as “realistic” choices. Hence, if untimely critical thought is to be meaningful it has to be on time by responding to political exigency in a practical, efficient, and strategic manner. In contrast to this prevalent form of understanding the untimeliness of critical theory, I will now turn to a different account of the untimely provided by Wendy Brown whose work informs the project of dismantling security as untimely critique. Drawing from her discussion of the relationship between critique, crisis, and political time, I will suggest that untimely critique of security entails, simultaneously, an attunement to the times and an aggressive violation of their self-conception. It is in this different sense of the untimely that the suggestion of dismantling security needs to be situated. Critique and Political Time As I suggested in the Prelude to this chapter, elevating security itself to the position of major protagonist and extending a call to “dismantle security” was itself declared to be an untimely pursuit in a time depicted as the time of crisis in security. Such a declaration stood as an exemplary moment (not in the sense of illustration or allegory, but as a moment of crystallization) for disciplinary prohibitions to think and act otherwise—perhaps the moment when a doxa exhibits its most powerful hold. Hence, what is first needed is to overturn the taken-for-granted relations between crisis, timeliness, and critique. The roots krisis and kritik can be traced back to the Greek word krinõ, which meant “to separate”, to “choose,” to “judge,” to “decide.”341 While creating a broad spectrum of meanings, it was intimately related to politics as it connoted a “divorce” or “quarrel,” but also a moment of decision and a turning point. It was also used as a jurisprudential term in the sense of making a decision, reaching a verdict or judgment (kritik) on an alleged disorder so as to provide a way to restore order. Rather than being separated into two domains of meaning—that of “subjective critique” and “objective crisis”—krisis and kritik were conceived as interlinked moments. Koselleck explains this conceptual fusion: [I]t wasin the sense of “judgment,” “trial,” “legal decision,” and ultimately “court” that crisis achieved a high constitutionalstatus, through which the individual citizen and the community were bound together. The “for and against” wastherefore present in the original meaning of the word and thisin a manner that already conceptually anticipated the appropriate judgment. 342 Recognition of an objective crisis and subjective judgments to be passed on it so as to come up with a formula for restoring the health of the polity by setting the times right were thereby infused and implicated in each other.343 Consequently, as Brown notes, there could be no such thing as “mere critique” or “untimely critique” because critique always entailed a concern with political time: “[C]ritique as political krisis promise[d] to restore continuity by repairing or renewing the justice that gives an order the prospect of continuity, that indeed ma[de] it continuous.”344 The breaking of this intimate link between krisis and kritik, the consequent depoliticization of critique and its sundering from crisis coincides with the rise of modern political order and redistribution of the public space into the binary structure of sovereign and subject, public and private.345 Failing to note the link between the critique it practiced and the looming political crisis, emerging philosophies of history, according Koselleck, had the effect of obfuscating this crisis. As he explains, “[n]ever politically grasped, [this political crisis] remained concealed in historico-philosophical images of the future which cause the day’s events to pale.”346 It is this intimate, but severed, link between crisis and critique in historical narratives that Wendy Brown’s discussion brings to the fore and re-problematizes. She turns to Walter Benjamin’s “Theses on the Philosophy of History” and challenges conventional understandings of historical materialism, which conceives of the present in terms of unfolding laws of history.347 According to Brown, the practice of critical theory appeals to a concern with time to the extent that “[t]he crisis that incites critique and that critique engages itself signals a rupture of temporal continuity, which is at the same time a rupture in political imaginary.”348 Cast in these terms, it is a particular experience with time, with the present, that Brown suggests Benjamin’s theses aim to capture. Rather than an unmoving or an automatically overcome present (a present that is out of time), the present is interpreted as an opening that calls for a response to it. This call for a response highlights the idea that, far from being a luxury, critique is non-optional in its nature. Such an understanding of critical thought is premised on a historical consciousness that grasps the present historically so as to break with the selfconception of the age. Untimely critique transforms into a technique to blow up the present through fracturing its apparent seamlessness by insisting on alternatives to its closed political and epistemological universe.349 Such a conception resonates with the distinction that Žižek makes between a political subjectivity that is confined to choosing between the existing alternatives—one that takes the