# NDT Round 1 Opensource

## 1AC v. Texas FM

### Plan

#### The United States federal government should limit the President's war powers authority to assert, on behalf of the United States, immunity from judicial review by establishing a cause of action allowing civil suits brought against the United States by those unlawfully injured by targeted killing operations, their heirs, or next friends in security cleared legal proceedings.

### Advantage is Accountability

#### Judicial review is key to prevent unlawful strikes – executive targeting decisions are inevitably flawed and violent

Ahmad Chehab 12, Georgetown University Law Center, “RETRIEVING THE ROLE OF ACCOUNTABILITY IN THE TARGETED KILLINGS CONTEXT: A PROPOSAL FOR JUDICIAL REVIEW,” March 30 2012, abstract available at http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2031572

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

#### Accountability mechanisms that constrain the executive prevent drone overuse in Yemen

Benjamin R. Farley 12, JD from Emory University School of Law, former Editor-in-Chief of the Emory International Law Review, “Drones and Democracy: Missing Out on Accountability?” Winter 2012, 54 S. Tex. L. Rev. 385, lexis

Effective accountability mechanisms constrain policymakers' freedom to choose to use force by increasing the costs of use-of-force decisions and imposing barriers on reaching use-of-force decisions. The accountability mechanisms discussed here, when effective, reduce the likelihood of resorting to force (1) through the threat of electoral sanctioning, which carries with it a demand that political leaders explain their resort to force; (2) by limiting policymakers to choosing force only in the manners authorized by the legislature; and (3) by requiring policymakers to adhere to both domestic and international law when resorting to force and demanding that their justifications for uses of force satisfy both domestic and international law. When these accountability mechanisms are ineffective, the barriers to using force are lowered and the use of force becomes more likely.¶ Use-of-force decisions that avoid accountability are problematic for both functional and normative reasons. Functionally, accountability avoidance yields increased risk-taking and increases the likelihood of policy failure. The constraints imposed by political, supervisory, fiscal, and legal accountability "make[] leaders reluctant to engage in foolhardy military expeditions... . If the caution about military adventure is translated into general risk-aversion when it comes to unnecessary military engagements, then there will likely be a distributional effect on the success rates of [democracies]." n205 Indeed, this result is predicted by the structural explanation of the democratic peace. It also explains why policies that rely on covert action - action that is necessarily less constrained by accountability mechanisms - carry an increased risk of failure. n206 Thus, although accountability avoidance seductively holds out the prospect of flexibility and freedom of action for policymakers, it may ultimately prove counterproductive.¶ In fact, policy failure associated with the overreliance on force - due at least in part to lowered barriers from drone-enabled accountability avoidance - may be occurring already. Airstrikes are deeply unpopular in both Yemen n207 and Pakistan, n208 and although the strikes have proven critical [\*421] to degrading al-Qaeda and associated forces in Pakistan, increased uses of force may be contributing to instability, the spread of militancy, and the failure of U.S. policy objectives there. n209 Similarly, the success of drone [\*422] strikes in Pakistan must be balanced against the costs associated with the increasingly contentious U.S.-Pakistani relationship, which is attributable at least in part to the number and intensity of drone strikes. n210 These costs include undermining the civilian Pakistani government and contributing to the closure of Pakistan to NATO supplies transiting to Afghanistan, n211 thus forcing the U.S. and NATO to rely instead on several repressive central Asian states. n212 Arguably the damage to U.S.-Pakistan relations and the destabilizing influence of U.S. operations in Yemen would be mitigated by fewer such operations - and there would be fewer U.S. operations in both Pakistan and Yemen if U.S. policymakers were more constrained by use-of-force accountability mechanisms.¶ From a normative perspective, the freedom of action that accountability avoidance facilitates represents the de facto concentration of authority to use force in the executive branch. While some argue that such concentration of authority is necessary or even pragmatic in the current international environment, 168 it is anathema to the U.S. constitutional system. Indeed, the founding generation’s fear of foolhardy military adventurism is one reason for the Constitution’s diffusion of use-of-force authority between the Congress and the President. 169 That generation recognized that a President vested with an unconstrained ability to go to war is more likely to lead the nation into war.

#### Overuse of targeted killings in Yemen strengthens AQAP and fuels instability

Danielle Wiener-Bronner 12/13/13, staff writer at the Wire and former Web Editor for Reuters, “Latest Drone Strikes Shows How U.S. Strategy in Yemen Is Backfiring,” http://www.thewire.com/global/2013/12/yemen-drones/356111/

Targeted drone killings are defended by the United States as means to combat al-Qaeda in the most effective way possible. If attacks are carried out correctly, they should minimize civilian casualties, eliminate risk to our own forces, and remove dangerous militant operatives, ideally dismantling terrorist groups from a safe distance.¶ But if the attacks are not carried out correctly, as they often aren't, the results can backfire, which is exactly what's been happening in Yemen, according to Reuters: ¶ Tribal leaders, who have a lot of influence within Yemen's complex social structure, warn of rising sympathy for al Qaeda. Awad Ahmed Mohsen from Majallah, a southern village hit by a drone strike that killed dozens in 2009, told Reuters that America had brought hatred with its drones. Asked if more people joined al Qaeda in the wake of attacks that killed civilians, Mohsen said: "Definitely. And even those who don't join, now sympathize with al Qaeda because of these strikes, these violations. Any American they see, they exact revenge, even if it's a civilian."¶ On Thursday, 14 Yemeni civilians were killed by a U.S. drone strike that mistakenly targeted a wedding convoy, according to Yemeni national security officials. Another official, however, said AQAP militants may have been traveling with the wedding party, but in either case it seems that civilians were not the original targets have been killed. The CIA didn't comment on the strike, per standard procedure. The attack threatens to undo the U.S.'s efforts to scale back its drone program, while making it more palatable to the countries it affects.¶ Reuters reports that al-Qaeda in the Arabian Peninsula (AQAP) has started traveling in smaller groups to avoid the aerial strikes, which may actually make it more difficult to track their motions. And the strikes are angering some Sunni Muslims upset about strikes that kill their supporters, rather than anti-government Shi'ite rebels, fueling sectarian tensions which are already high in the region.¶ If those killed in this week's attack are confirmed to be civilians, according to the Associated Press, it could mean a surge of anti-American sentiment in Yemen: ¶ Civilian deaths have bred resentments on a local level, sometimes undermining U.S. efforts to turn the public against the militants. The backlash in Yemen is still not as large as in Pakistan, where there is heavy pressure on the government to force limits on strikes — but public calls for a halt to strikes are starting to emerge.¶ In May, President Obama promised to increase transparency on the drone strike program and enhance guidelines on their use. But the Bureau of Investigative Journalism found in November that the six months following Obama's speech actually saw an increase of drone strike casualties in Yemen and Pakistan. ¶ Human Rights Watch and Amnesty International reported in October that civilian casualties of drone strikes are higher than the U.S. admits. Around the same time, a U.N. human rights investigator said 400-600 of the 2,200 people killed by drones in the past decade were noncombatants. And in 2012, reports emerged that the Yemeni government works to help the U.S. hide it deadly errors. ¶ Data on drone strikes, like all counter-terrorism efforts, is necessarily shrouded in mystery, making it difficult to measure success. But if drone strikes continue to indiscriminately kill civilians, moderates in Yemen may be driven towards more extremist positions. Even governments working with Washington to coordinate the strikes could turn against the U.S. if drone casualties are not scaled back or eliminated.

#### AQAP is strengthening now---they’re regrouping

UPI 1/22, “Report: Al Qaeda systematically assassinating Yemen's intelligence officers,” http://www.albawaba.com/news/yemen-al-qaeda-549282

Dozens of top intelligence and military officers have been assassinated in recent months in a savage campaign widely attributed to jihadists while complex attacks have been conducted against key military installations, all indicating Al Qaeda in the Arabian Peninsula is still a force with which to be reckoned.¶ The group, considered the most dangerous of Al Qaeda's affiliates from the badlands of northern Pakistan to Morocco, includes some of the network's most effective commanders, bomb-makers and ideologues.¶ Despite heavy losses, including several important leaders, from U.S. airstrikes in the last couple of years, AQAP remains a coherent force that counterinsurgency analysts say is steadily regrouping.¶ In 2012, the Yemeni military, heavily supported by U.S. airstrikes and equipment, drove AQAP out of the jihadist emirate it had established in south Yemen's Abyan province by exploiting a seething separatist campaign in the region.¶ But now, the analysts say, AQAP has moved into the eastern province of Hadramaut, which covers a third of the impoverished country, to establish a new base of operations under veteran jihadist Nasir al-Wuhayshi, Osama bin Laden's personal secretary in the 1990s.

#### AQAP in Yemen is the core of Al Qaeda’s operations

John Masters 8/22/13, Deputy Editor @ the Council on Foreign Relations, “Al-Qaeda in the Arabian Peninsula (AQAP),” CFR Backgrounder, http://www.cfr.org/yemen/al-qaeda-arabian-peninsula-aqap/p9369#p6

The militant Islamist group al-Qaeda in the Arabian Peninsula (AQAP) was formed in January 2009 through a union of the Saudi and Yemeni branches of al-Qaeda. Jihadist antecedents in the region date to the early 1990s, when thousands of mujahedeen returned to Yemen after fighting the Soviet occupation in Afghanistan. Analysts rate the Yemen-based group as the most lethal Qaeda franchise, carrying out a domestic insurgency while maintaining its sights on striking Western targets. As the ranks of so-called "al-Qaeda central" in Pakistan have thinned, the umbrella organization's core may shift to Yemen. In August 2013, indications of an AQAP-sponsored plot led to the closure of more than two dozen U.S. diplomatic facilities across the Middle East, Africa, and South Asia.¶ Yemen, long a fractured and fragile country, is increasingly so since the ouster of President Ali Abdullah Saleh in February 2012. AQAP has exploited the instability, establishing a domestic insurgency based in the south. Meanwhile, the United States has expanded counterterrorism operations—particularly drone strikes—in the area. Experts question whether President Abd Rabbu Mansour Hadi's transitional government can pull back the impoverished country from the brink of failure.¶ Members of Ansar al-ShariaMembers of Ansar al-Sharia are seen near a tank taken from the army, as they guard a road leading to the southern Yemeni town of Jaar (Courtesy Reuters).¶ A Legacy of Jihad¶ In the late 1980s, the Saleh regime fostered jihad in what was then North Yemen by repatriating thousands of Yemeni nationals who had fought the Soviets in Afghanistan. Saleh dispatched these mujahadeen to fight the Soviet-backed Marxist government of South Yemen in a successful bid for unification, and subsequently, to crush southern secessionists.¶ The returning Yemenis were joined by other Arab veterans of the Afghan war, foremost among them Osama bin Laden, who advocated a central role for Yemen in global jihad. A corps of jihadists who had trained under bin Laden in Afghanistan formed the militant group Islamic Jihad in Yemen (1990-1994), one of several AQAP predecessors. Other such groups include the Army of Aden Abyan (1994-1998) and al-Qaeda in Yemen, or AQY (1998-2003).¶ In October 2000, a skiff piloted by two members of AQY detonated several hundred pounds of explosives into the hull of the USS Cole, which was moored in the port of Aden. Seventeen U.S. servicemen were killed. Two years later, another suicide bombing orchestrated by AQY, on the French oil tanker M/V Limburg, killed one crew member and further highlighted the threat to Western interests in the region. Several militants involved in the Limburg plot would eventually hold top leadership positions in AQAP.¶ Following the Cole bombing and the al-Qaeda-led attacks on September 11, 2001, the Bush administration pressed the Saleh government to begin aggressive counterterrorism operations against AQY. Many analysts believe Saleh may have stoked the jihadist threat—perhaps facilitating prison escapes of convicted terrorists—to ensure Western backing for his embattled regime, which viewed northern insurgents and southern secessionists as a greater threat than al-Qaeda.¶ Washington dispatched Special Forces and intelligence personnel to Yemen to aid the counterterrorism campaign. A U.S. drone strike in 2002, the first such operation in the region, killed AQY's leader, Abu Ali al-Harithi. By the end of 2003, AQY faced a precipitous membership decline.¶ Resiliency¶ In February 2006, twenty-three convicted terrorists escaped from a high-security prison in the capital of Sana'a, a turning point for al-Qaeda in the region. Many of the escapees worked to "resurrect al-Qaeda from the ashes" (PDF) and launch a fresh campaign of attacks. Among them was Nasser al-Wuhayshi, who today leads AQAP.¶ In late 2008, a crackdown by the Saudi government led remnants of the local al-Qaeda franchise there to flee across the border and unite with the resurgent jihad in Yemen. The two branches merged in 2009.¶ The U.S. State Department estimates the organization has "close to a thousand members." This represents dramatic growth from some two-to-three-hundred members in 2009, Yemen expert Gregory Johnsen notes, even as so-called al-Qaeda central, based in Pakistan, has declined.¶ AQAP has claimed responsibility for numerous attacks in the region since 2006. These have included the failed August 2009 assassination attempt on Saudi prince Mohammed bin Nayef; an attack on the U.S. in Sana'a in 2008; attacks on Italian and British embassies; suicide bombings targeting Belgian tourists in January 2008 and Korean tourists in March 2009; bombings of oil pipelines and production facilities; and the bombing of a Japanese oil tanker in April 2008. In May 2012, a suicide bomber killed more than ninety Yemeni soldiers rehearsing for a military parade in the capital of Sana'a, the largest attack since Hadi assumed power in early 2012.¶ AQAP has also been implicated in plots on the U.S. homeland, including Umar Farouk Abdulmutallab's failed 2009 Christmas Day bombing, Faisal Shahzad's attempted 2010 Times Square bombing, and the foiled May 2012 Detroit airliner bomb plot.¶ More than half of the 166 prisoners held in the U.S. military prison at Guantanamo Bay are Yemenis, and President Barack Obama's long-standing pledge to shut down the facility is contingent on repatriating them. But some U.S. lawmakers have objected, raising concern about the prisoners' return to the battlefield through detention and reintegration programs.¶ An Effective Propaganda¶ The primary goals of AQAP are consistent with the principles of militant jihad, which aims to purge Muslim countries of Western influence and replace secular "apostate" governments with fundamentalist Islamic regimes observant of sharia law. Associated AQAP objectives include overthrowing the regime in Sana'a; assassinating Western nationals and their allies, including members of the Saudi royal family; striking at related interests in the region, such as embassies and energy concerns; and attacking the U.S. homeland.¶ The group has also mastered recruitment through propaganda and media campaigns. A bimonthly AQAP magazine in Arabic, Sada al-Malahim ("The Echo of Battles"), is tailored to a Yemeni audience and offers theological support and praise for jihadists. The U.S.-born Anwar al-Awlaki and Pakistani-American Samir Khan were central figures in AQAP's production of propaganda aimed at Western audiences. Though they were killed in an October 2011 U.S. drone strike, their English-language propaganda magazine Inspire continues to be published. U.S. Major Nidal Hasan exchanged emails with Awlaki prior to his shooting rampage at the U.S. Army's Fort Hood in 2009.¶ Analysts say that AQAP's messaging attracts recruits by "minimiz[ing] global jihad while emphasizing national struggle," focusing on jihad as an answer to local grievances while remaining focused on what jihadists call the "far enemy"—the United States, particularly for its unholy alliance with Saudi Arabia.

**Al Qaeda’s actions, statements, and internal documents prove they want nuclear weapons and mass casualty attacks**

Larry J. **Arbuckle 8**, Naval Postgraduate School, "The Deterrence of Nuclear Terrorism through an Attribution Capability", Thesis for master of science in defense analysis, approved by Professor Robert O'Connell, and Gordon McCormick, Chairman, Department of Defense Analysis, Naval Postgraduate School, June

However, there is evidence that a small number of terrorist organizations in recent history, and at least one presently, have nuclear ambitions. These groups include Al Qaeda, Aum Shinrikyo, and Chechen separatists (Bunn, Wier, and Friedman; 2005). Of these, Al Qaeda appears to have made the most serious attempts to obtain or otherwise develop a nuclear weapon. Demonstrating these intentions, in 2001 Osama Bin Laden, Ayman al Zawahiri, and two other al Qaeda operatives met with two Pakistani scientists to discuss weapons of mass destruction development (Kokoshin, 2006). Additionally, Al Qaeda has made significant efforts to justify the use of mass violence to its supporters. Sulaiman Abu Ghaith, an al Qaeda spokesman has stated that al Qaeda, “has the right to kill 4 million Americans – 2 million of them children,” in retaliation for deaths that al Qaeda links to the U.S. and its support of Israel (as cited in Bunn, Wier, and Friedman; 2005). Indeed Bin Laden received a fatwa in May 2003 from an extreme Saudi cleric authorizing the use of weapons of mass destruction against U.S. civilians (Bunn, Wier, and Friedman; 2005). Further evidence of intent is the following figure taken from al Qaeda documents seized in Afghanistan. **It depicts a workable design for a nuclear weapon.** Additionally, the text accompanying the design sketch includes some **fairly advanced weapons design parameters** (Boettcher & Arnesen, 2002). Clearly **maximizing the loss of life is key among al Qaeda’s goals**. Thus their use of conventional means of attack presently appears to be a **result of their current capabilities** and not a function of their pure preference (Western Europe, 2005).