limits of what is given as the limits to what is possible—and a form of subjectivity that creates the very set of alternatives by “transcend[ing] the coordinates of a given situation [and] ‘posit[ing] the presuppositions’ of one's activity” by redefining the very situation within which one is active.”350 With its attempt to grasp the times in its singularity, critique is cast neither as a breaking free from the weight of time (which would amount to ahistoricity) nor being weighed down by the times (as in the case of teleology).351 It conceives the present as “historically contoured but not itself experienced as history because not necessarily continuous with what has been.”352 It is an attitude that renders the present as the site of “non-utopian possibility” since it is historically situated and constrained yet also a possibility since it is not historically foreordained or determined.353 It entails contesting the delimitations of choice and challenging the confinement of politics to existing possibilities. Rather than positing history as existing objectively outside of narration, what Brown’s discussion highlights is the intimate relation between the constitution of political subjectivity vis-à-vis the meaning of history for the present. It alludes to “the power of historical discourse,” which Mowitt explains as a power “to estrange us from that which is most familiar, namely, the fixity of the present” because “what we believe to have happened to us bears concretely on what we are prepared to do with ourselves both now and in the future.”354 Mark Neocleous concretizes the political stakes entailed in such encounters with history—with the dead—from the perspective of three political traditions: a conservative one, which aims to reconcile the dead with the living, a fascist one, which aims to resurrect the dead to legitimate its fascist program, and a historical materialist one, which seeks redemption with the dead as the source of hope and inspiration for the future.355 Brown’s discussion of critique and political time is significant for highlighting the immediately political nature of critique in contrast to contemporary invocations that cast it as a self-indulgent practice, an untimely luxury, a disinterested, distanced, academic endeavor. Her attempt to trace critique vis-à-vis its relation to political time provides a counter-narrative to the conservative and moralizing assertions that shun untimely critique of security as a luxurious interest that is committed to abstract ideals rather than to the “reality” of politics—i.e., running after utopia rather than modeling “real world” solutions. Dismantling security as untimely critique entails a similar claim to unsettle the accounts of “what the times are” with a “bid to reset time.”356 It aspires to be untimely in the face of the demands on critical thought to be on time; aims to challenge the moralizing move, the call to conscience that arrives in the form of assertions that saying “no!” to security, that refusing to write it, would be untimely. Rather than succumbing to the injunction that thought of political possibility is to be confined within the framework of security, dismantling security aims to open up space for alternative forms, for a different language of politics so as to “stop digging” the hole politics of security have dug us and start building a counter-discourse. Conclusion As an attempt to push a debate that is fixated on security to the limit and explore what it means to dismantle security, my engagement with various aspects of this move is not intended as an analysis raised at the level of causal interpretations or as an attempt to find better solutions to a problem that already has a name. Rather, it tries to recast what is taken-for-granted by attending to the conceptual assumptions, the historical and systemic conditions within which the politics of security plays itself out. As I tried to show in this chapter, it also entails a simultaneous move of refusing to be a disciple of the discipline of security. This implies overturning not only the silent disciplinary protocols about which questions are legitimate to ask, but also the very framework that informs those questions. It is from this perspective that I devoted two chapters to examining and clarifying the proposal to dismantle security as a claim on time. After explicating, in Chapter 4, the temporal structure that is enacted by politics of security and elaborating on how security structures the relation between the present and the future, in this chapter, I approached the question of temporality from a different perspective, by situating it in relation to disciplinary times in order to clarify what an untimely critique of security means. I tried to elaborate this notion of the untimely by exploring the understanding of untimeliness that informs certain conceptions of critical theorizing in International Relations. I suggested that such a notion of the untimely paradoxically calls on critical thought to be on time in the sense of being punctual and strategic. Turning to Wendy Brown’s discussion of the relation between critique and political time, I elaborated on the sense of untimely critique that dismantling security strives for—a critique that goes against the times that are saturated by the infinite passion to secure and works toward taking apart the architecture of security.