#### Risk of nuclear terrorism is real and high now

Bunn et al 10/2/13 Matthew, Valentin Kuznetsov, Martin B. Malin, Yuri Morozov, Simon Saradzhyan, William H. Tobey, Viktor I. Yesin, and Pavel S. Zolotarev. "Steps to Prevent Nuclear Terrorism." Paper, Belfer Center for Science and International Affairs, Harvard Kennedy School, October 2, 2013, Matthew Bunn. Professor of the Practice of Public Policy at Harvard Kennedy School andCo-Principal Investigator of Project on Managing the Atom at Harvard University’s Belfer Center for Science and International Affairs. • Vice Admiral Valentin Kuznetsov (retired Russian Navy). Senior research fellow at the Institute for U.S. and Canadian Studies of the Russian Academy of Sciences, Senior Military Representative of the Russian Ministry of Defense to NATO from 2002 to 2008. • Martin Malin. Executive Director of the Project on Managing the Atom at the Belfer Center for Science and International Affairs. • Colonel Yuri Morozov (retired Russian Armed Forces). Professor of the Russian Academy of Military Sciences and senior research fellow at the Institute for U.S. and Canadian Studies of the Russian Academy of Sciences, chief of department at the Center for Military-Strategic Studies at the General Staff of the Russian Armed Forces from 1995 to 2000. • Simon Saradzhyan. Fellow at Harvard University’s Belfer Center for Science and International Affairs, Moscow-based defense and security expert and writer from 1993 to 2008. • William Tobey. Senior fellow at Harvard University’s Belfer Center for Science and International Affairs and director of the U.S.-Russia Initiative to Prevent Nuclear Terrorism, deputy administrator for Defense Nuclear Nonproliferation at the U.S. National Nuclear Security Administration from 2006 to 2009. • Colonel General Viktor Yesin (retired Russian Armed Forces). Leading research fellow at the Institute for U.S. and Canadian Studies of the Russian Academy of Sciences and advisor to commander of the Strategic Missile Forces of Russia, chief of staff of the Strategic Missile Forces from 1994 to 1996. • Major General Pavel Zolotarev (retired Russian Armed Forces). Deputy director of the Institute for U.S. and Canadian Studies of the Russian Academy of Sciences, head of the Information and Analysis Center of the Russian Ministry of Defense from1993 to 1997, section head - deputy chief of staff of the Defense Council of Russia from 1997 to 1998.<http://belfercenter.ksg.harvard.edu/publication/23430/steps_to_prevent_nuclear_terrorism.html>

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

#### Yes there are a lot of steps, but these are considered in studies---the risk is real

Peter Beinart 8, associate professor of journalism and political science at CUNY, The Good Fight; Why Liberals – and only Liberals – Can Win the War on Terror and Make America Great Again, 106-7

For all these reasons, jihadists seem less intent on acquiring a finished nuclear weapon than on acquiring weapons- grade uranium and building the bomb themselves. In the early 1990s, Al Qaeda bought a 3- foot- long cylinder from a Sudanese military officer who said it contained South African highly enriched uranium. It turned out to be a hoax. Jihadists have reportedly made other failed attempts as well. Eventually, however, they could succeed. Moscow may adequately protect its nuclear weapons, but the National Academy of Sciences has warned that “large inventories of SNM [fissile material] are stored at many sites that apparently lack inventory controls.” And the Russians reportedly experience one or two attempted thefts of that material a year—that they know of. ¶ If Al Qaeda obtained 50 kilograms of weapons-g rade uranium, the hardest part would be over. The simplest nuke to build is the kind the United States dropped on Hiroshima, a “gun- type,” in which a mass of highly enriched uranium is fired down a large gun barrel into a second uranium mass. Instructions for how to make one are widely available. Just how widely available became clear to an elderly nuclear physicist named Theodore Taylor in 2002, when he looked up “atomic bomb” in the World Book Encyclopedia in his upstate New York nursing home, and found much of the information you’d need. ¶ Even with directions, building a nuclear bomb would still be a monumental task. According to a New York Times Magazine article by Bill Keller, in 1986 five Los Alamos nuke builders wrote a paper called “Can Terrorists Build Nuclear Weapons?” They concluded that it would require people who understood “the physical, chemical and metallurgical proper-¶ 107¶ ties of the various materials to be used, as well as characteristics affecting their fabrication; neutronic properties; radiation effects, both nuclear and biological; technology concerning high explosives and/or chemical pro- pellants; some hydrodynamics; electrical circuitry.” That sounds daunting. **Yet, at the end of the paper, the scientists answered their question: “Yes, they can.”** ¶Finally, once terrorists built a nuclear weapon, they’d still have to smuggle it into the United States. The best way might be to put it in a shipping container, on one of the many supertankers that bring oil into American ports every day. The containers are huge, more than big enough to fit a gun-t ype nuke, which could be as small as 6 feet in length and 6 inches in diameter. Highly enriched uranium emits much less radiation than plutonium, and inside a supertanker’s thick double-steel hull it would be hard for sensors to detect. What’s more, a single ship can carry several thousand containers, most of which are never searched. On September 11, 2002, ABC News smuggled a 15- pound cylinder of depleted uranium in a cargo container past U.S. customs. On September 11, 2003, they performed the same exercise—and got the uranium past customs again.

#### Terrorism studies are epistemologically and methodologically valid---our authors are self-reflexive

Michael J. Boyle '8, School of International Relations, University of St. Andrews, and John Horgan, International Center for the Study of Terrorism, Department of Psychology, Pennsylvania State University, April 2008, “A Case Against Critical Terrorism Studies,” Critical Studies On Terrorism, Vol. 1, No. 1, p. 51-64

Jackson (2007c) calls for the development of an explicitly CTS on the basis of what he argues preceded it, dubbed ‘Orthodox Terrorism Studies’. The latter, he suggests, is characterized by: (1) its poor methods and theories, (2) its state centricity, (3) its problemsolving orientation, and (4) its institutional and intellectual links to state security projects. Jackson argues that the major defining characteristic of CTS, on the other hand, should be ‘a skeptical attitude towards accepted terrorism “knowledge”’. **An implicit presumption from this is that terrorism scholars have laboured for all of these years without being aware that their area of study has an implicit bias, as well as definitional and methodological** **problems**. In fact**, terrorism scholars are not only well aware of these problems, but also have provided their own** searching **critiques** of the field at various points during the last few decades (e.g. Silke 1996, Crenshaw 1998, Gordon 1999, Horgan 2005, esp. ch. 2, ‘Understanding Terrorism’). **Some of those scholars** most associated with the critique of empiricismimplied in ‘Orthodox Terrorism Studies’ **have also engaged in deeply critical examinations of the nature of sources, methods, and data in the study of terrorism**. For example, Jackson (2007a) regularly cites the handbook produced by **Schmid and Jongman** (1988) to support his claims that theoretical progress has been limited. But this fact was well recognized by the authors; indeed, in the introduction of the second edition they **point out** that they have not revised their chapter on theories of terrorism from the first edition, because the **failure to address** persistent conceptual and **data problems** has undermined progress in the field. The point of their handbook was to sharpen and make more comprehensive the result of research on terrorism, not to glide over its methodological and definitional failings (Schmid and Jongman 1988, p. xiv). Similarly, **Silke’s** (2004) **volume on the state of the field of terrorism research performed a similar function**, highlighting the shortcomings of the field, in particular the lack of rigorous primary data collection. **A non-reflective community of scholars does not produce such scathing indictments of its own work.**

#### Successful nuclear terrorist attack kills billions

Owen B. Toon 7, chair of the Department of Atmospheric and Oceanic Sciences at CU-Boulder, et al., April 19, 2007, “Atmospheric effects and societal consequences of regional scale nuclear conflicts and acts of individual nuclear terrorism,” online: http://climate.envsci.rutgers.edu/pdf/acp-7-1973-2007.pdf

To an increasing extent, **people are congregating in the world’s great urban centers, creating megacities with populations exceeding 10 million individuals**. At the same time, **advanced technology has designed nuclear explosives of such small size they can be easily transported in a car**, small plane or boat **to the heart of a city**. We demonstrate here that **a single detonation in the 15 kiloton range can produce urban fatalities approaching one million** in some cases, **and casualties** exceeding one million. Thousands of small weapons still exist in the arsenals of the U.S. and Russia, and there are at least six other countries with substantial nuclear weapons inventories. In all, thirty-three countries control sufficient amounts of highly enriched uranium or plutonium to assemble nuclear explosives. A conflict between any of these countries involving 50-100 weapons with yields of 15 kt has the potential to create fatalities rivaling those of the Second World War. Moreover, **even a single surface nuclear explosion**, or an air burst in rainy conditions, **in a city center is likely to cause the entire metropolitan area to be abandoned at least for decades** owing to infrastructure damage and radioactive contamination. As the aftermath of hurricane Katrina in Louisiana suggests, **the economic consequences of even a localized nuclear catastrophe would most likely have severe national and** international economic consequences. Striking effects result even from relatively small nuclear attacks because low yield detonations are most effective against city centers where business and social activity as well as population are concentrated. Rogue nations and terrorists would be most likely to strike there. Accordingly, an organized **attack on the U.S. by a small nuclear state, or terrorists** supported by such a state, could generate casualties comparable to those once predicted for a full-scale nuclear “counterforce” exchange in a superpower conflict. Remarkably, the **estimated quantities of smoke generated by attacks totaling about one megaton of nuclear explosives** could lead to significant global climate perturbations (Robock et al., 2007). While we did not extend our casualty and damage predictions to include potential medical, social or economic impacts following the initial explosions, such analyses have been performed in the past for large-scale nuclear war scenarios (Harwell and Hutchinson, 1985). Such a study should be carried out as well for the present scenarios and physical outcomes.

#### Independently, large-scale terrorist attacks cause retaliatory nuclear strikes by the US

Robert Ayson 10, Professor of Strategic Studies and Director of the Centre for Strategic Studies: New Zealand – Victoria University of Wellington, “After a Terrorist Nuclear Attack: Envisaging Catalytic Effects”, Studies in Conflict & Terrorism, 33(7), July

*A Catalytic Response: Dragging in the Major Nuclear Powers*

A terrorist nuclear attack, and even the use of nuclear weapons in response by the country attacked in the first place, would not necessarily represent the worst of the nuclear worlds imaginable. Indeed, there are reasons to wonder whether nuclear terrorism should ever be regarded as belonging in the category of truly existential threats. A contrast can be drawn here with the global catastrophe that would come from a massive nuclear exchange between two or more of the sovereign states that possess these weapons in significant numbers. Even the worst terrorism that the twenty-first century might bring would fade into insignificance alongside considerations of what a general nuclear war would have wrought in the Cold War period. And it must be admitted that as long as the major nuclear weapons states have hundreds and even thousands of nuclear weapons at their disposal, there is always the possibility of a truly awful nuclear exchange taking place precipitated entirely by state possessors themselves. But these two nuclear worlds—a non-state actor nuclear attack and a catastrophic interstate nuclear exchange—are not necessarily separable. It is just possible that some sort of terrorist attack, and especially an act of nuclear terrorism, could precipitate a chain of events leading to a massive exchange of nuclear weapons between two or more of the states that possess them. In this context, today's and tomorrow's terrorist groups might assume the place allotted during the early Cold War years to new state possessors of small nuclear arsenals who were seen as raising the risks of a catalytic nuclear war between the superpowers started by third parties. These risks were considered in the late 1950s and early 1960s as concerns grew about nuclear proliferation, the so-called n+1 problem. It may require a considerable amount of imagination to depict an especially plausible situation where an act of nuclear terrorism could lead to such a massive inter-state nuclear war. For example, in the event of a terrorist nuclear attack on the United States, it might well be wondered just how Russia and/or China could plausibly be brought into the picture, not least because they seem unlikely to be fingered as the most obvious state sponsors or encouragers of terrorist groups. They would seem far too responsible to be involved in supporting that sort of terrorist behavior that could just as easily threaten them as well. Some possibilities, however remote, do suggest themselves. For example, how might the United States react if it was thought or discovered that the fissile material used in the act of nuclear terrorism had come from Russian stocks,[40](http://www.informaworld.com.proxy-remote.galib.uga.edu/smpp/section?content=a923238837&fulltext=713240928#EN0040) and if for some reason Moscow denied any responsibility for nuclear laxity? The correct attribution of that nuclear material to a particular country might not be a case of science fiction given the observation by Michael May et al. that while the debris resulting from a nuclear explosion would be “spread over a wide area in tiny fragments, its radioactivity makes it detectable, identifiable and collectable, and a wealth of information can be obtained from its analysis: the efficiency of the explosion, the materials used and, most important … some indication of where the nuclear material came from.”[41](http://www.informaworld.com.proxy-remote.galib.uga.edu/smpp/section?content=a923238837&fulltext=713240928#EN0041) Alternatively, if the act of nuclear terrorism came as a complete surprise, and American officials refused to believe that a terrorist group was fully responsible (or responsible at all) suspicion would shift immediately to state possessors. Ruling out Western ally countries like the United Kingdom and France, and probably Israel and India as well, authorities in Washington would be left with a very short list consisting of North Korea, perhaps Iran if its program continues, and possibly Pakistan. But at what stage would Russia and China be definitely ruled out in this high stakes game of nuclear Cluedo? In particular, if the act of nuclear terrorism occurred against a backdrop of existing tension in Washington's relations with Russia and/or China, and at a time when threats had already been traded between these major powers, would officials and political leaders not be tempted to assume the worst? Of course, the chances of this occurring would only seem to increase if the United States was already involved in some sort of limited armed conflict with Russia and/or China, or if they were confronting each other from a distance in a proxy war, as unlikely as these developments may seem at the present time. The reverse might well apply too: should a nuclear terrorist attack occur in Russia or China during a period of heightened tension or even limited conflict with the United States, could Moscow and Beijing resist the pressures that might rise domestically to consider the United States as a possible perpetrator or encourager of the attack? Washington's early response to a terrorist nuclear attack on its own soil might also raise the possibility of an unwanted (and nuclear aided) confrontation with Russia and/or China. For example, in the noise and confusion during the immediate aftermath of the terrorist nuclear attack, the U.S. president might be expected to place the country's armed forces, including its nuclear arsenal, on a higher stage of alert. In such a tense environment, when careful planning runs up against the friction of reality, it is just possible that Moscow and/or China might mistakenly read this as a sign of U.S. intentions to use force (and possibly nuclear force) against them. In that situation, the temptations to preempt such actions might grow, although it must be admitted that any preemption would probably still meet with a devastating response. As part of its initial response to the act of nuclear terrorism (as discussed earlier) Washington might decide to order a significant conventional (or nuclear) retaliatory or disarming attack against the leadership of the terrorist group and/or states seen to support that group. Depending on the identity and especially the location of these targets, Russia and/or China might interpret such action as being far too close for their comfort, and potentially as an infringement on their spheres of influence and even on their sovereignty. One far-fetched but perhaps not impossible scenario might stem from a judgment in Washington that some of the main aiders and abetters of the terrorist action resided somewhere such as Chechnya, perhaps in connection with what Allison claims is the “Chechen insurgents' … long-standing interest in all things nuclear.”[42](http://www.informaworld.com.proxy-remote.galib.uga.edu/smpp/section?content=a923238837&fulltext=713240928#EN0042) American pressure on that part of the world would almost certainly raise alarms in Moscow that might require a degree of advanced consultation from Washington that the latter found itself unable or unwilling to provide.

### Solvency

#### The plan establishes legal norms and ensures compliance with the laws of war

Jonathan Hafetz 13, Associate Prof of Law at Seton Hall University Law School, former Senior Staff Attorney at the ACLU, served on legal teams in multiple Supreme Court cases regarding national security, “Reviewing Drones,” 3/8/2013, http://www.huffingtonpost.com/jonathan-hafetz/reviewing-drones\_b\_2815671.html

The better course is to ensure meaningful review after the fact. To this end, Congress should authorize federal damages suits by the immediate family members of individuals killed in drone strikes.¶ Such ex post review would serve two main functions: providing judicial scrutiny of the underlying legal basis for targeted killings and affording victims a remedy. It would also give judges more leeway to evaluate the facts without fear that an error on their part might leave a dangerous terrorist at large.¶ For review to be meaningful, judges must not be restricted to deciding whether there is enough evidence in a particular case, as they would likely be under a FISA model. They must also be able to examine the government's legal arguments and, to paraphrase the great Supreme Court chief justice John Marshall, "to say what the law is" on targeted killings.¶ Judicial review through a civil action can achieve that goal. It can thus help resolve the difficult questions raised by the Justice Department white paper, including the permissible scope of the armed conflict with al Qaeda and the legality of the government's broad definition of an "imminent" threat.¶ Judges must also be able to afford a remedy to victims. Mistakes happen and, as a recent report by Columbia Law School and the Center for Civilians in Conflict suggests, they happen more than the U.S. government wants to acknowledge.¶ Errors are not merely devastating for family members and their communities. They also increase radicalization in the affected region and beyond. Drone strikes -- if unchecked -- could ultimately create more terrorists than they eliminate.¶ Courts should thus be able to review lethal strikes to determine whether they are consistent with the Constitution and with the 2001 Authorization for Use of Military Force, which requires that such uses of force be consistent with the international laws of war. If a drone strike satisfies these requirements, the suit should be dismissed.

#### Cause of action deters abuse and avoids legal barriers---drawbacks of judicial review don’t apply

Stephen I. Vladeck 14, Prof of Law and Associate Dean for Scholarship, American University Washington College of Law, “Targeted Killing and Judicial Review ,”

Once one accepts that neutral magistrates are competent to resolve certain issues in suits challenging targeted killings, the focus should shift to how such oversight can best be designed to maximize both the government’s interests in secrecy and expediency and the individual rights of the putative targets. I offered my critiques of Judge Gonzales’s proposal above. Although I have expressed my own views on this subject before,69 the following briefly lays out some of the key elements I consider necessary to any such regime. ¶ As noted above,70 such review is best provided after the fact, rather than ex ante, in a similar manner as the wrongful death actions recognized by virtually every jurisdiction.71 After-the-fact review avoids the serious logistical, prudential, and potentially constitutional concerns that ex ante review would raise because it does not stop the government from acting at its own discretion, and it allows for more comprehensive consideration of the issues “removed from the pressures of the moment and with the benefit of the dispassionate distance on which judicial review must rely.”72¶ Such review should be predicated on an express cause of action created by Congress. In designing such a remedy, Congress can borrow from the model created by FISA, which has provided since its inception that “[a]n aggrieved person, other than [one who is properly subject to surveillance under FISA], who has been subjected to an electronic surveillance . . . shall have a cause of action against any person who committed such violation.”73 An express cause of action would clarify Congress’s intent that such suits should be allowed to go forward, and it would also support arguments against otherwise available common law privileges and immunities. ¶ Further to that end, because review would be after the fact, such an action should be for damages, and, unlike FISA, should therefore contain an express waiver of the United States’ sovereign immunity to ensure that money damages will actually be available in such cases74—not so much to make the victim’s heirs whole, but to provide a meaningful deterrent for future government officers. Thus, although many will disagree with this particular aspect of my proposal, I suspect that such a cause of action could serve its purpose even if it only provided for nominal damages, insofar as such nominal damages still establish forward-looking principles of liability.75¶ Although no special jurisdictional provisions should be necessary (e.g., FISA does not require civil suits under FISA to be brought before the FISC),76 Congress could confer exclusive jurisdiction over such suits upon the U.S. District Court for the District of Columbia.77 This jurisdictional exclusivity would ensure that such cases were brought before federal judges with substantial and sustained experience handling high-profile (and often highly sensitive) national security cases. ¶ Borrowing from the model of the Federal Tort Claims Act (“FTCA”),78 as amended by the Federal Employees Liability Reform and Tort Compensation Act of 1988 (“Westfall Act”), 79 Congress can immunize potential officer-defendants by substituting the United States as the defendant on any claims arising under this cause of action in which the officer-defendant was acting within the scope of his employment.80 As is the case under the Westfall Act, such a move would also necessarily moot application of official immunity doctrines because it would confer absolute immunity upon the officer-defendants,81 and the United States may not invoke official immunity as a party. As under the Westfall Act, substitution would reinforce the idea that the goal is not to punish individual officers, but to establish the liability of the federal government writ large. ¶ As under the FTCA, Congress could bar jury trials in such cases, requiring instead that all factual and legal determinations be made by the presiding judge.82 Again, such a move would help to ensure that these suits could be heard expeditiously and with due regard for the government’s secrecy concerns. ¶ On that note, with regard to secrecy, Congress could look to both FISA83 and the provisions of the 1996 immigration laws establishing the Alien Terrorist Removal Court (“ATRC”)84 as models for how to allow for judicial proceedings that are both adversarial and largely secret. In this respect, both FISA and the ATRC contemplate litigation between the government and security-cleared counsel without regard to the state secrets privilege, which Congress could otherwise abrogate.85

#### Multiple suits have been brought but they were DISMISSED because the exec said there was no legal standing---the plan solves this

Joshua Hersch 12, July 18th, 2012, "Drone Wars: Civil Liberties Groups Sue CIA, Pentagon Over Targeted Killings ," www.huffingtonpost.com/2012/07/18/drone-wars-aclu-cia-lawsuit\_n\_1681508.html

The ACLU and the Center for Constitutional Rights both have long track records of attempting to use the courts to force the White House to address the practice of targeted killings across the world, to little avail. In 2010, the two groups sued the government, on behalf of Awlaki's father to prevent his assassination. A judge later threw out the case, ruling that Awlaki's father did not have standing to sue, and asserting that the courts may not have the capacity to assess the decision to place someone on a classified kill list.¶The Obama administration has successfully blocked previous efforts by courts to review documents related to the drone assassination program under the state secrets privilege, which permits the executive branch to prevent the review of certain information that could harm national security. The administration declined to acknowledge the existence of the drone program until Obama defended it during a video chat with the public on Google+ earlier this year.

#### Ex post review creates a credible signal of compliance that restrains future executives

Kwame Holman 13, congressional correspondent for PBS NewsHour; citing Rosa Brooks, Prof of Law at Georgetown University Law Center, former Counselor to the Under Secretary of Defense for Policy, former senior advisor at the US Dept of State, “Congress Begins to Weigh In On Drone Strikes Policy,” http://www.pbs.org/newshour/rundown/2013/04/congress-begins-to-weigh-in-on-drone-strikes-policy.html

While some experts have argued for court oversight of drone strikes before they're carried out, Brooks sides with those who say that would be unwieldy and unworkable.¶ Brooks says however an administration that knows its strikes could face court review after the fact -- with possible damages assessed -- would be more responsible and careful about who it strikes and why.¶ "If Congress were to create a statutory cause of action for damages for those who had been killed in abusive or mistaken drone strikes, you would have a court that would review such strikes after the fact. [That would] create a pretty good mechanism that would frankly keep the executive branch as honest as we hope it is already and as we hope it will continue to be into administrations to come," Brooks said.¶ "It would be one of the approaches that would go a very long way toward reassuring both U.S. citizens and the world more generally that our policies are in compliance with rule of law norms."

#### Only judicial oversight can credibly verify compliance with the laws of war

Avery Plaw 7, Associate Prof of Political Science at the University of Massachusetts at Dartmouth, PhD in Political Science from McGill University, “Terminating Terror: The Legality, Ethics and Effectiveness of Targeting Terrorists,” Theoria: A Journal of Social and Political Theory, No. 114, War and Terror (December 2007), pp. 1-27

To summarize, the general policy of targeting terrorists appears to be defensible in principle in terms of legality, morality and effectiveness. However, some specific targetings have been indefensible and should be prevented from recurring. Critics focus on the indefensible cases and insist that these are best prevented by condemning the general policy. States which target terrorists and their defenders have insisted that self-defense provides a blanket justification for targeting operations. The result has been a stalemate over terrorist targeting harmful to both the prosecution of the war on terror and the credibility of international law. Yet neither advocates nor critics of targeting appear to have a viable strategy for resolving the impasse. A final issue which urgently demands attention, therefore, is whether there are any plausible prospects for a coherent and principled political compromise over the issue of targeting terrorists.¶ Conclusion: the Possibility of Principled Compromise ¶ This final section offers a brief case that there is room for a principled compromise between critics and advocates of targeting terrorists. The argument is by example—a short illustration of one promising possibility. It will not satisfy everyone, but I suggest that it has the potential to resolve the most compelling concerns on both sides.¶ The most telling issues raised by critics of targeting fall into three categories: (1) the imperative need to establish that targets are combatants; (2) the need in attacking combatants to respect the established laws of war; and (3) the overwhelming imperative to avoid civilian casualties. The first issue seems to demand an authoritative judicial determination that could only be answered by a competent court. The second issue requires the openly avowed and consistent implementation of targeting according to standards accepted in international law—a requirement whose fulfillment would best be assured through judicial oversight. The third issue calls for independent evaluation of operations to assure that standards of civilian protection are robustly upheld, a role that could be effectively performed by a court.

#### The plan creates political incentives for the executive to comply

Richard H. Pildes 12, Sudler Family Professor of Constitutional Law at NYU School of Law and Co-Director of the NYU Center on Law and Security, April 2012, “Law and the President,” NYU School of Law Public Law & Legal Theory Research Paper Series, Working Paper No. 12-13, http://ssrn.com/abstract=2012024

But as Levinson’s work helps to show, even on its own terms, Posner and Vermeule’s approach offers an incomplete account of the role of law. Levinson’s work, for example, is devoted to showing why constitutional law will be followed, even by disappointed political majorities, for purely instrumental reasons, even if those majorities do not experience any internal sense of duty to obey. He identifies at least six rational-choice mechanisms that will lead rational actors to adhere to constitutional law decisions of the Supreme Court: coordination, reputation, repeat-play, reciprocity, asset- specific investment, and positive political feedback mechanisms.76 No obvious reason exists to explain why all or some of these mechanisms would fail to lead presidents similarly to calculate that compliance with the law is usually important to a range of important presidential objectives. At the very least, for example, the executive branch is an enormous organization, and for internal organizational efficacy, as well as effective cooperation with other parts of the government, law serves an essential coordination function that presidents and their advisors typically have an interest in respecting. There is a reason executive branch departments are staffed with hundreds of lawyers: while Posner and Vermeule might cynically speculate that the reason is to figure out how to circumvent the law artfully, the truth, surely, is that law enables these institutions to function effectively, both internally and in conjunction with other institutions, and that lawyers are there to facilitate that role. In contrast to Posner and Vermeule, who argue that law does not constrain, and who then search for substitute constraints, scholars like Levinson establish that rational-choice theory helps explain why law does constrain. Indeed, as Posner and Vermeule surely know, there is a significant literature within the rational-choice framework that explains why powerful political actors would agree to accept and sustain legal constraints on their power, including the institution of judicial review.77¶ That Posner and Vermeule miss the role of legal compliance as a powerful signal, perhaps the most powerful signal, in maintaining a President’s critical credibility as a well-motivated user of discretionary power is all the more surprising in light of the central role executive self-binding constraints play in their theory. After asserting that “one of the greatest constraints on [presidential] aggrandizement” is “the president’s own interest in maintaining his credibility” (p. 133), they define their project as seeking to discover the “social-scientific microfoundations” (p. 123) of presidential credibility: the ways in which presidents establish and maintain credibility. One of the most crucial and effective mechanisms, in their view, is executive self-binding, “whereby executives commit themselves to a course of action that would impose higher costs on ill-motivated actors” (p. 137). As they also put it, “a well-motivated president can distinguish himself from an ill-motivated president by binding himself to a policy position that an ill-motivated president would reject” (p. 135). ¶ By complying with these constraints, presidents signal their good faith and accrue more trust to take further action. Most importantly from within Posner and Vermeule’s theory, these constraints, many self-generated through executive self-binding, substitute for the constraints of law. Law does not, or cannot, or should not constrain presidents, in their view, but rational-actor presidents recognize that complying with constraints is in their own self-interest; presidents therefore substitute or accept other constraints.¶ Thus, Posner and Vermeule recognize the importance of “enabling constraints”78 in effective mobilization and maintenance of political power; that is, they recognize that what appear to be short-term constraints on the immediate preferences of actors like presidents might actually enable longterm marshaling of effective presidential power. Yet they somehow miss that law, too, can work as an enabling constraint; when it comes to law, Posner and Vermeule seem to see nothing but constraint. Indeed, this failing runs even deeper. For if presidents must signal submission to various constraints to maintain and enhance their credibility — as Posner and Vermeule insist they must — Posner and Vermeule miss the fact that the single most powerful signal of that willingness to be constrained, particularly in American political culture, is probably the President’s willingness to comply with law. ¶ In theoretical terms, then, Posner and Vermeule emerge as inconsistent or incomplete consequentialists. Even if law does not bind presidents purely for normative reasons, presidents will have powerful incentives to comply with law — even more powerful than the incentives Posner and Vermeule rightly recognize presidents will have to comply with other constraints on their otherwise naked power. To the extent that Posner and Vermeule mean to acknowledge this point but argue that it means presidents are not “really” complying with the law and are only bowing to these other incentives, they are drawing a semantic distinction that seems of limited pragmatic significance, as the next Part shows.

#### Legal solutions can effectively engage issues in the war on terrorism

Nick Basciano 13, 11/3/13, intern at Brookings. Notre Dame Grad, Book Review: Dirty Wars: The World is a Battlefield by Jeremy Scahill, www.lawfareblog.com/2013/11/dirty-wars-the-world-is-a-battlefield/

Scahill’s project is to depict the “dark side” of what he considers to be America’s unrestrained pursuit of security through the “institutionalization of assassination as a central component of U.S. national security policy.” His main case study for this portrait is the 2011 targeting of U.S. citizen and alleged Al Qaeda in the Arabian Peninsula leader Anwar Al-Awlaki. Scahill weaves together the story of Awlaki’s life and death with the activities of CIA-backed warlords in Mogadishu, operations across the JSOC-infested mountains of Yemen, and the rise of a supposedly-unshackled U.S. military-intelligence complex. Scahill sees these apparently-disparate issues as coming together, and his book describes a vision of CIA and JSOC as the standard-bearers of a new and bloody counterterrorism agenda defined by assassination. Using commando raids, missile strikes, and the ultimate killing of Awlaki himself, Scahill paints what he sees as the new reality of U.S. counterterrorism policy: the entire world is a battlefield, one in which the U.S. government feels at liberty to assassinate its own citizens, without oversight, and without trial.¶ ¶ Let’s start with the redeeming feature: Dirty Wars contains a great deal of on-the-ground reporting from places many journalists don’t go, and Scahill had access to voices Americans don’t often hear from about the consequences of drone strikes and other military and covert operations. The book draws on interviews with sources from warlords to foot-soldiers to civilians in countries like Yemen and Somalia in portraying a Machiavellian U.S. government ready to make a deal with almost anyone willing to help strike at its enemies. Scahill blasts this end-justifies-the-means approach and the inherent duplicity of covert liaison with nasty people, which he sees as dangerously shortsighted. Many readers will be more sympathetic to the Real Politik of U.S. action than he is, and Scahill certainly is not the first person to worry that aggressive counterterorism operations may lead to radicalization. But his reporting does show how blowback from U.S. involvement in the Horn of Africa, especially a potential alliance with warlords and occupying forces from Ethiopia, may well pose significant problems to its long-term goals in the region by increasing violence and further destabilizing local governance. Similar problems exist in Yemen, where the former regime of former president Ali Abdullah Saleh played both sides of the terrorism coin—fighting terrorists energetically enough to keep control of the country but not so energetically as to defeat them and thus dry up military funding from the U.S. As American intelligence continued to grasp at any ally that would allow it to strike terrorists, Scahill claims these policies, born of fear, have a reverse effect; it is the toxic relationships and “global assassination program” that would become the “recruitment device for the very forces the United States claimed to be destroying.” This is certainly overstated, but it’s not entirely wrong, and it’s an important caution.¶ ¶ ¶ Perhaps the strongest part of the book are the first-hand reports Scahill has amassed of desperate and enraged family members of those killed in botched raids and strikes. In a particularly disturbing account of a failed raid, Scahill relays one survivor’s desire: “I wanted to wear a suicide jacket and blow myself up among the Americans.” The death of Awlaki’s own teenage son in an ill-directed drone strike adds an exclamation point to the argument that strikes have killed civilians in a dangerously-unaccountable manner. Such harsh realities underscore the tangible human toll strikes impart on their targets. Wholly-utilitarian or overly-legalistic defenders of attacks may criticize these depictions as nothing more than the tragedies of war or mere depictions of perfectly-lawful collateral damage. But Scahill’s personal interactions with survivors remind us that a targeting program that relies on shortsighted agreements with foreign governments, poor intelligence, and aggressive tactics can produce serious negative consequences that are detrimental to security—even if it produces short-term tactical benefits.¶ ¶ The trouble is that Dirty Wars aims to be far more than a mere reminder of the costs of the counterterrorism. It aims to indict the entire project with those costs, but Scahill does not count either the costs or the benefits accurately or honestly. Instead, he selectively highlights certain glaring failures from over a decade of war while failing to discuss any of its successes. There are hundreds of cases over the past several years of highly-focused and discriminate operations; they are missing almost entirely from Scahill’s account. And when they do show up, it tends to be by accident. Scahill inadvertently points to successful operations such as the capture of terrorism suspect Ahmed Abdulkadir Warsame, but he never dwells on the favorable outcomes of the operations in which they were captured. Comprehensive studies place civilian fatality rates for all alleged drone strikes in Yemen from as low as 5 percent and to as high as 19 percent, rates which have continued to decline over time. Even the high end of these estimates indicate that strikes are dramatically more discriminate than one would believe from Scahill’s account, in which the one group of people the United States never seems to kill are terrorists. To be sure, this fact in no way diminishes the human suffering created by failed operations, nor does it excuse the deaths of innocents or errors that have certainly taken place in certain strikes. But by exclusively describing the program’s most public failures while wholly ignoring its successes, the argument stacks the deck, severely limiting Scahill’s ability to persuade those who do not already agree with him. If you only look at the strikes in which civilians get killed, and without taking account of the person being targeted, of course high-value targeting will seem immoral or illegal.¶ ¶ For that matter, if one simply asserts the illegality of all terrorist targeting, as Scahill does, you can make any targeting program look pretty lawless. Scahill makes a deliberate choice to label all U.S. drone, missile, and Special Operations Forces (SOF) strikes as “assassinations”—casting a pall of illegality over all such strikes. But he never makes a real legal argument about when or why targeting is or isn’t lawful. Assassination is banned by executive order, and Scahill admits that “no president’s executive orders actually defined what constituted an assassination.” We might add, too, that authoritative statements by US government officials have said what is not covered by the assassination ban: it does not include killings that are otherwise lawful as, for example, Reagan-era State Department Legal Adviser Abraham Sofaer stated in a famous speech and Obama administration officials have repeated several times.¶ ¶ Seemingly unaware of this, Scahill fails to offer any definition of his own or to engage either the U.S. government’s view of the subject or that available in academic literature. He simply asserts that the executive branch has promulgated “a blanket rebranding of assassinations as ‘High Value Targeting’.” He does not consider possibilities like an argument of self-defense, the existence of a non-international armed conflict with Al Qaeda, the proper scope of the 2001 AUMF, or the simple fact that it is an executive order, not a law, and the executive can interpret or revoke it. Scahill also doesn’t appear to differentiate between a variety of methods, locations, and parameters that make big legal differences under any targeting program. The cruise missile attack that recklessly takes the lives of civilians is no different in his lexicon from a boot-on-the-ground capture raid or a highly-selective and discriminate drone strike. While word substitution provides Scahill a rhetorical soapbox on which to stand, it’s ultimately a pretty cheap trick. And it’s no substitute for specifying a clear legal framework as to when and why lethal tactics amount to illegal assassinations.¶ ¶ Scahill has a third method for making all drones strikes illegal—one that involves a significant rebranding of his own: He sometimes just suggests senior terrorists don’t pose any threat. He largely builds the argument for the illegality of targeted killing in the most unlikely figure of Anwar Awlaki. As the only known American specifically targeted for death by drone, Awlaki presents a unique model to probe Scahill’s central question: “Could the American government assassinate it [sic] own citizens without due process?” To answer this, Dirty Wars sets off to show Alwaki, widely considered one of Al Qaeda’s most dangerous terrorists, in an alternative, more favorable light. While admitting that a deluge “US media outlets, terror ‘experts’ and prominent government officials were identifying Awlaki as a leader of AQAP,” Scahill dismisses these as “dubious” allegations. So in his view, an official government statement describing how Awlaki “involved himself in every aspect of the supply chain of terrorism…training operatives, and planning attacks,” provides “no evidence” for the allegations against Awlaki. And while Scahill is happy to rely on the New York Times and other news outlets for quotes and facts when it is convenient to do so, he treats those same sources with suspicion when they suggest that Awlaki was actually a bad guy. In a particularly striking example of this tendency, Scahill cites “intelligence sources” from an NPR article as to how many times the U.S. tried to kill Awlaki, but he neglects to mention that the same sources go on in the same article to indicate that Awlaki ran a terrorist “cell” in Yemen.¶ ¶ Elsewhere, Scahill simply skips over facts that don’t promote his narrative of Awlaki. One such example comes in Awlaki’s relationship with Umar Farouk Abdulmutallab, the “Christmas Day Bomber” who attempted to detonate almost three ounces of PETN aboard Northwest flight 253 on its descent to Detroit. A publically-available and widely-cited sentencing memorandum for Abdulmutallab describes how Awlaki housed Abdulmutallab in Yemen and took him to AQAP’s primary bomb-maker, Ibrahim Al Asiri. There, they “discussed a plan for martyrdom mission” and Awlaki himself gave the bombing plot “final approval and instructed Defendant Abdulmutallab on it.” Awlaki’s “last instructions,” the memorandum continues, “were to wait until the airplane was over the United States and then to take the plane down.” Without dealing with this evidence from the Abdulmutallab trial, Scahill admits that Awlaki was only “in touch” with Abdulmutallab, insisting that “no conclusive evidence [was] presented, at least not publicly, that Awlaki had played an operational role in any attacks.” Why such a relevant piece of evidence isn’t included in Scahill’s retelling of the Abdulmuttallab plot is unclear, but it isn’t the only instance of turning a blind eye to evidence linking Awlaki directly to terrorism. In early 2010 Awlaki corresponded with Rajib and Tehzeeb Karim, two brothers who had plotted to plant a bomb on U.S.-bound flight. In encrypted emails confiscated from Rajib’s hard drive by British authorities, Awlaki asks Rajib to “please specify your role in the airline industry, how much access do you have to airports, what information do you have on the limitations and cracks in present airport security systems.” These questions largely contradict Scahill’s contention that Awlaki was not involved in operational planning. In another email, Awlaki names the ultimate target for smuggling a bomb on a plane: “Our highest priority is the US. Anything there, even if on a smaller scale . . . would be our choice. So the question is: with the people you have, is it possible to get a package or a person with a package on board a flight heading to the US?” These emails quite convincingly provide evidence that Awlaki was intimately involved in AQAP’s operational mission to attack America. Scahill fails entirely to mention either the Karim brother’s plot or Awlaki’s emails.¶ ¶ By stacking the deck through omission of evidence and unsubstantiated disbelief of official statements, Scahill claims that Awlaki was not a operational member of AQAP and therefore not an immediate threat. With this false ambiguity in hand, Scahill argues that the U.S. unlawfully killed Awlaki without due process. That the U.S. has a right to defend itself against immediate and ongoing threats, that Awlaki’s active engagement in hostilities against the United States might affect his right to due process, that Yemen was unwilling or unable to arrest him, or that any unilateral capture operation poses tremendous difficulties Scahill fails to address at all.¶ ¶ Dirty Wars delivers a significant argument against destructive counterterrorism operations by recounting the terrible human loss involved in at least some strikes and raids. Beyond the obvious human cost, it suggests that overly-aggressive and lethal tactics can, in some cases, play a role in increasing radicalization and thereby hampering the effectiveness of these tactics. Yet, Scahill’s depiction of American efforts to “kill its way to victory” is a crude caricature, one that fails to address countless aspects of a complex and broad set of policies and tactics on which any serious treatment would dwell at length. His wholesale disapproval of all closed-door agreements, intelligence operations, and the use of lethal force yields few viable options for dealing with the cold realities of global terrorism. The tactics of law enforcement bring hope that there is, in fact, a way forward, a way that offers protection without necessitating lethal force. But Dirty Wars utterly fails to offer the necessary clarity, balance, or sobriety in which to weigh the risks and benefits of integrating military and intelligence approaches into counterterrorism. America needs people like Scahill to remind it of the moral and human costs involved when it wages war, but it also needs those people to count those costs carefully—something Dirty Wars fails to do.