### emergency legalism (fatovic)

#### Emergency means no solvency

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

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

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

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

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

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

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

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

### university o/w (bond graham)

#### University outweighs

Bond Graham 09. Darwin Bond Graham, PhD Sociology UC Santa Barbara, and Hell, UC Fiat Pax Research Project Group, Higher Education Militarization Resource, 2003, “The Militarization of America’s Universities”, Fiat Pax, UC Santa Cruz Press, pages 3-4, http://www.fiatpax.net/demil.pdf, Accessed 10/15/09

This publication is the testimony of our careers as students of a university in service of the warfare state. This publication is founded on a belief that war, no matter how urgent it might seem and no matter how necessary we are made to think it is, can no longer be considered a justifiable act. War is not the last resort, war is not the path to peace, war is not the means to an end, war is never the solution. War is always a failure. This publication is founded on a fact: War is not possible and pursuable in any society without the coordination and resources of a nation’s knowledge base for the purposes of making war. In our society this means that war is made possible only through a permanent technological revolution encompassing most dis- ciplines of science. War is the product of a close relationship between the US military establishment, private corporations, and academic institutions. This is the military-industrial-academic complex. Colleges and universities serve a critical purpose that only they can fulfill by providing access to the best and brightest minds, the product of their research, and the legitimization of war and weapons as high and honorable pursuits. The role that universities collectively play in warfare cannot be over-stated. War as we know it, with all its destructive and horrific capacity, would not be possible were it not for the military-industrial shaping of science, and our institutions of knowledge creation. We are not against science. We are opposed to the manipulation and perversion of science and technology used for the destruction of humankind. We are for the realization of a university that works to better society through research and education. We are in support of science guided by ethics not profits. In a message to the university community dated March 19th, 2003 UC President Richard Atkinson remarked that with respect to the war against Iraq and during times of war in general, "it is important that we all remember, now more than ever, the important role the University plays as a place of reasoned inquiry and civil discourse. While emotions may run high, there can be no room on our campuses for violence or intolerance." President Atkinson is right. There can be no room on our campuses for violence or intolerance. Therefore we must immediately cease all participation in the production of war and the technologies used to fight it. We must mobilize science entirely for peace and the prevention of war. Since the UC laid the foundation for the military-university relationship, it should be the first to sever the ties. We are calling upon the University of California to show leadership by transforming its system of research from war to peace, its economic purpose from destruction to sustainability, and by realizing its motto "Fiat Lux," that progress and a peaceful future is still possible.

### bernstein

#### probability outweighs magnitude because debate impacts are all empirically denied

**Bernstein et al, 2k** (Steven Bernstein.,Richard Ned Lebow, Janice Gross Stein and Steven Weber**,***University of Toronto, The Ohio State University, University of Toronto and University of California at Berkeley***. “***God Gave Physics the Easy Problems”*European Journal of International Relations2000; 6; 43.)