#### Simulation over war powers is empowering --- students are key

Laura K. Donohue 13, Associate Professor of Law, Georgetown Law, 4/11, National Security Law Pedagogy and the Role of Simulations, http://jnslp.com/wp-content/uploads/2013/04/National-Security-Law-Pedagogy-and-the-Role-of-Simulations.pdf

2. Factual Chaos and Uncertainty¶ One of the most important skills for students going into national security law is the ability to deal with factual chaos. The presentation of factual chaos significantly differs from the traditional model of legal education, in which students are provided a set of facts which they must analyze. Lawyers working in national security law must figure out what information they need, integrate enormous amounts of data from numerous sources, determine which information is reliable and relevant, and proceed with analysis and recommendations. Their recommendations, moreover, must be based on contingent conditions: facts may be classified and unavailable to the legal analyst, or facts may change as new information emerges. This is as true for government lawyers as it is for those outside of governmental structures. They must be aware of what is known, what is unsure, what is unknown, and the possibility of changing circumstances, and they must advise their clients, from the beginning, how the legal analysis might shift if the factual basis alters. a. Chaos. Concern about information overload in the national security environment is not new: in the 1970s scholars discussed and debated how to handle the sequential phases of intelligence gathering and analysis in a manner that yielded an optimal result.132 But the digital revolution has exponentially transformed the quantitative terms of reference, the technical means of collection and analysis, and the volume of information available. The number of sources of information – not least in the online world – is staggering. Added to this is the rapid expansion in national security law itself: myriad new Executive Orders, Presidential Directives, institutions, programs, statutes, regulations, lawsuits, and judicial decisions mean that national security law itself is rapidly changing. Lawyers inside and outside of government must keep abreast of constantly evolving authorities. The international arena too is in flux, as global entities, such as the United Nations, the European Court of Human Rights, the G-7/G-8, and other countries, introduce new instruments whose reach includes U.S. interests. Rapid geopolitical changes relating to critical national security concerns, such as worldwide financial flows, the Middle East, the Arab Spring, South American drug cartels, North Korea, the former Soviet Union, China, and other issues require lawyers to keep up on what is happening globally as a way of understanding domestic concerns. Further expanding the information overload is the changing nature of what constitutes national security itself.133 In sum, the sheer amount of information the national security lawyer needs to assimilate is significant. The basic skills required in the 1970s thus may be similar – such as the ability (a) to know where to look for relevant and reliable information; (b) to obtain the necessary information in the most efficient manner possible; (c) to quickly discern reliable from unreliable information; (d) to know what data is critical; and (e) to ascertain what is as yet unknown or contingent on other conditions. But the volume of information, the diversity of information sources, and the heavy reliance on technology requires lawyers to develop new skills. They must be able to obtain the right information and to ignore chaos to focus on the critical issues. These features point in opposite directions – i.e., a broadening of knowledge and a narrowing of focus. A law school system built on the gradual and incremental advance of law, bolstered or defeated by judicial decisions and solidified through the adhesive nature of stare decisis appears particularly inapposite for this rapidly-changing environment. An important question that will thus confront students upon leaving the legal academy is how to keep abreast of rapidly changing national security and geopolitical concerns in an information-rich world in a manner that allows for capture of relevant information, while retaining the ability to focus on the immediate task at hand. Staying ahead of the curve requires developing a sense of timing – when to respond to important legal and factual shifts – and identifying the best means of doing so. Again, this applies to government and non-government employees. How should students prioritize certain information and then act upon it? This, too, is an aspect of information overload. b. Uncertainty. National security law proves an information-rich, factuallydriven environment. The ability to deal with such chaos may be hampered by gaps in the information available and the difficulty of engaging in complex fact-finding – a skill often under-taught in law school. Investigation of relevant information may need to reach far afield in order to generate careful legal analysis. Uncertainty here plays a key role. In determining, for instance, the contours of quarantine authority, lawyers may need to understand how the pandemic in question works, where there have been outbreaks, how it will spread, what treatments are available, which social distancing measures may prove most effective, what steps are being taken locally, at a state-level, and internationally, and the like. Lawyers in non-profit organizations, legal academics, in-house attorneys, and others, in turn, working in the field, must learn how to find out the relevant information before commenting on new programs and initiatives, agreeing to contractual terms, or advising clients on the best course of action. For both government and non-government lawyers, the secrecy inherent in the field is of great consequence. The key here is learning to ask intelligent questions to generate the best legal analysis possible. It may be the case that national security lawyers are not aware of the facts they are missing – facts that would be central to legal analysis. This phenomenon front-loads the type of advice and discussions in which national security lawyers must engage. It means that analysis must be given in a transparent manner, contingent on a set of facts currently known, with indication given up front as to how that analysis might change, should the factual basis shift. This is particularly true of government attorneys, who may be advising policymakers who may or may not have a background in the law and who may have access to more information than the attorney. Signaling the key facts on which the legal decision rests with the caveat that the legal analysis of the situation might change if the facts change, provides for more robust consideration of critically important issues. c. Creative Problem Solving. Part of dealing with factual uncertainty in a rapidly changing environment is learning how to construct new ways to address emerging issues. Admittedly, much has been made in the academy about the importance of problem-based learning as a method in developing students’ critical thinking skills.134 Problem-solving, however, is not merely a method of teaching. It is itself a goal for the type of activities in which lawyers will be engaged. The means-ends distinction is an important one to make here. Problemsolving in a classroom environment may be merely a conduit for learning a specific area of the law or a limited set of skills. But problem-solving as an end suggests the accumulation of a broader set of tools, such as familiarity with multidisciplinary approaches, creativity and originality, sequencing, collaboration, identification of contributors’ expertise, and how to leverage each skill set. This goal presents itself in the context of fact-finding, but it draws equally on strong understanding of legal authorities and practices, the Washington context, and policy considerations. Similarly, like the factors highlighted in the first pedagogical goal, adding to the tensions inherent in factual analysis is the abbreviated timeline in which national security attorneys must operate. Time may not be a commodity in surplus. This means that national security legal education must not only develop students’ complex fact-finding skills and their ability to provide contingent analysis, but it must teach them how to swiftly and efficiently engage in these activities. 3. Critical Distance As was recognized more than a century ago, analytical skills by themselves are insufficient training for individuals moving into the legal profession.135 Critical thinking provides the necessary distance from the law that is required in order to move the legal system forward. Critical thought, influenced by the Ancient Greek tradition, finds itself bound up in the Socratic method of dialogue that continues to define the legal academy. But it goes beyond such constructs as well. Scholars and educators disagree, of course, on what exactly critical thinking entails.136 For purposes of our present discussion, I understand it as the metaconversation in the law. Whereas legal analysis and substantive knowledge focus on the law as it is and how to work within the existing structures, critical thought provides distance and allows students to engage in purposeful discussion of theoretical constructs that deepen our understanding of both the actual and potential constructs of law. It is inherently reflective. For the purpose of practicing national security law, critical thought is paramount. This is true partly because of the unique conditions that tend to accompany the introduction of national security provisions: these are often introduced in the midst of an emergency. Their creation of new powers frequently has significant implications for distribution of authority at a federal level, a diminished role for state and local government in the federalism realm, and a direct impact on individual rights.137 Constitutional implications demand careful scrutiny. Yet at the time of an attack, enormous pressure is on officials and legislators to act and to be seen to act to respond.138 With the impact on rights, in particular, foremost in legislators’ minds, the first recourse often is to make any new powers temporary. However, they rarely turn out to be so, instead becoming embedded in the legislative framework and providing a baseline on which further measures are built.139 In order to withdraw them, legislators must demonstrate either that the provisions are not effective or that no violence will ensue upon their withdrawal (either way, a demanding proof). Alternatively, legislators would have to acknowledge that some level of violence may be tolerated – a step no politician is willing to take. Any new powers, introduced in the heat of the moment, may become a permanent part of the statutory and regulatory regime. They may not operate the way in which they were intended. They may impact certain groups in a disparate manner. They may have unintended and detrimental consequences. Therefore, it is necessary for national security lawyers to be able to view such provisions, and related policy decisions, from a distance and to be able to think through them outside of the contemporary context. There are many other reasons such critical analysis matters that reflect in other areas of the law. The ability to recognize problems, articulate underlying assumptions and values, understand how language is being used, assess whether argument is logical, test conclusions, and determine and analyze pertinent information depends on critical thinking skills. Indeed, one could draw argue that it is the goal of higher education to build the capacity to engage in critical thought. Deeply humanistic theories underlie this approach. The ability to develop discerning judgment – the very meaning of the Greek term, 􏰀􏰁􏰂􏰃􏰄􏰅􏰆 – provides the basis for advancing the human condition through reason and intellectual engagement. Critical thought as used in practicing national security law may seem somewhat antithetical to the general legal enterprise in certain particulars. For government lawyers and consultants, there may be times in which not providing legal advice, when asked for it, may be as important as providing it. That is, it may be important not to put certain options on the table, with legal justifications behind them. Questions whether to advise or not to advise are bound up in considerations of policy, professional responsibility, and ethics. They may also relate to questions as to who one’s client is in the world of national security law.140 It may be unclear whether and at what point one’s client is a supervisor, the legal (or political) head of an agency, a cross-agency organization, the White House, the Constitution, or the American public. Depending upon this determination, the national security lawyer may or may not want to provide legal advice to one of the potential clients. Alternatively, such a lawyer may want to call attention to certain analyses to other clients. Determining when and how to act in these circumstances requires critical distance. 4. Nontraditional Written and Oral Communication Skills Law schools have long focused on written and oral communication skills that are central to the practice of law. Brief writing, scholarly analysis, criminal complaints, contractual agreements, trial advocacy, and appellate arguments constitute standard fare. What is perhaps unique about the way communication skills are used in the national security world is the importance of non-traditional modes of legal communication such as concise (and precise) oral briefings, email exchanges, private and passing conversations, agenda setting, meeting changed circumstances, and communications built on swiftly evolving and uncertain information. For many of these types of communications speed may be of the essence – and unlike the significant amounts of time that accompany preparation of lengthy legal documents (and the painstaking preparation for oral argument that marks moot court preparations.) Much of the activity that goes on within the Executive Branch occurs within a hierarchical system, wherein those closest to the issues have exceedingly short amounts of time to deliver the key points to those with the authority to exercise government power. Unexpected events, shifting conditions on the ground, and deadlines require immediate input, without the opportunity for lengthy consideration of the different facets of the issue presented. This is a different type of activity from the preparation of an appellate brief, for instance, involving a fuller exposition of the issues involved. It is closer to a blend of Supreme Court oral argument and witness crossexamination – although national security lawyers often may not have the luxury of the months, indeed, years, that cases take to evolve to address the myriad legal questions involved. Facts on which the legal analysis rests, moreover, as discussed above, may not be known. This has substantive implications for written and oral communications. Tension between the level of legal analysis possible and the national security process itself may lead to a different norm than in other areas of the law. Chief Judge Baker explains, If lawyers insist on knowing all the facts all the time, before they are willing to render advice, or, if they insist on preparing a written legal opinion in response to every question, then national security process would become dysfunctional. The delay alone would cause the policymaker to avoid, and perhaps evade, legal review.141 Simultaneously, lawyers cannot function without some opportunity to look carefully at the questions presented and to consult authoritative sources. “The art of lawyering in such context,” Baker explains, “lies in spotting the issue, accurately identifying the timeline for decision, and applying a meaningful degree of formal or informal review in response.”142 The lawyer providing advice must resist the pressure of the moment and yet still be responsive to the demand for swift action. The resulting written and oral communications thus may be shaped in different ways. Unwilling to bind clients’ hands, particularly in light of rapidly-changing facts and conditions, the potential for nuance to be lost is considerable. The political and historical overlay of national security law here matters. In some circumstances, even where written advice is not formally required, it may be in the national security lawyer’s best interests to commit informal advice to paper in the form of an email, notation, or short memo. The process may serve to provide an external check on the pressures that have been internalized, by allowing the lawyer to separate from the material and read it. It may give the lawyer the opportunity to have someone subject it to scrutiny. Baker suggests that “on issues of importance, even where the law is clear, as well as situations where novel positions are taken, lawyers should record their informal advice in a formal manner so that they may be held accountable for what they say, and what they don’t say.”143 Written and oral communication may occur at highly irregular moments – yet it is at these moments (in the elevator, during an email exchange, at a meeting, in the course of a telephone call), that critical legal and constitutional decisions are made. This model departs from the formalized nature of legal writing and research. Yet it is important that students are prepared for these types of written and oral communication as an ends in and of themselves. 5. Leadership, Integrity and Good Judgment National security law often takes place in a high stakes environment. There is tremendous pressure on attorneys operating in the field – not least because of the coercive nature of the authorities in question. The classified environment also plays a key role: many of the decisions made will never be known publicly, nor will they be examined outside of a small group of individuals – much less in a court of law. In this context, leadership, integrity, and good judgment stand paramount. The types of powers at issue in national security law are among the most coercive authorities available to the government. Decisions may result in the death of one or many human beings, the abridgment of rights, and the bypassing of protections otherwise incorporated into the law. The amount of pressure under which this situation places attorneys is of a higher magnitude than many other areas of the law. Added to this pressure is the highly political nature of national security law and the necessity of understanding the broader Washington context, within which individual decision-making, power relations, and institutional authorities compete. Policy concerns similarly dominate the landscape. It is not enough for national security attorneys to claim that they simply deal in legal advice. Their analyses carry consequences for those exercising power, for those who are the targets of such power, and for the public at large. The function of leadership in this context may be more about process than substantive authority. It may be a willingness to act on critical thought and to accept the impact of legal analysis. It is closely bound to integrity and professional responsibility and the ability to retain good judgment in extraordinary circumstances. Equally critical in the national security realm is the classified nature of so much of what is done in national security law. All data, for instance, relating to the design, manufacture, or utilization of atomic weapons, the production of special nuclear material, or the use of nuclear material in the production of energy is classified from birth.144 NSI, the bread and butter of the practice of national security law, is similarly classified. U.S. law defines NSI as “information which pertains to the national defense and foreign relations (National Security) of the United States and is classified in accordance with an Executive Order.” Nine primary Executive Orders and two subsidiary orders have been issued in this realm.145 The sheer amount of information incorporated within the classification scheme is here relevant. While original classification authorities have steadily decreased since 1980, and the number of original classification decisions is beginning to fall, the numbers are still high: in fiscal year 2010, for instance, there were nearly 2,300 original classification authorities and almost 225,000 original classification decisions.146 The classification realm, moreover, in which national security lawyers are most active, is expanding. Derivative classification decisions – classification resulting from the incorporation, paraphrasing, restating, or generation of classified information in some new form – is increasing. In FY 2010, there were more than seventy-six million such decisions made.147 This number is triple what it was in FY 2008. Legal decisions and advice tend to be based on information already classified relating to programs, initiatives, facts, intelligence, and previously classified legal opinions. The key issue here is that with so much of the essential information, decisionmaking, and executive branch jurisprudence necessarily secret, lawyers are limited in their opportunity for outside appraisal and review. Even within the executive branch, stove-piping occurs. The use of secure compartmentalized information (SCI) further compounds this problem as only a limited number of individuals – much less lawyers – may be read into a program. This diminishes the opportunity to identify and correct errors or to engage in debate and discussion over the law. Once a legal opinion is drafted, the opportunity to expose it to other lawyers may be restricted. The effect may be felt for decades, as successive Administrations reference prior legal decisions within certain agencies. The Office of Legal Counsel, for instance, has an entire body of jurisprudence that has never been made public, which continues to inform the legal analysis provided to the President. Only a handful of people at OLC may be aware of the previous decisions. They are prevented by classification authorities from revealing these decisions. This results in a sort of generational secret jurisprudence. Questions related to professional responsibility thus place the national security lawyer in a difficult position: not only may opportunities to check factual data or to consult with other attorneys be limited, but the impact of legal advice rendered may be felt for years to come. The problem extends beyond the executive branch. There are limited opportunities, for instance, for external judicial review. Two elements are at work here: first, very few cases involving national security concerns make it into court. Much of what is happening is simply not known. Even when it is known, it may be impossible to demonstrate standing – a persistent problem with regard to challenging, for instance, surveillance programs. Second, courts have historically proved particularly reluctant to intervene in national security matters. Judicially-created devices such as political question doctrine and state secrets underscore the reluctance of the judiciary to second-guess the executive in this realm. The exercise of these doctrines is increasing in the post-9/11 environment. Consider state secrets. While much was made of some five to seven state secrets cases that came to court during the Bush administration, in more than 100 cases the executive branch formally invoked state secrets, which the courts accepted.148 Many times judges did not even bother to look at the evidence in question before blocking it and/or dismissing the suit. In numerous additional cases, the courts treated the claims as though state secrets had been asserted – even where the doctrine had not been formally invoked.149 In light of these pressures – the profound consequences of many national security decisions, the existence of stovepiping even within the executive branch, and limited opportunity for external review – the practice of national security law requires a particularly rigorous and committed adherence to ethical standards and professional responsibility. This is a unique world in which there are enormous pressures, with potentially few external consequences for not acting in accordance with high standards. It thus becomes particularly important, from a pedagogical perspective, to think through the types of situations that national security attorneys may face, and to address the types of questions related to professional responsibility that will confront them in the course of their careers. Good judgment and leadership similarly stand paramount. These skills, like many of those discussed, may also be relevant to other areas of the law; however, the way in which they become manifest in national security law may be different in important ways. Good judgment, for instance, may mean any number of things, depending upon the attorney’s position within the political hierarchy. Policymaking positions will be considerably different from the provision of legal advice to policymakers. Leadership, too, may mean something different in this field intimately tied to political circumstance. It may mean breaking ranks with the political hierarchy, visibly adopting unpopular public or private positions, or resigning when faced by unethical situations. It may mean creating new bureaucratic structures to more effectively respond to threats. It may mean holding off clients until the attorneys within one’s group have the opportunity to look at issues while still being sensitive to the political needs of the institution. Recourse in such situations may be political, either through public statements and use of the media, or by going to different branches of government for a solution. 6. Creating Opportunities for Learning In addition to the above skills, national security lawyers must be able to engage in continuous self-learning in order to improve their performance. They must be able to identify new and emerging legal and political authorities and processes, systems for handling factual chaos and uncertainty, mechanisms to ensure critical distance, evaluating written and oral performance, and analyzing leadership skills. Law schools do not traditionally focus on how to teach students to continue their learning beyond the walls of academia. Yet it is vital for their future success to give students the ability to create conditions of learning.

#### Simulated national security law debates preserve agency and enhance decision-making

Laura K. Donohue 13, Associate Professor of Law, Georgetown Law, 4/11, “National Security Law Pedagogy and the Role of Simulations”, http://jnslp.com/wp-content/uploads/2013/04/National-Security-Law-Pedagogy-and-the-Role-of-Simulations.pdf

The concept of simulations as an aspect of higher education, or in the law school environment, is not new.164 Moot court, after all, is a form of simulation and one of the oldest teaching devices in the law. What is new, however, is the idea of designing a civilian national security course that takes advantage of the doctrinal and experiential components of law school education and integrates the experience through a multi-day simulation. In 2009, I taught the first module based on this design at Stanford Law, which I developed the following year into a full course at Georgetown Law. It has since gone through multiple iterations. The initial concept followed on the federal full-scale Top Official (“TopOff”) exercises, used to train government officials to respond to domestic crises.165 It adapted a Tabletop Exercise, designed with the help of exercise officials at DHS and FEMA, to the law school environment. The Tabletop used one storyline to push on specific legal questions, as students, assigned roles in the discussion, sat around a table and for six hours engaged with the material. The problem with the Tabletop Exercise was that it was too static, and the rigidity of the format left little room, or time, for student agency. Unlike the government’s TopOff exercises, which gave officials the opportunity to fully engage with the many different concerns that arise in the course of a national security crisis as well as the chance to deal with externalities, the Tabletop focused on specific legal issues, even as it controlled for external chaos. The opportunity to provide a more full experience for the students came with the creation of first a one-day, and then a multi-day simulation. The course design and simulation continues to evolve. It offers a model for achieving the pedagogical goals outlined above, in the process developing a rigorous training ground for the next generation of national security lawyers.166 A. Course Design The central idea in structuring the NSL Sim 2.0 course was to bridge the gap between theory and practice by conveying doctrinal material and creating an alternative reality in which students would be forced to act upon legal concerns.167 The exercise itself is a form of problem-based learning, wherein students are given both agency and responsibility for the results. Towards this end, the structure must be at once bounded (directed and focused on certain areas of the law and legal education) and flexible (responsive to student input and decisionmaking). Perhaps the most significant weakness in the use of any constructed universe is the problem of authenticity. Efforts to replicate reality will inevitably fall short. There is simply too much uncertainty, randomness, and complexity in the real world. One way to address this shortcoming, however, is through design and agency. The scenarios with which students grapple and the structural design of the simulation must reflect the national security realm, even as students themselves must make choices that carry consequences. Indeed, to some extent, student decisions themselves must drive the evolution of events within the simulation.168 Additionally, while authenticity matters, it is worth noting that at some level the fact that the incident does not take place in a real-world setting can be a great advantage. That is, the simulation creates an environment where students can make mistakes and learn from these mistakes – without what might otherwise be devastating consequences. It also allows instructors to develop multiple points of feedback to enrich student learning in a way that would be much more difficult to do in a regular practice setting. NSL Sim 2.0 takes as its starting point the national security pedagogical goals discussed above. It works backwards to then engineer a classroom, cyber, and physical/simulation experience to delve into each of these areas. As a substantive matter, the course focuses on the constitutional, statutory, and regulatory authorities in national security law, placing particular focus on the interstices between black letter law and areas where the field is either unsettled or in flux. A key aspect of the course design is that it retains both the doctrinal and experiential components of legal education. Divorcing simulations from the doctrinal environment risks falling short on the first and third national security pedagogical goals: (1) analytical skills and substantive knowledge, and (3) critical thought. A certain amount of both can be learned in the course of a simulation; however, the national security crisis environment is not well-suited to the more thoughtful and careful analytical discussion. What I am thus proposing is a course design in which doctrine is paired with the type of experiential learning more common in a clinical realm. The former precedes the latter, giving students the opportunity to develop depth and breadth prior to the exercise. In order to capture problems related to adaptation and evolution, addressing goal [1(d)], the simulation itself takes place over a multi-day period. Because of the intensity involved in national security matters (and conflicting demands on student time), the model makes use of a multi-user virtual environment. The use of such technology is critical to creating more powerful, immersive simulations.169 It also allows for continual interaction between the players. Multi-user virtual environments have the further advantage of helping to transform the traditional teaching culture, predominantly concerned with manipulating textual and symbolic knowledge, into a culture where students learn and can then be assessed on the basis of their participation in changing practices.170 I thus worked with the Information Technology group at Georgetown Law to build the cyber portal used for NSL Sim 2.0. The twin goals of adaptation and evolution require that students be given a significant amount of agency and responsibility for decisions taken in the course of the simulation. To further this aim, I constituted a Control Team, with six professors, four attorneys from practice, a media expert, six to eight former simulation students, and a number of technology experts. Four of the professors specialize in different areas of national security law and assume roles in the course of the exercise, with the aim of pushing students towards a deeper doctrinal understanding of shifting national security law authorities. One professor plays the role of President of the United States. The sixth professor focuses on questions of professional responsibility. The attorneys from practice help to build the simulation and then, along with all the professors, assume active roles during the simulation itself. Returning students assist in the execution of the play, further developing their understanding of national security law. Throughout the simulation, the Control Team is constantly reacting to student choices. When unexpected decisions are made, professors may choose to pursue the evolution of the story to accomplish the pedagogical aims, or they may choose to cut off play in that area (there are various devices for doing so, such as denying requests, sending materials to labs to be analyzed, drawing the players back into the main storylines, and leaking information to the media). A total immersion simulation involves a number of scenarios, as well as systemic noise, to give students experience in dealing with the second pedagogical goal: factual chaos and information overload. The driving aim here is to teach students how to manage information more effectively. Five to six storylines are thus developed, each with its own arc and evolution. To this are added multiple alterations of the situation, relating to background noise. Thus, unlike hypotheticals, doctrinal problems, single-experience exercises, or even Tabletop exercises, the goal is not to eliminate external conditions, but to embrace them as part of the challenge facing national security lawyers. The simulation itself is problem-based, giving players agency in driving the evolution of the experience – thus addressing goal [2(c)]. This requires a realtime response from the professor(s) overseeing the simulation, pairing bounded storylines with flexibility to emphasize different areas of the law and the students’ practical skills. Indeed, each storyline is based on a problem facing the government, to which players must then respond, generating in turn a set of new issues that must be addressed. The written and oral components of the simulation conform to the fourth pedagogical goal – the types of situations in which national security lawyers will find themselves. Particular emphasis is placed on nontraditional modes of communication, such as legal documents in advance of the crisis itself, meetings in the midst of breaking national security concerns, multiple informal interactions, media exchanges, telephone calls, Congressional testimony, and formal briefings to senior level officials in the course of the simulation as well as during the last class session. These oral components are paired with the preparation of formal legal instruments, such as applications to the Foreign Intelligence Surveillance Court, legal memos, applications for search warrants under Title III, and administrative subpoenas for NSLs. In addition, students are required to prepare a paper outlining their legal authorities prior to the simulation – and to deliver a 90 second oral briefing after the session. To replicate the high-stakes political environment at issue in goals (1) and (5), students are divided into political and legal roles and assigned to different (and competing) institutions: the White House, DoD, DHS, HHS, DOJ, DOS, Congress, state offices, nongovernmental organizations, and the media. This requires students to acknowledge and work within the broader Washington context, even as they are cognizant of the policy implications of their decisions. They must get used to working with policymakers and to representing one of many different considerations that decisionmakers take into account in the national security domain. Scenarios are selected with high consequence events in mind, to ensure that students recognize both the domestic and international dimensions of national security law. Further alterations to the simulation provide for the broader political context – for instance, whether it is an election year, which parties control different branches, and state and local issues in related but distinct areas. The media is given a particularly prominent role. One member of the Control Team runs an AP wire service, while two student players represent print and broadcast media, respectively. The Virtual News Network (“VNN”), which performs in the second capacity, runs continuously during the exercise, in the course of which players may at times be required to appear before the camera. This media component helps to emphasize the broader political context within which national security law is practiced. Both anticipated and unanticipated decisions give rise to ethical questions and matters related to the fifth goal: professional responsibility. The way in which such issues arise stems from simulation design as well as spontaneous interjections from both the Control Team and the participants in the simulation itself. As aforementioned, professors on the Control Team, and practicing attorneys who have previously gone through a simulation, focus on raising decision points that encourage students to consider ethical and professional considerations. Throughout the simulation good judgment and leadership play a key role, determining the players’ effectiveness, with the exercise itself hitting the aim of the integration of the various pedagogical goals. Finally, there are multiple layers of feedback that players receive prior to, during, and following the simulation to help them to gauge their effectiveness. The Socratic method in the course of doctrinal studies provides immediate assessment of the students’ grasp of the law. Written assignments focused on the contours of individual players’ authorities give professors an opportunity to assess students’ level of understanding prior to the simulation. And the simulation itself provides real-time feedback from both peers and professors. The Control Team provides data points for player reflection – for instance, the Control Team member playing President may make decisions based on player input, giving students an immediate impression of their level of persuasiveness, while another Control Team member may reject a FISC application as insufficient. The simulation goes beyond this, however, focusing on teaching students how to develop (6) opportunities for learning in the future. Student meetings with mentors in the field, which take place before the simulation, allow students to work out the institutional and political relationships and the manner in which law operates in practice, even as they learn how to develop mentoring relationships. (Prior to these meetings we have a class discussion about mentoring, professionalism, and feedback). Students, assigned to simulation teams about one quarter of the way through the course, receive peer feedback in the lead-up to the simulation and during the exercise itself. Following the simulation the Control Team and observers provide comments. Judges, who are senior members of the bar in the field of national security law, observe player interactions and provide additional debriefing. The simulation, moreover, is recorded through both the cyber portal and through VNN, allowing students to go back to assess their performance. Individual meetings with the professors teaching the course similarly follow the event. Finally, students end the course with a paper reflecting on their performance and the issues that arose in the course of the simulation, develop frameworks for analyzing uncertainty, tension with colleagues, mistakes, and successes in the future. B. Substantive Areas: Interstices and Threats As a substantive matter, NSL Sim 2.0 is designed to take account of areas of the law central to national security. It focuses on specific authorities that may be brought to bear in the course of a crisis. The decision of which areas to explore is made well in advance of the course. It is particularly helpful here to think about national security authorities on a continuum, as a way to impress upon students that there are shifting standards depending upon the type of threat faced. One course, for instance, might center on the interstices between crime, drugs, terrorism and war. Another might address the intersection of pandemic disease and biological weapons. A third could examine cybercrime and cyberterrorism. This is the most important determination, because the substance of the doctrinal portion of the course and the simulation follows from this decision. For a course focused on the interstices between pandemic disease and biological weapons, for instance, preliminary inquiry would lay out which authorities apply, where the courts have weighed in on the question, and what matters are unsettled. Relevant areas might include public health law, biological weapons provisions, federal quarantine and isolation authorities, habeas corpus and due process, military enforcement and posse comitatus, eminent domain and appropriation of land/property, takings, contact tracing, thermal imaging and surveillance, electronic tagging, vaccination, and intelligence-gathering. The critical areas can then be divided according to the dominant constitutional authority, statutory authorities, regulations, key cases, general rules, and constitutional questions. This, then, becomes a guide for the doctrinal part of the course, as well as the grounds on which the specific scenarios developed for the simulation are based. The authorities, simultaneously, are included in an electronic resource library and embedded in the cyber portal (the Digital Archives) to act as a closed universe of the legal authorities needed by the students in the course of the simulation. Professional responsibility in the national security realm and the institutional relationships of those tasked with responding to biological weapons and pandemic disease also come within the doctrinal part of the course. The simulation itself is based on five to six storylines reflecting the interstices between different areas of the law. The storylines are used to present a coherent, non-linear scenario that can adapt to student responses. Each scenario is mapped out in a three to seven page document, which is then checked with scientists, government officials, and area experts for consistency with how the scenario would likely unfold in real life. For the biological weapons and pandemic disease emphasis, for example, one narrative might relate to the presentation of a patient suspected of carrying yersinia pestis at a hospital in the United States. The document would map out a daily progression of the disease consistent with epidemiological patterns and the central actors in the story: perhaps a U.S. citizen, potential connections to an international terrorist organization, intelligence on the individual’s actions overseas, etc. The scenario would be designed specifically to stress the intersection of public health and counterterrorism/biological weapons threats, and the associated (shifting) authorities, thus requiring the disease initially to look like an innocent presentation (for example, by someone who has traveled from overseas), but then for the storyline to move into the second realm (awareness that this was in fact a concerted attack). A second storyline might relate to a different disease outbreak in another part of the country, with the aim of introducing the Stafford Act/Insurrection Act line and raising federalism concerns. The role of the military here and Title 10/Title 32 questions would similarly arise – with the storyline designed to raise these questions. A third storyline might simply be well developed noise in the system: reports of suspicious activity potentially linked to radioactive material, with the actors linked to nuclear material. A fourth storyline would focus perhaps on container security concerns overseas, progressing through newspaper reports, about containers showing up in local police precincts. State politics would constitute the fifth storyline, raising question of the political pressures on the state officials in the exercise. Here, ethnic concerns, student issues, economic conditions, and community policing concerns might become the focus. The sixth storyline could be further noise in the system – loosely based on current events at the time. In addition to the storylines, a certain amount of noise is injected into the system through press releases, weather updates, private communications, and the like. The five to six storylines, prepared by the Control Team in consultation with experts, become the basis for the preparation of scenario “injects:” i.e., newspaper articles, VNN broadcasts, reports from NGOs, private communications between officials, classified information, government leaks, etc., which, when put together, constitute a linear progression. These are all written and/or filmed prior to the exercise. The progression is then mapped in an hourly chart for the unfolding events over a multi-day period. All six scenarios are placed on the same chart, in six columns, giving the Control Team a birds-eye view of the progression. C. How It Works As for the nuts and bolts of the simulation itself, it traditionally begins outside of class, in the evening, on the grounds that national security crises often occur at inconvenient times and may well involve limited sleep and competing demands.171 Typically, a phone call from a Control Team member posing in a role integral to one of the main storylines, initiates play. Students at this point have been assigned dedicated simulation email addresses and provided access to the cyber portal. The portal itself gives each team the opportunity to converse in a “classified” domain with other team members, as well as access to a public AP wire and broadcast channel, carrying the latest news and on which press releases or (for the media roles) news stories can be posted. The complete universe of legal authorities required for the simulation is located on the cyber portal in the Digital Archives, as are forms required for some of the legal instruments (saving students the time of developing these from scratch in the course of play). Additional “classified” material – both general and SCI – has been provided to the relevant student teams. The Control Team has access to the complete site. For the next two (or three) days, outside of student initiatives (which, at their prompting, may include face-to-face meetings between the players), the entire simulation takes place through the cyber portal. The Control Team, immediately active, begins responding to player decisions as they become public (and occasionally, through monitoring the “classified” communications, before they are released). This time period provides a ramp-up to the third (or fourth) day of play, allowing for the adjustment of any substantive, student, or technology concerns, while setting the stage for the breaking crisis. The third (or fourth) day of play takes place entirely at Georgetown Law. A special room is constructed for meetings between the President and principals, in the form of either the National Security Council or the Homeland Security Council, with breakout rooms assigned to each of the agencies involved in the NSC process. Congress is provided with its own physical space, in which meetings, committee hearings and legislative drafting can take place. State government officials are allotted their own area, separate from the federal domain, with the Media placed between the three major interests. The Control Team is sequestered in a different area, to which students are not admitted. At each of the major areas, the cyber portal is publicly displayed on large flat panel screens, allowing for the streaming of video updates from the media, AP wire injects, articles from the students assigned to represent leading newspapers, and press releases. Students use their own laptop computers for team decisions and communication. As the storylines unfold, the Control Team takes on a variety of roles, such as that of the President, Vice President, President’s chief of staff, governor of a state, public health officials, and foreign dignitaries. Some of the roles are adopted on the fly, depending upon player responses and queries as the storylines progress. Judges, given full access to each player domain, determine how effectively the students accomplish the national security goals. The judges are themselves well-experienced in the practice of national security law, as well as in legal education. They thus can offer a unique perspective on the scenarios confronted by the students, the manner in which the simulation unfolded, and how the students performed in their various capacities. At the end of the day, the exercise terminates and an immediate hotwash is held, in which players are first debriefed on what occurred during the simulation. Because of the players’ divergent experiences and the different roles assigned to them, the students at this point are often unaware of the complete picture. The judges and formal observers then offer reflections on the simulation and determine which teams performed most effectively. Over the next few classes, more details about the simulation emerge, as students discuss it in more depth and consider limitations created by their knowledge or institutional position, questions that arose in regard to their grasp of the law, the types of decision-making processes that occurred, and the effectiveness of their – and other students’ – performances. Reflection papers, paired with oral briefings, focus on the substantive issues raised by the simulation and introduce the opportunity for students to reflect on how to create opportunities for learning in the future. The course then formally ends.172 Learning, however, continues beyond the temporal confines of the semester. Students who perform well and who would like to continue to participate in the simulations are invited back as members of the control team, giving them a chance to deepen their understanding of national security law. Following graduation, a few students who go in to the field are then invited to continue their affiliation as National Security Law fellows, becoming increasingly involved in the evolution of the exercise itself. This system of vertical integration helps to build a mentoring environment for the students while they are enrolled in law school and to create opportunities for learning and mentorship post-graduation. It helps to keep the exercise current and reflective of emerging national security concerns. And it builds a strong community of individuals with common interests. CONCLUSION The legal academy has, of late, been swept up in concern about the economic conditions that affect the placement of law school graduates. The image being conveyed, however, does not resonate in every legal field. It is particularly inapposite to the burgeoning opportunities presented to students in national security. That the conversation about legal education is taking place now should come as little surprise. Quite apart from economic concern is the traditional introspection that follows American military engagement. It makes sense: law overlaps substantially with political power, being at once both the expression of government authority and the effort to limit the same. The one-size fits all approach currently dominating the conversation in legal education, however, appears ill-suited to address the concerns raised in the current conversation. Instead of looking at law across the board, greater insight can be gleaned by looking at the specific demands of the different fields themselves. This does not mean that the goals identified will be exclusive to, for instance, national security law, but it does suggest there will be greater nuance in the discussion of the adequacy of the current pedagogical approach. With this approach in mind, I have here suggested six pedagogical goals for national security. For following graduation, students must be able to perform in each of the areas identified – (1) understanding the law as applied, (2) dealing with factual chaos and uncertainty, (3) obtaining critical distance, (4) developing nontraditional written and oral communication skills, (5) exhibiting leadership, integrity, and good judgment in a high-stakes, highly-charged environment, and (6) creating continued opportunities for self-learning. They also must learn how to integrate these different skills into one experience, to ensure that they will be most effective when they enter the field. The problem with the current structures in legal education is that they fall short, in important ways, from helping students to meet these goals. Doctrinal courses may incorporate a range of experiential learning components, such as hypotheticals, doctrinal problems, single exercises, extended or continuing exercises, and tabletop exercises. These are important classroom devices. The amount of time required for each varies, as does the object of the exercise itself. But where they fall short is in providing a more holistic approach to national security law which will allow for the maximum conveyance of required skills. Total immersion simulations, which have not yet been addressed in the secondary literature for civilian education in national security law, may provide an important way forward. Such simulations also cure shortcomings in other areas of experiential education, such as clinics and moot court. It is in an effort to address these concerns that I developed the simulation model above. NSL Sim 2.0 certainly is not the only solution, but it does provide a starting point for moving forward. The approach draws on the strengths of doctrinal courses and embeds a total immersion simulation within a course. It makes use of technology and physical space to engage students in a multi-day exercise, in which they are given agency and responsibility for their decision making, resulting in a steep learning curve. While further adaptation of this model is undoubtedly necessary, it suggests one potential direction for the years to come.