A deep irony is embedded in the history of the scientific study of international relations. Recent generations of scholars separated policy from theory to gain an intellectual distance from decision-making, in the belief that this would enhance the 'scientific' quality of their work. But five decades of well-funded efforts to develop theories of international relations have produced precious little in the way of useful, high confidence results. Theories abound, but few meet **the most relaxed** 'scientific' tests of validity. Even the most robust generalizations or laws we can state - war is more likely between neighboring states, weaker states are less likely to attack stronger states - **are close to trivial**, have important exceptions, and for the most part stand outside any consistent body of theory. A generation ago, we might have excused our performance on the grounds that we were a young science still in the process of defining problems, developing analytical tools and collecting data. This excuse is neither credible nor sufficient; there is no reason to suppose that another 50 years of well-funded research would result in anything resembling a valid theory in the Popperian sense. We suggest that **the nature, goals and criteria for judging social science theory should be rethought**, if theory is to be more helpful in understanding the real world. We begin by justifying our pessimism, both conceptually and empirically, and argue that the quest for *predictive* theory rests on a mistaken analogy between physical and social phenomena. Evolutionary biology is a more productive analogy for social science. We explore the value of this analogy in its 'hard' and 'soft' versions, and examine the implications of both for theory and research in international relations.2 We develop the case for forward 'tracking' of international relations on the basis of local and general knowledge as an alternative to backward-looking attempts to build deductive, nomothetic theory. We then apply this strategy to some emerging trends in international relations. This article is not a nihilistic diatribe against 'modern' conceptions of social science. Rather, it is a plea for constructive humility in the current context of attraction to deductive logic, falsifiable hypothesis and large-n statistical 'tests' of narrow propositions. We propose a practical alternative for social scientists to pursue in addition, and in a complementary fashion, to 'scientific' theory-testing. *Newtonian Physics: A Misleading Model* Physical and chemical laws make two kinds of predictions. Some phenomena - the trajectories of individual planets - can be predicted with a reasonable degree of certainty. Only a few variables need to be taken into account and they can be measured with precision. Other mechanical problems, like the break of balls on a pool table, while subject to deterministic laws, are inherendy unpredictable because of their complexity. Small differences in the lay of the table, the nap of the felt, the curvature of each ball and where they make contact, amplify the variance of each collision and lead to what appears as a near random distribution of balls. Most predictions in science are probabilistic, like the freezing point of liquids, the expansion rate of gases and all chemical reactions. Point predictions appear possible only because of the large numbers of units involved in interactions. In the case of nuclear decay or the expansion of gases, we are talking about *trillions* of atoms and molecules. In international relations, even more than in other domains of social science, it is often **impossible** to assign metrics to what we think are relevant variables (Coleman, 1964: especially Chapter 2). The concepts of **polarity**, relative power and the **balance of power** are among the most widely used independent variables, **but there are no commonly accepted definitions or measures** for them. Yet without consensus on definition and measurement, almost every statement or hypothesis will have too much wiggle room to be 'tested' decisively against evidence. What we take to be dependent variables fare little better. Unresolved controversies rage over the definition and evaluation of **deterrence outcomes**, and about the criteria for **democratic** **governance** and their application to specific countries at different points in their history. Differences in coding for even a few cases have significant implications for tests of theories of deterrence or of the democratic peace (Lebow and Stein, 1990; Chan, 1997). The lack of consensus about terms and their measurement is **not merely the result of** intellectual anarchy or **sloppiness** - although the latter cannot entirely be dismissed. Fundamentally, **it has more to do with the arbitrary nature of the concepts themselves**. Key terms in physics, like mass, temperature and velocity, refer to aspects of the physical universe that we cannot directly observe. However, they are embedded in theories with deductive implications that have been verified through empirical research. Propositions containing these terms are legitimate assertions about reality because their truth-value can be assessed. Social science theories are for the most part built on **'idealizations'**, that is, on concepts that cannot be anchored to observable phenomena through rules of correspondence. Most of these terms (e.g. rational actor, balance of power) are not descriptions of reality but **implicit 'theories'** about actors and **contexts that do not exist** (Hempel, 1952; Rudner, 1966; Gunnell, 1975; Moe, 1979; Searle, 1995: 68-72). The inevitable differences in interpretation of these concepts lead to different predictions in some contexts, and these outcomes may eventually produce widely varying futures (Taylor, 1985: 55). **If** problems of definition, measurement and coding could be resolved, we **would still find it** difficult, if not **impossible, to construct large enough samples** of comparable cases to permit statistical analysis. It is now almost generally accepted that in the analysis of the causes of wars, the **variation across time and the complexity of the interaction** among putative causes make the likelihood of a general theory **extraordinarily low**. Multivariate theories run into the problem of negative degrees of freedom, yet international relations rarely generates data sets in the high double digits. Where larger samples do exist, they often group together cases that differ from one another in theoretically important ways.3 Complexity in the form of multiple causation and equifinality can also make simple statistical comparisons misleading. But it is hard to elaborate more sophisticated statistical tests until one has a deeper baseline understanding of the nature of the phenomenon under investigation, as well as the categories and variables that make up candidate causes (Geddes, 1990: 131-50; Lustick, 1996: 505-18; Jervis, 1997).

### robinson

#### The pacifism unfeasible argument is false – based on the militarized public sphere

**Karatzogianni and Robinson 13**—University of Hull AND independent researcher

(Athina and Andrew, “Schizorevolutions vs. Microfascisms: A DeleuzoNietzschean Perspective on State, Security, and Active/Reactive Networks”, http://works.bepress.com/cgi/viewcontent.cgi?article=1037&context=athina\_karatzogianni, dml)

The return of state violence from the kernel of state exceptionalism is a growing problem. It is grounded on a reaction of the terrified state by conceiving the entire situation as it is formerly conceived specific sites of exception and emergency (c.f. Agamben, 1998, 2005). New forms of social control directed against minor deviance or uncontrolled flows are expanding into a war against difference and a systematic denial of the ‘right to have rights’ (Robinson, 2007). The project is not simply an extension of liberal-democratic models of social control, but breaks with such models in directly criminalizing nonconformity from a prescribed way of life and attempting to extensively regulate everyday life through repression. This new repressive model, expressing a kind of neo-totalitarianism, should be taken to include such measures and structures as the rise of gated communities, CCTV, RFID, ID cards, ASBOs, dispersal zones, paramilitary policing methods, the ‘social cleansing’ of groups such as homeless people and street drinkers from public spaces, increasing restrictions on protests and attacks on ‘extremist’ groups, the use of extreme sentencing against minor deviance, and of course the swathe of “anti-terrorism” laws which provide a pretext for expanded repression. This increasingly vicious state response leads to extremely intrusive state measures. The magazine Datacide analyses the wave of repression as ‘the real subsumption of every singularity in the domain of the State. From now on if your attributes don't quite extend to crime, a judge's word suffices to ensure that crime will reach out and embrace your attributes’ (Hyland n.d.). To decompose networks, the state seeks to shadow them ever more closely. The closure of space is an inherent aspect of this project of control. While open space is a necessary enabling good from the standpoint of active desire, it is perceived as a threat by the terrified state, because it is **space in which demonised Others can gather** and recompose networks outside state control. Hence, for the threatened state, open space is space for the enemy, space of risk. Given that open space is in contrast necessary for difference to function (since otherwise it is excluded as unrepresentable or excessive), the attempts to **render all space closed and governable** involve a constant war on difference which expands ever more deeply into everyday life. As Guattari aptly argues, neoliberal capitalism tends to construe difference as unwanted ‘noise’ (1996: 137). Society thus becomes a hothouse of constant crackdowns and surveillance, which at best simulates, and at worst creates, a situation where horizontal connections either cannot emerge or are constantly persecuted. Theories such as those of Agamben and Kropotkin show the predisposition of the state to pursue total control. But why is the state pursuing this project now? To understand this, one must recognise the multiple ways in which capitalism can handle difference. Hence, there are two poles the state can pursue, social-democratic (adding axioms) or totalitarian (subtracting axioms), which have the same function in relation to capitalism, but are quite different in other regards. State terror involves the replacement of addition of axioms (inclusion through representation) with subtraction of axioms (repression of difference). This parallels the distinction between ‘hard’ and ‘soft’ power in international relations. Crucially, ‘hard’ power is deflationary (Mann 2005: 83-4). While ideological integration can be increased by intensified command, ‘soft’ power over anyone who remains outside the dominant frame is dissipated. **Everyday deviance** becomes resistance because of the project of control which attacks it. It also becomes necessarily more insurrectionary, in direct response to the cumulative attempts to stamp it out through micro-regulation. What the state gains in coercive power, it loses in its ability to influence or engage with its other. But the state, operating under intense uncertainty and fear, is giving up trying to seem legitimate across a field of difference. A recent example of this concerns the treatment of whistleblowers: Bradley Manning and by extent the publisher Julian Assange in the WikiLeaks case (for a discussion of affect see Karatzogianni, 2012) and Edward Snowden in relation to the recent revelations about NSA surveillance program PRISM (Poitras and Greenwald’s video Interview with Edward Snowden, 9 June 2013). This is not to say that it dispenses with articulation. It simply restricts it tautologically to its own ideological space (Negri 2003: 27). **Legitimation is replaced by information**, technocracy and a simulation of participation (Negri 2003: 90, 111.). There is a peculiarly close relationship between the state logic of command and the field of what is variously termed ‘ideology’ (in Althusser), ‘mythology’ (in Barthes) and ‘fantasy’ (in Lacan): second-order significations embedded in everyday representations, through which **a simulated lifeworld is created**, in which people live in passivity, creating their real performative connection to their conditions of existence and bringing them into psychological complicity in their own repression. Such phenomena are crucial to the construction of demonised Others which provides the discursive basis for projects of state control. ‘[Conflict is] deflected… through the automatic micro-functioning of ideology through information systems. This is the normal, ‘everyday’ fascism, whose most noticeable feature is how unnoticeable it is’ (Negri 1998a: 190). In denial of generalisable rights, the in-group defines social space for itself and itself alone. The result is a denial of basic dignity and rights to those who fall outside "society", who, in line with their metaphysical status, are to be cast out, locked away, or put beyond a society defined as being for "us and us only" (the mythical division between social and anti-social). The neo-totalitarian state resurrects the tendency to build a state ideology, but this ideology is now disguised as a shared referent of polyarchic parties and nominally free media. **Failing to think in statist terms** is no longer any different from criminal intent. Romantically crossing an airport barrier for a goodbye kiss is taken as a major crime, for the state, being terrified, responds disproportionately; the romantic is blamed for producing this response (Baker and Robins, 2010). He should have thought like the state to begin with, and not corrupted its functioning with trivialities such as love. Such is the core of the terror-state: constant exertion of energy to ward off constant anxiety, at the cost of a war on difference.