#### Policy relevant debate about war powers is critical to hold the government accountable --- must engage specific proposals to solve

Ewan E. Mellor 13, European University Institute, Political and Social Sciences, Graduate Student, Paper Prepared for BISA Conference, “Why policy relevance is a moral necessity: Just war theory, impact, and UAVs”, <http://www.academia.edu/4175480/Why_policy_relevance_is_a_moral_necessity_Just_war_theory_impact_and_UAVs>

This section of the paper considers more generally the need for just war theorists to engage with policy debate about the use of force, as well as to engage with the more fundamental moral and philosophical principles of the just war tradition. It draws on John Kelsay’s conception of just war thinking as being a social practice,35 as well as on Michael Walzer’s understanding of the role of the social critic in society.36 It argues that the just war tradition is a form of “practical discourse” which is concerned with questions of “how we should act.”37¶ Kelsay argues that:¶ [T]he criteria of jus ad bellum and jus in bello provide a framework for structured participation in a public conversation about the use of military force . . . citizens who choose to speak in just war terms express commitments . . . [i]n the process of giving and asking for reasons for going to war, those who argue in just war terms seek to influence policy by persuading others that their analysis provides a way to express and fulfil the desire that military actions be both wise and just.38¶ He also argues that “good just war thinking involves continuous and complete deliberation, in the sense that one attends to all the standard criteria at war’s inception, at its end, and throughout the course of the conflict.”39 This is important as it highlights the need for just war scholars to engage with the ongoing operations in war and the specific policies that are involved. The question of whether a particular war is just or unjust, and the question of whether a particular weapon (like drones) can be used in accordance with the jus in bello criteria, only cover a part of the overall justice of the war. Without an engagement with the reality of war, in terms of the policies used in waging it, it is impossible to engage with the “moral reality of war,”40 in terms of being able to discuss it and judge it in moral terms.¶ Kelsay’s description of just war thinking as a social practice is similar to Walzer’s more general description of social criticism. The just war theorist, as a social critic, must be involved with his or her own society and its practices. In the same way that the social critic’s distance from his or her society is measured in inches and not miles,41 the just war theorist must be close to and must understand the language through which war is constituted, interpreted and reinterpreted.42 It is only by understanding the values and language that their own society purports to live by that the social critic can hold up a mirror to that society to¶ demonstrate its hypocrisy and to show the gap that exists between its practice and its values.43 The tradition itself provides a set of values and principles and, as argued by Cian O’Driscoll, constitutes a “language of engagement” to spur participation in public and political debate.44 This language is part of “our common heritage, the product of many centuries of arguing about war.”45 These principles and this language provide the terms through which people understand and come to interpret war, not in a deterministic way but by providing the categories necessary for moral understanding and moral argument about the legitimate and illegitimate uses of force.46 By spurring and providing the basis for political engagement the just war tradition ensures that the acts that occur within war are considered according to just war criteria and allows policy-makers to be held to account on this basis.¶ Engaging with the reality of war requires recognising that war is, as Clausewitz stated, a continuation of policy. War, according to Clausewitz, is subordinate to politics and to political choices and these political choices can, and must, be judged and critiqued.47 Engagement and political debate are morally necessary as the alternative is disengagement and moral quietude, which is a sacrifice of the obligations of citizenship.48 This engagement must bring just war theorists into contact with the policy makers and will require work that is accessible and relevant to policy makers, however this does not mean a sacrifice of critical distance or an abdication of truth in the face of power. By engaging in detail with the policies being pursued and their concordance or otherwise with the principles of the just war tradition the policy-makers will be forced to account for their decisions and justify them in just war language. In contrast to the view, suggested by Kenneth Anderson, that “the public cannot be made part of the debate” and that “[w]e are necessarily committed into the hands of our political leadership”,49 it is incumbent upon just war theorists to ensure that the public are informed and are capable of holding their political leaders to account. To accept the idea that the political leadership are stewards and that accountability will not benefit the public, on whose behalf action is undertaken, but will only benefit al Qaeda,50 is a grotesque act of intellectual irresponsibility. As Walzer has argued, it is precisely because it is “our country” that we are “especially obligated to criticise its policies.”51

#### Searches for root causes are ineffective for terrorism---focusing on specific solutions and proximate causes is best

Peter **Beinart 8**, associate professor of journalism and political science at CUNY, The Good Fight; Why Liberals – and only Liberals – Can Win the War on Terror and Make America Great Again, 100-2

While different U.S. policies may be more or less important at differ- ent times, most experts agree that it is American actions (“what we do”), not American values (“who were are”) that have made the United States the target of salafist jihad. While in his ideal world Bin Laden would cer- tainly like to see the United States ditch its barbaric culture and convert to Islam, that is low on his list of concerns. As he himself has pointed out, if Al Qaeda were offended primarily by the licentiousness Western societies practice at home, it would have attacked Sweden. ¶ The problem is that while salafists might theoretically leave the United States alone if we left them alone, their concerns are vast and their hostility to liberal values is profound. Salafism is not a universalist ideology in the way that Communism was. (That is not to say its devotees do not dream of a world completely under God’s rule—they do—only that the cultural barriers preventing, say, an Argentinean from adopting the religion of Qutb are far greater than the barriers preventing him from adopting the religion of Marx.) But neither is salafism easy to avoid. Bin Laden has said the United States can escape “this ordeal” of terrorism if “it leaves the Arabian Peninsula, and stops its involvement in Palestine, and in all the Islamic world.” Unfortunately, Zawahiri, his second in command, has defined the Islamic world as stretching from “Eastern Turkestan [ Xinjiang, in western China] to Andalusia [Spain and Portugal].” Azzam has gone further, including among the territory that must be “returned to us so that Islam will reign again” sub- Saharan African countries like Chad, Eritrea, and Somalia and Asian nations like Burma and the Philippines. Salafists want to restore the caliphate that once ruled much of the Islamic world. But even at its eighth- century peak, the caliphate only stretched from In- dia to Spain. Under Al Qaeda’s more expansive definition, it seems to include every country or region once under Muslim rule. To comply with those terms, the United States would have to **retreat** virtually **to the Western Hemisphere.** ¶ Needless to say, for the United States to withdraw from a swath of territory stretching from West Africa to Southeast Asia would constitute a geostrategic revolution. American power is the guarantor of last resort for the government of Pakistan, which has nuclear weapons, a volatile border with nuclear- armed India, and salafist elements in its security services. It plays the same role in Jordan and Egypt, the lynchpins of peace between Israel and the Arab world. And, of course, America protects the Saudi monarchy, whose kingdom sits atop one quarter of the world’s proven oil reserves. As the Bush administration has rightly recognized, these relation- ships are unsustainable in their current form, and America’s long-t erm safety requires that its clients evolve in a democratic direction, even if it means they prove less compliant. But were the jihadist movement to force the United States to withdraw its military, political, or economic influence ¶ from these crucial areas—producing governments with dramatically dif- ferent orientations—**the consequences for American security, the world economy, and regional peace could be grave**. ¶ And a withdrawal from the Muslim world would not only imperil American interests, it would also imperil American values. Al Qaeda may not hate us for “who we are”—unless “who we are” obligates us to oppose what might be called “religious cleansing,” the violent purification of large swaths of the globe. After all, **if the U**nited **S**tates **withdrew from its war against salafism, salafism would still be at war**. Al Qaeda’s ultimate goal is not to expel the United States from Islamic lands; it is to establish a new caliphate that ushers in God’s rule on earth. And the many enemies of that effort—non- Muslims, apostate Muslims, liberated female Muslims, gay and lesbian Muslims—would still blemish the Islamic world, representing jahiliyyah in its myriad sinful forms. ¶ Where those enemies have no army to defend them, the result has been terror. Where they do, the result has been endless war. It is a virtual axiom of international politics that salafists will try to seize control of any local conflict—from the Philippines to Chechnya to Kashmir to Iraq—that pits Sunni Muslims against their neighbors. And the more they succeed, the less likely it is that such a conflict will end. Many Muslims, including many non-s alafist Islamists, also support Muslim insurgencies around the world. In Iraq, they may support attacks on American troops. But since they see jihad as a means to some concrete goal, political compromise is possible. Salafists, however, who see jihad as a means to usher in a messianic age, will accept no outcome that leaves Muslims under non- Muslim rule, because such a compromise threatens the path to paradise.

## 2AC

### 2AC Topicality

#### We meet---we prohibit TKs without judicial review

#### Ex post is a restriction

ECHR 91,European Court of Human Rights, Decision in Ezelin v. France, 26 April 1991, http://www.bailii.org/eu/cases/ECHR/1991/29.html

The main question in issue concerns Article 11 (art. 11), which provides:¶ "1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.¶ 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. ..."¶ Notwithstanding its autonomous role and particular sphere of application, Article 11 (art. 11) must, in the present case, also be considered in the light of Article 10 (art. 10) (see the Young, James and Webster judgment of 13 August 1981, Series A no. 44, p. 23, § 57). The protection of personal opinions, secured by Article 10 (art. 10), is one of the objectives of freedom of peaceful assembly as enshrined in Article 11 (art. 11).¶ A. Whether there was an interference with the exercise of the freedom of peaceful assembly¶ In the Government’s submission, Mr Ezelin had not suffered any interference with the exercise of his freedom of peaceful assembly and freedom of expression: he had been able to take part in the procession of 12 February 1983 unhindered and to express his convictions publicly, in his professional capacity and as he wished; he was reprimanded only after the event and on account of personal conduct deemed to be inconsistent with the obligations of his profession.¶ The Court does not accept this submission. The term "restrictions" in paragraph 2 of Article 11 (art. 11-2) - and of Article 10 (art. 10-2) - cannot be interpreted as not including measures - such as punitive measures - taken not before or during but after a meeting (cf. in particular, as regards Article 10 (art. 10), the Handyside judgment of 7 December 1976, Series A no. 24, p. 21, § 43, and the Müller and Others judgment of 24 May 1988, Series A no. 133, p. 19, § 28).

#### Counter-interp---restrictions means limit---we meet

CAA 8,COURT OF APPEALS OF ARIZONA, DIVISION ONE, DEPARTMENT A, STATE OF ARIZONA, Appellee, v. JEREMY RAY WAGNER, Appellant., 2008 Ariz. App. Unpub. LEXIS 613

P10 The term "restriction" is not defined by the Legislature for the purposes of the DUI statutes. See generally A.R.S. § 28-1301 (2004) (providing the "[d]efinitions" section of the DUI statutes). In the absence of a statutory definition of a term, we look to ordinary dictionary definitions and do not construe the word as being a term of art. Lee v. State, 215 Ariz. 540, 544, ¶ 15, 161 P.3d 583, 587 (App. 2007) ("When a statutory term is not explicitly defined, we assume, unless otherwise stated, that the Legislature intended to accord the word its natural and obvious meaning, which may be discerned from its dictionary definition.").¶ P11 The dictionary definition of "restriction" is "[a] limitation or qualification." Black's Law Dictionary 1341 (8th ed. 1999). In fact, "limited" and "restricted" are considered synonyms. See Webster's II New Collegiate Dictionary 946 (2001). Under these commonly accepted definitions, Wagner's driving privileges were "restrict[ed]" when they were "limited" by the ignition interlock requirement. Wagner was not only [\*7] statutorily required to install an ignition interlock device on all of the vehicles he operated, A.R.S. § 28-1461(A)(1)(b), but he was also prohibited from driving any vehicle that was not equipped with such a device, regardless whether he owned the vehicle or was under the influence of intoxicants, A.R.S. § 28-1464(H). These limitations constituted a restriction on Wagner's privilege to drive, for he was unable to drive in circumstances which were otherwise available to the general driving population. Thus, the rules of statutory construction dictate that the term "restriction" includes the ignition interlock device limitation.

#### We meet---we restrict the war power to assert sovereign immunity AND cause of action is a restriction

Edward Keynes 10, Professor of Political Science at The Pennsylvania State University and has been visiting professor at the universities of Cologne, Kiel, and Marburg. A University of Wisconsin Ph.D., he has been a Fulbright and an Alexander von Humboldt fellow, “Undeclared War: Twilight Zone of Constitutional Power”, Google Books, p. 119-120

Despite numerous cases challenging the President’s authority to initiate and conduct the Vietnam War, the Federal courts exhibited extreme caution in entering this twilight zone of constitutional power. The federal judiciary’s reluctance to decide war-powers controversies reveals a respect for the constitutional separation of powers, an appreciation of the respective constitutional functions of Congress and the President in external affairs, and a sense of judicial self-restraint. Although most Federal courts exercised self-restraint, several courts scaled such procedural barriers as jurisdiction, standing to sue, sovereign immunity, and the political question to address the scope of congressional and presidential power to initiate war and military hostilities without a declaration of war. The latter decisions reveal an appreciation of the constitutional equilibrium upon which the separation of powers and the rule of law rest. Despite judicial caution, several Federal courts entered the political thicket in order to restore the constitutional balance between Congress and the President. Toward the end of the war in Indochina, judicial concern for the rule of law recommended intervention rather than self-restraint.

#### Counter-interp---authority means legality

Ellen Taylor 96, 21 Del. J. Corp. L. 870 (1996), Hein Online

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

#### Counter-interp---war powers authority is OVERALL power over war-making---we meet

Manget 91 Fred F, Assistant General Counsel with the CIA, "Presidential War Powers", 1991, media.nara.gov/dc-metro/rg-263/6922330/Box-10-114-7/263-a1-27-box-10-114-7.pdf

The President's war powers authority is actually a national defense power that exists at all times, whether or not there is a war declared by Congress, an armed conflict, or any other hostilities or fighting. In a recent case the Supreme Court upheld the revocation of the passport of a former CIA employee (Agee) and rejected his contention that certain statements of Executive Branch policy were entitled to diminished weight because they concerned the powers of the Executive in wartime. The Court stated: "History eloquently attests that grave problems of national security and foreign policy are by no means limited to times of formally declared war. " 3 ; Another court has said that the war power is not confined to actual engagements on fields of battle only but embraces every aspect of national defense and comprehends everything required to wage war successfully. 3 H A third court stated: "It is-and must be-true that the Executive should be accorded wide and normally unassailable discretion with respect to the conduct of the national defense and the prosecution of national objectives through military means . "39 ¶ Thus, the Executive Branch's constitutional war powers authority does not spring into existence when Congress declares war, nor is it dependent on there being hostilities. It empowers the President to prepare for war as well as wage it, in the broadest sense. It operates at all times.

### Risk K

#### The 1AC’s Risk Analysis isn’t what they criticize --- evidence-based *possiblistic thinking* is vital to prevent catastrophes without consuming us with fear

Lee Clarke 6, Ph.D., Associate Professor of Sociology at Rutgers University, Worst Cases: Terror and Catastrophe in the Popular Imagination, 2006, p. ix-xi

People are worried, now, about terror and catastrophe in ways that a short time ago would have seemed merely fantastic. Not to say that horror and fear suffuse the culture, but they are in the ascendant. And for good reason. There are possibilities for accident and attack, disease and disaster that would make September 11 seem like a mosquito bite. I think we have all become more alert to some of those possibilities, and it is wise to face them down. The idea of worst cases isn’t foreign to us. We have not, however, been given enough useful insight or guidance, either from academics or political leaders, regarding how to do that. In this book I look the worst full in the face. What I see is frightening but enlightening. I believe that knowing a thing permits more comfort with that thing. Sometimes the comfort comes from greater control. Sometimes it comes from knowing the enemy, or the scary thing, which proffers a way forward, toward greater safety. There is horror in disaster. But there is much more, for we can use calamity to glean wisdom, to find hope. Tragedy is with us now as never before. But that does not mean we need be consumed with fear and loathing. We can learn a lot about how society works, and fails to work, by looking at the worst. We can learn about the imagination, about politics, and about the wielding of power. We can learn about people’s capacities for despair and callousness, and for optimism and altruism. As we learn, our possibilities for improvement increase. Worst Cases is about the human condition in the modern world. Some say that September 11 changed everything. That’s not true. But it did imprint upon our imaginations scenes of horror that until then had been the province of novels and movies. We now imagine ourselves in those images, and our wide-awake nightmares are worse than they used to be. We must name, analyze, and talk about the beast. That’s our best hope, as a society, to come to terms with the evil, the human failings, the aspects of nature, and just plain chance that put us in harm’s way. Of course, talking about the worst can be a way to scare people into accepting programs that have other ends, and that they might not otherwise accept. The image of a nuclear mushroom cloud, for example, can be used to justify war because the possibility is so frightening that we would do almost anything to prevent it. The dark side of worst case thinking is apparent even at the level of personal relationships. Unleavened by evidence or careful thought it can lead to astonishingly poor policy and dumb decisions. No organizational culture can prevent or guard against it. The only response that will effectively mute such abuses is one that is organized and possessed of courage and vision. So warnings that the worst is at hand should be inspected closely, particularly if they call for actions that would serve ends the speaker cannot or does not freely acknowledge. I acknowledge my ends in this book. For better or worse, I always have. Worst Cases is a book full of stories about disasters. But it is not a disaster book. It is a book about the imagination. We look back and say that 9/11 was the worst terrorist attack ever in the United States, that the Spanish Flu of 1918, the Black Death, or AIDS was the worst epidemic ever, or that the 1906 San Francisco earthquake was the Great Earthquake. Nothing inherent to the events requires that we adorn them with superlatives. People’s imaginations make that happen. Similarly, we construct possible futures of terror and calamity: what happens if the nation’s power grid goes down for six months? what if smallpox sweeps the world? what if nuclear power has a particularly bad day? what if a monster tsunami slams southern California? These too are feats of imagination. There are those who say we shouldn’t worry about things that are unlikely to happen. That’s what your pilot means in saying, after a turbulent cross-country flight, “You’ve just completed the safest part of your trip.” We hear the same thing when officials tell us that the probability of a nuclear power plant melting down is vanishingly small. Or that the likelihood of an asteroid striking the earth is one in a million, billion, or trillion. There is similar advice from academics who complain that people are unreasonable because their fears don’t jibe with statistics. Chance, they reckon, is in our favor. But chance is often against us. My view is that disasters and failures are normal, that, as a colleague of mine puts it, things that have never happened before happen all the time. A fair number of those things end up being events we call worst cases. When they happen we’re given opportunities to learn things about society and human nature that are usually obscured. Worst case thinking hasn’t been given its due, either in academic writings or in social policy. We’re not paying enough attention to the ways we organize society that make us vulnerable to worst cases. We’re not demanding enough responsibility and transparency from leaders and policy makers. I am not an alarmist, but I am alarmed. That’s why I wrote Worst Cases. It is also why my tone and language are not technical. I am a sociologist, but I wrote Worst Cases so that nonsociologists can read it.

#### Magnitude of our impacts means you act under epistemological uncertainty --- perm resolves any residual links

Rudra Sil 11, Asst. Professor of Political Science @ University of Pennsylvania where he holds the Janice and Julian Bers Chair in the Social Sciences, “De-Centering, Not Discarding, the “Isms”: Some Friendly Amendments,” International Studies Quarterly (2011) 55, p. 481-485

Lake is right to note that inter-paradigm debates frequently reﬂect epistemological divisions, such as between nomological and narrative styles of scholarship. It is worth noting, however, that crucial epistemological differences exist on each side of this divide as well—for example, between empiricists and theoretical realists on the nomological side, or between post-structuralists and those partial to hermeneutics or ‘‘thick’’ description on the ‘‘narrative’’ side. The permutations and fractal distinctions (Abbot 2004:162–70) among various epistemological issues make it more reasonable to speak of an epistemological ‘‘spectrum’’ rather than ‘‘divide’’ (Sil 2000). We do concur with Lake’s salutary, pluralistic stance, evident in his acknowledgment of the absence of any objective criteria for preferring one epistemological position over another. This pluralism, however, restates rather than resolves the dilemma posed by the epistemic commitments or preferences of different communities of scholars. This is why our conception of analytic eclecticism proceeds from a pragmatist foundation. The pragmatist turn in international relations scholarship does not resolve epistemological dilemmas, but it does enable us to temporarily bypass or suspend irresolvable metaphysical debates for the purpose of exploring substantively important problems. Pragmatism also recognizes the inevitable fallibility of truth claims and focuses on the consequences of our conclusions about various problems (Sil and Katzenstein 2010:43–48). Pragmatism does not trump other foundational perspectives. It creates the conditions for greater toleration and more inclusive dialogue among scholars partial to different research traditions. And it may even pave the way for a return to the public engagement that characterized the social sciences at their birth (Calhoun 2009).

#### Epistemology doesn’t precede our impacts—threats must be dealt with

Olav Knudsen 1, PoliSci Professor at Sodertorn University, “Post-Copenhagen Security Studies,” *Security Dialogue* 32:3, September, <http://sdi.sagepub.com/cgi/reprint/32/3/355>

Moreover, I have a problem with the underlying implication that it is unimportant whether states ‘really’ face dangers from other states or groups.  In the Copenhagen school, threats are seen as coming mainly from the actors’ own fears, or from what happens when the fears of individuals turn into paranoid political action.  In my view, this emphasis on the subjective is a misleading conception of threat, in that it discounts an independent existence or whatever is perceived as a threat. Granted, political life is often marked by misperceptions, mistakes, pure imaginations, ghosts, or mirages, but such phenomena do not occur simultaneously to large numbers of politicians, and hardly most of the time.  During the cold War, threats—in the sense of plausible possibilities of danger—referred to ‘real’ phenomena, and they refer to ‘real’ phenomena now.  The objects referred to are often not the same, but that is a different matter.   Threats have to be dealt with both in terms of perceptions and in terms of the phenomena which are perceived to be threatening.   The point of Waever’s concept of security is not the potential existence of danger somewhere but the use of the word itself by political elites.   In his 1997 PhD dissertation, he writes, ‘One can view “security” as that which is in language theory called a speech act: it is not interesting as a sign referring to something more real—it is the utterance itself that is the act.’  The deliberate disregard for objective actors is even more explicitly stated in Buzan & Waever’s joint article of the same year.   As a consequence, the phenomenon of threat is reduced to a matter of pure domestic politics.   It seems to me that the security dilemma, as a central notion in security studies, then loses its foundation.  Yet I see that Waever himself has no compunction about referring to the security dilemma in a recent article.  This discounting of the objective aspect of threats shifts security studies to insignificant concerns.  What has long made ‘threats’ and ‘threat perceptions’ important phenomena in the study of IR is the implication that urgent action may be required.   Urgency, of course, is where Waever first began his argument in favor of an alternative security conception, because a convincing sense of urgency has been the chief culprit behind the abuse of ‘security’ and the consequent ‘politics of panic,’ as Waever aptly calls it.  Now, here—in the case of urgency—another baby is thrown our with the Waeverian bathwater.   When situations of urgency arise, those situations are challenges to democracy; they are actually at the core of the problematic arising with the process of making security policy in parliamentary democracy.  But in Waever’s world, threats are merely more or less persuasive, and the claim of urgency is just another argument.  I hold that instead of ‘abolishing’ threatening phenomena ‘out there’ by reconceptualizing them, as Waever does, we should continue paying attention to them, because situations with a credible claim to urgency will keep coming back and then we need to know more about how they work in the interrelations of groups and states (such as civil wars, for instance), not least to find adequate democratic procedures for dealing with them. Drawing on the securitization concept, much research now focuses on the process of defining something as a threat in order to put ‘new’ things on the political agenda.  It should follow from the above that I disagree with the level of emphasis thus placed on the subjective side.  Such an emphasis means that researchers are asked to distance themselves from the world of politics as it is and to shift their attention one-sidedly towards the politics of ‘what could be’.  This aspect of Waever’s approach is clearly not accidental; it is intended to be that way. The problem here is that this serves to downgrade the significance of problems that exist out there—not just in the heads of politicians and decision-makers but as challenges to their experience and problem-solving efforts.  The implication of the agenda-setting approach is that perceptions and images are arbitrary, a stance which in itself may be ill-advised because it detracts from the significance of issues like crisis management in Europe, which ought to have a fairly high priority.  Yet, to be fair, the distance of theory from policy is not only a product of the Copenhagen school; it is also an effect of the excessive emphasis on epistemology and metatheoretical issues referred to above.

#### The complexity thesis is wrong---makes policymaking impossible

Dr. Sebastian L. V. Gorka et al 12, Director of the Homeland Defense Fellows Program at the College of International Security Affairs, National Defense University, teaches Irregular Warfare and US National Security at NDU and Georgetown, et al., Spring 2012, “The Complexity Trap,” Parameters, <http://www.carlisle.army.mil/USAWC/parameters/Articles/2012spring/Gallagher_Geltzer_Gorka.pdf>

We live in a world of unprecedented complexity, or so we are told. President Obama’s words above echo an increasingly common narrative in the American foreign policy and national security establishments: the forces of globalization, rising nonstate actors, irregular conflict, and proliferating destructive technologies have made crafting sound national security strategy more elusive than ever before. 2 If “strategy is the art of creating power” by specifying the relationship among ends, ways, and means, 3 then the existence of unprecedented complexity would seem to make this art not only uniquely difficult today but also downright dangerous, inasmuch as choosing any particular course of action would preclude infinitely adaptive responses in the future. As Secretary of Defense Robert Gates memorably described, the pre-9/11 challenges to American national security were “amateur night compared to the world today.” 4 And as former State Department Director of Policy Planning Anne-Marie Slaughter recently stated, there is a “universal awareness that we are living through a time of rapid and universal change,” one in which the assumptions of the twentieth century make little sense. 5 The “Mr. Y” article that occasioned her comments argued that, in contrast to the “closed system” of the twentieth century that could be controlled by mankind, we now live in an “open system” defined by its supremely complex and protean nature. 6 Unparalleled complexity, it seems, is the hallmark of our strategic age.¶ These invocations of complexity permeate today’s American national security documents and inform Washington’s post-Cold War and -9/11 strategic culture. The latest Quadrennial Defense Review begins its analysis with a description of the “complex and uncertain security landscape in which the pace of change continues to accelerate. Not since the fall of the Soviet Union or the end of World War II has the international terrain been affected by such farreaching and consequential shifts.” 7 In a similar vein, the National Intelligence Council’s Global Trends 2025 argues that the international system is trending towards greater degrees of complexity as power is diffused and actors multiply. 8 The Director of National Intelligence’s Vision 2015 terms our time the “Era of Uncertainty,” one “in which the pace, scope, and complexity of change are increasing.” 9 Disturbingly, the younger generation of foreign policy and national security professionals seems to accept and embrace these statements declaiming a fundamental change in our world and our capacity to cope with it. The orientation for the multi-thousand-member group of Young Professionals in Foreign Policy calls “conquering complexity” the fundamental challenge for the millennial generation. Complexity, it appears, is all the rage. ¶ We challenge these declarations and assumptions—not simply because they are empirically unfounded but, far more importantly, because they negate the very art of strategy and make the realization of the American national interest impossible. We begin by showing the rather unsavory consequences of the current trend toward worshipping at complexity’s altar and thus becoming a member of the “Cult of Complexity.” Next, we question whether the world was ever quite as simple as today’s avowers of complexity suggest, thus revealing the notion of today’s unprecedented complexity to be descriptively false. We then underscore that this idea is dangerous, given the consequences of an addiction to complexity. Finally, we offer an escape from the complexity trap, with an emphasis on the need for prioritization in today’s admittedly distinctive international security environment. Throughout, we hope to underscore that today’s obsession with complexity results in a dangerous denial of the need to strategize.

**Policymakers have an obligation to err in favor of prediction—it’s inevitable and using explicit predictions enhances decision-making**

**Fitzsimmons 7** (Michael, Washington DC defense analyst, “The Problem of Uncertainty in Strategic Planning”, Survival, Winter 06-07, online)

In defence of prediction ¶ Uncertainty is not a new phenomenon for strategists. Clausewitz knew that ‘many intelligence reports in war are contradictory; even more are false, and most are uncertain’. In coping with uncertainty, he believed that ‘what one can reasonably ask of an officer is that he should possess a standard of judgment, which he can gain only from knowledge of men and affairs and from common sense. He should be guided by the laws of probability.’34 Granted, one can certainly allow for epistemological debates about the best ways of gaining ‘a standard of judgment’ from ‘knowledge of men and affairs and from common sense’. Scientific inquiry into the ‘laws of probability’ for any given strate- gic question may not always be possible or appropriate. Certainly, analysis cannot and should not be presumed to trump the intuition of decision-makers. Nevertheless, Clausewitz’s implication seems to be that the burden of proof in any debates about planning should belong to the decision-maker who rejects formal analysis, standards of evidence and probabilistic reasoning. Ultimately, though, the value of prediction in strategic planning does not rest primarily in getting the correct answer, or even in the more feasible objective of bounding the range of correct answers. Rather, prediction requires decision- makers to expose, not only to others but to themselves, the beliefs they hold regarding why a given event is likely or unlikely and why it would be impor- tant or unimportant. Richard Neustadt and Ernest May highlight this useful property of probabilistic reasoning in their renowned study of the use of history in decision-making, Thinking in Time. In discussing the importance of probing presumptions, they contend: The need is for tests prompting questions, for sharp, straightforward mechanisms the decision makers and their aides might readily recall and use to dig into their own and each others’ presumptions. And they need tests that get at basics somewhat by indirection, not by frontal inquiry: not ‘what is your inferred causation, General?’ Above all, not, ‘what are your values, Mr. Secretary?’ ... If someone says ‘a fair chance’ ... ask, ‘if you were a betting man or woman, what odds would you put on that?’ If others are present, ask the same of each, and of yourself, too. Then probe the differences: why? This is tantamount to seeking and then arguing assumptions underlying different numbers placed on a subjective probability assessment. We know of no better way to force clarification of meanings while exposing hidden differences ... Once differing odds have been quoted, the question ‘why?’ can follow any number of tracks. Argument may pit common sense against common sense or analogy against analogy. What is important is that the expert’s basis for linking ‘if’ with ‘then’ gets exposed to the hearing of other experts before the lay official has to say yes or no.’35 There are at least three critical and related benefits of prediction in strate- gic planning. The first reflects Neustadt and May’s point – prediction enforces a certain level of discipline in making explicit the assumptions, key variables and implied causal relationships that constitute decision-makers’ beliefs and that might otherwise remain implicit. Imagine, for example, if Shinseki and Wolfowitz had been made to assign probabilities to their opposing expectations regarding post-war Iraq. Not only would they have had to work harder to justify their views, they might have seen more clearly the substantial chance that they were wrong and had to make greater efforts in their planning to prepare for that contingency. Secondly, the very process of making the relevant factors of a deci- sion explicit provides a firm, or at least transparent, basis for making choices. Alternative courses of action can be compared and assessed in like terms. Third, the transparency and discipline of the process of arriving at the initial strategy should heighten the decision-maker’s sensitivity toward changes in the envi- ronment that would suggest the need for adjustments to that strategy. In this way, prediction enhances rather than under-mines strategic flexibility. This defence of prediction does not imply that great stakes should be gambled on narrow, singular predictions of the future. On the contrary, the central problem of uncertainty in plan- ning remains that any given prediction may simply be wrong. Preparations for those eventualities must be made. Indeed, in many cases, relatively unlikely outcomes could be enormously consequential, and therefore merit extensive preparation and investment. In order to navigate this complexity, strategists must return to the dis- tinction between uncertainty and risk. While the complexity of the international security environment may make it somewhat resistant to the type of probabilis- tic thinking associated with risk, a risk-oriented approach seems to be the only viable model for national-security strategic planning. The alternative approach, which categorically denies prediction, precludes strategy. As Betts argues, Any assumption that some knowledge, whether intuitive or explicitly formalized, provides guidance about what should be done is a presumption that there is reason to believe the choice will produce a satisfactory outcome – that is, it is a prediction, however rough it may be. If there is no hope of discerning and manipulating causes to produce intended effects, analysts as well as politicians and generals should all quit and go fishing.36 Unless they are willing to quit and go fishing, then, strategists must sharpen their tools of risk assessment. Risk assessment comes in many varieties, but identification of two key parameters is common to all of them: the consequences of a harmful event or condition; and the likelihood of that harmful event or condition occurring. With no perspective on likelihood, a strategist can have no firm perspective on risk. With no firm perspective on risk, strategists cannot purposefully discriminate among alternative choices. Without purposeful choice, there is no strategy. \* \* \* One of the most widely read books in recent years on the complicated relation- ship between strategy and uncertainty is Peter Schwartz’s work on scenario-based planning, The Art of the Long View. Schwartz warns against the hazards faced by leaders who have deterministic habits of mind, or who deny the difficult implications of uncertainty for strategic planning. To overcome such tenden- cies, he advocates the use of alternative future scenarios for the purposes of examining alternative strategies. His view of scenarios is that their goal is not to predict the future, but to sensitise leaders to the highly contingent nature of their decision-making.37 This philosophy has taken root in the strategic-planning processes in the Pentagon and other parts of the US government, and properly so. Examination of alternative futures and the potential effects of surprise on current plans is essential. Appreciation of uncertainty also has a number of organisational impli- cations, many of which the national-security establishment is trying to take to heart, such as encouraging multidisciplinary study and training, enhancing information sharing, rewarding innovation, and placing a premium on speed and versatility. The arguments advanced here seek to take nothing away from these imperatives of planning and operating in an uncertain environment. But appreciation of uncertainty carries hazards of its own. Questioning assumptions is critical, but assumptions must be made in the end. Clausewitz’s ‘standard of judgment’ for discriminating among alternatives must be applied. Creative, unbounded speculation must resolve to choice or else there will be no strategy. Recent history suggests that unchecked scepticism regarding the validity of prediction can marginalise analysis, trade significant cost for ambiguous benefit, empower parochial interests in decision-making, and undermine flexibility. Accordingly, having fully recognised the need to broaden their strategic-planning aperture, national-security policymakers would do well now to reinvigorate their efforts in the messy but indispensable business of predicting the future.

#### Discourse isn’t the primary shaper of reality --- material change from the plan outweighs --- internal link turns reps

Thierry Balzacq 5, Professor of Political Science and IR @ Namar University, “The Three Faces of Securitization: Political Agency, Audience and Context” European Journal of International Relations, London: Jun 2005, Volume 11, Issue 2

However, despite important insights, this position remains highly disputable. The reason behind this qualification is not hard to understand. With great trepidation my contention is that one of the main distinctions we need to take into account while examining securitization is that between 'institutional' and 'brute' threats. In its attempts to follow a more radical approach to security problems wherein threats are institutional, that is, mere products of communicative relations between agents, the CS has neglected the importance of 'external or brute threats', that is, threats that do not depend on language mediation to be what they are - hazards for human life. In methodological terms, however, any framework over-emphasizing either institutional or brute threat risks losing sight of important aspects of a multifaceted phenomenon. Indeed, securitization, as suggested earlier, is successful when the securitizing agent and the audience reach a common structured perception of an ominous development. In this scheme, there is no security problem except through the language game. Therefore, how problems are 'out there' is exclusively contingent upon how we linguistically depict them. This is not always true. For one, language does not construct reality; at best, it shapes our perception of it. Moreover, it is not theoretically useful nor is it empirically credible to hold that what we say about a problem would determine its essence. For instance, what I say about a typhoon would not change its essence. The consequence of this position, which would require a deeper articulation, is that some security problems are the attribute of the development itself. In short, threats are not only institutional; some of them can actually wreck entire political communities regardless of the use of language. Analyzing security problems then becomes a matter of understanding how external contexts, including external objective developments, affect securitization. Thus, far from being a departure from constructivist approaches to security, external developments are central to it.

#### Engagement with technocracy is more effective than dissensus

Jiménez-Aleixandre 2, professor of education – University of Santiago de Compostela, and Pereiro-Muñoz High School Castelao, Vigo (Spain) (Maria-Pilar and Cristina, “Knowledge producers or knowledge consumers? Argumentation and decision making about environmental management,” International Journal of Science Education Vol. 24, No. 11, p. 1171–1190)

If science education and environmental education have as a goal to develop **critical thinking and** to promote **decision making**, it seems that the acknowledgement of a variety of experts and expertise is of relevance to both. **Otherwise citizens could be unable to challenge a common view** that places economical issues and technical features over other types of values or concerns. As McGinn and Roth (1999) argue, citizens should be prepared to participate in scientific practice, to be involved in situations where science is, if not created, at least used. The assessment of environmental management is, in our opinion, one of these, and citizens do not need to possess all the technical knowledge to be able to examine the positive and negative impacts and to weigh them up. The identification of instances of scientific practice in classroom discourse is difficult especially if this practice is viewed as a complex process, not as fixed ‘steps’. Several instances were identified when it could be said that students acted as a knowledge-producing community in spite of the fact that the students, particularly at the beginning of the sequence, expressed doubts about their capacities to assess a project written by experts and endorsed by a government office. Perhaps these doubts relate to the nature of the project, a ‘real life’ object that made its way into the classroom, into the ‘school life’. As Brown et al. (1989) point out, there is usually a difference between practitioners’ tasks and stereotyped school tasks and, it could be added, students are not used to being confronted with the complexity of ‘life-size’ problems. However, as the sequence proceeded, **the students assumed the role of experts**, exposing inconsistencies in the project, offering alternatives and discussing it with one of its authors. The issue of expertise is worthy of attention and it needs to be explored in different contexts where the relationships among technical expertise, values hierarchies and possible biases caused by the subject matter could be unravelled. One of the objectives of environmental education is to **empower people with the capacity of decision making**; for this purpose the acknowledging of multiple expertise is crucial.

#### This form of evidence-based possiblistic thinking is uniquely key in the context of terrorism

Lee Clarke 6, Ph.D., Associate Professor of Sociology at Rutgers University, Worst Cases: Terror and Catastrophe in the Popular Imagination, 2006, p. 21-22

The idea of the worst case draws our attention to the past and pushes it into the future. For thinking about worst cases involves both thinking about negative futures and evaluating past events as superlatively bad. “What’s the worst than can happen?” we ask children. Most people can look back and say, “That was the worst day of my life.” Such thinking and evaluating is fundamentally about the expansion and contraction of imagination. Labeling something “the worst” involves both prospective and retrospective orientations to disaster. Let me say a few more words about that. Sometimes we imagine futures that are particularly awful or construct scenarios that are overwhelmingly bad or sad, then attach the worst case moniker to them. Since the 9/11 terrorist attacks many people and organizations have created projections of that sort. Government leaders have made solemn announcements regarding when another attack might be coming—especially after it was discovered that officials actually had pretty good indications that something big was coming before September 11. Everyone has been urged to go on “high alert.” Reporters and others have set off to assess preparedness levels at nuclear plants, water treatment facilities, and key points on the electric power grid. Some of the 9/11 terrorists were reported to have asked questions of airport personnel in the small south Florida town of Belle Glade. Belle Glade is a farming community and crop dusters are a common sight there. Those reports were probably false, but at the time they prompted worst case projections about the use of crop dusters to distribute chemical or biological weapons. Similar speculation followed reports of a March 2001 visit by Mohammed Atta, a key player in the September 11 attacks, to a small town in Tennessee. Tanks at a nearby plant hold 250 tons of sulfur dioxide, and the plant’s worst case scenario said that perhaps sixty thousand people could be killed or hurt if it were sabotaged. Recall the EPA-required scenarios I mentioned earlier. Journalists looked through some of those scenarios after 9/11 and discovered that many of America’s most populated areas are next to facilities with large amounts of toxic chemicals. For example, in Kearny, New Jersey—which is very close to Manhattan—there’s a facility that has 180,000 pounds of sulfur dioxide which, if released in a toxic cloud, could kill or injure twelve million people. Similar scenarios exist for Los Angeles, Detroit, and Philadelphia. Officials of the companies responsible for these dangerous chemicals say they’re taking precautions that make such a catastrophe “unlikely”—there’s that short risk ruler again. That’s not very reassuring, though, because terrorists aim precisely to create unlikely horrors, which is to say they aim to make worst cases. To construct prospective worst cases, like the ones I just mentioned, we must somehow imagine the unimaginable. That isn’t easy to do. Before they built the Tacoma Narrows Bridge, engineers calculated that it would perform well under its own weight and the weight of the traffic it was to carry. That sort of projection often gets us into trouble, because once people convince themselves that they have imagined the worst then they stop imagining more possibilities. The engineers didn’t consider the possibility that wind could set up a wave in the deck of the suspension bridge that would, if sustained, shake the thing apart, but that’s exactly what happened on November 7, 1940, only four months after it opened to traffic. Their thinking was trapped in experience, depending on past successes and failures for models of what could go wrong. I’ll explore later how worst case thinking expands and contracts the imagination. For now, I just want to make the point that prospective worst case thinking is doomed to failure, in an absolute sense, because the mere act of imagining a worst case renders it something less of one. An emergency planner captured the idea well when he said, “People who are terrorists and sociopaths don’t have the normal thinking we have, so they would imagine things that would never occur to most of us. I would never say, ‘Oh, yeah, we’re as prepared as we can be.’ ”13 Forward-looking worst case creation isn’t just about terrorists. Millennialists, millenarians, and other religiously inspired apocalyptics do it when they look forward to the end of the world. Organizations do it too, when they make plans and scenarios for chemical facilities, such as those noted above or the contingency plans the U.S. Army has developed in case of a major mishap at its facilities for destroying our chemical weapons stockpile. To look at prospective worst cases is to look at how people think about and judge the future and their place in it.

#### Fear-driven anxiety is vital to affective agency

Susan McManus 11, Lecturer in Political Theory at Queen’s University, "Hope, Fear, and the Politics of Affective Agency", Volume 14, Issue 4, muse.jhu.edu/journals/theory\_and\_event/v014/14.4.mcmanus.html

Finally, if fear is a predominant affective formation in the political present, how can hope and fear be oriented together? Utopian-affect does not efface fear, but instead, inflects fear differently than hitherto. Restructuring or depathologizing fear-affects involves work on the sensory organization of all the different kinds of matter that affect agential capacity: affect circulates through various encounters of worldly matter and stuff through which subject finds itself manifest within. One way of restructuring fear-affect, then, is by intervening in the feedback loops through which fear is stabilized. This might involve turning the technologies that are central to the production of fear against themselves: when protesters use surveillance technologies against police, for instance, the feedback loops that those technologies sustain are interrupted, and the hegemonies they secure are disrupted, rendered capricious, variable, and open to intervention. Fear need not be ubiquitous, and visceral experimentation with our everyday sensorium can have effects upon the 'tone' of the age. Negri is, after all, right: hope is an 'an antidote to ... fear,' (Brown et al, 2002: 200); but only insofar as the antidote (hope) is made out of the same matter as the poison (fear). This illustrates the larger point that the future needs to be made out of matter that is available in the present, out of the same crises, but with different trajectories: it is from the matter of this world that the future is made. Utopian-affect, then, is made out of both hope and fear, and while fear might be restructured, it cannot be effaced, for the fear of utopian-affect also inheres in the encounter with the world itself, in the struggle, and in the uncertainty of the emergent. As Duggan puts it, 'there is fear attached to hope -- hope understood as a risky reaching out for something else that will fail,' (Duggan and Muñoz, 2009: 279). Fear and anxiety, rather than opposing utopian hope, are vital, necessary to its critical agency, as that agency works through immanent historical processes that remain open and undetermined.

#### Perm solves best---affect theorists overstate their case, must be considered in conjunction with communication/subjectivity

William Egginton 12, Andrew W Mellon Professor in the Humanities at John Hopkins University, "Affective Disorder", Volume 40, Number 4, Winter, muse.jhu.edu/journals/diacritics/v040/40.4.egginton.html

As we have seen, a great appeal of Deleuzian affect theory has been its promise of a kind of short circuit between experience and bodies that bypasses subjectivity and its attendant limitations63 —the ego, ethnocentrism, gender bias, the list goes on—touching on an implicit ethical dividend, insofar as subjective capture seems counterproductive to real engagement with otherness in almost any form. But as we've also seen, the same [End Page 36] early modern attempts to ground ethics in experience that so influenced Deleuze reveal in striking detail how the limits of subjectivity cleave to the problem of ethics at its very core. In fact, not only does it seem impossible to link the transmission of affect to an ethical project without the mediation of subjectivity, subjectivity and its inherent auto-alienation may well be intrinsic to affective experience. At its best, the turn to affect has reminded theorists of communication in all its forms, from the political to the psychological to the literary, that when humans communicate they do so through their bodies, and that the affective dimension of this embodied communication often exceeds the grasp and dominion of cognitive processes. But as often occurs with intellectual trends, the enthusiasts of affect have at times overstated their case, asserting a promise for their theoretical endeavors that not only exceeds their possibilities, but also undermines the very real pertinence of neurological studies of affect to vital questions in philosophy, psychology, and the study of literature, art, and culture. It behooves us, in the end, not to consider affect as an opponent to subjectivity, but instead to understand how deeply related the two are. "I feel, therefore I am,"64 wrote the Cuban novelist and theorist Alejo Carpentier in the context of his El recurso del método (Recourse of Method), a novel whose rationale from the title onward is a parody and response to Cartesian thought; to which one can only note how even this most basic expression of the primordial kinship between feeling and being seems sutured, at its core, to that solitary vowel that marks the subject's feeling minimal exclusion from the surrounding world. [End Page 37]

#### Structural violence is improving now, there’s no TRADEOFF between focus on war and structural violence, and our impacts turn theirs

Zack Beauchamp 12/11, “5 Reasons Why 2013 Was The Best Year In Human, Reporter/Blogger for ThinkProgress.org. He previously contributed to Andrew Sullivan’s The Dish at Newsweek/Daily Beast, and has also written for Foreign Policy and Tablet magazines, holds B.A.s in Philosophy and Political Science from Brown University and an M.Sc in International Relations from the London School of Economics, http://thinkprogress.org/security/2013/12/11/3036671/2013-certainly-year-human-history/#

Between the brutal civil war in Syria, the government shutdown and all of the deadly dysfunction it represents, the NSA spying revelations, and massive inequality, it’d be easy to for you to enter 2014 thinking the last year has been an awful one. But you’d be wrong. We have every reason to believe that 2013 was, in fact, the best year on the planet for humankind. Contrary to what you might have heard, virtually all of the most important forces that determine what make people’s lives good — the things that determine how long they live, and whether they live happily and freely — are trending in an extremely happy direction. While it’s possible that this progress could be reversed by something like runaway climate change, the effects will have to be dramatic to overcome the extraordinary and growing progress we’ve made in making the world a better place. Here’s the five big reasons why. 1. Fewer people are dying young, and more are living longer. The greatest story in recent human history is the simplest: we’re winning the fight against death. “There is not a single country in the world where infant or child mortality today is not lower than it was in 1950,” writes Angus Deaton, a Princeton economist who works on global health issues. The most up-to-date numbers on global health, the 2013 World Health Organization (WHO) statistical compendium, confirm Deaton’s estimation. Between 1990 and 2010, the percentage of children who died before their fifth birthday dropped by almost half. Measles deaths declined by 71 percent, and both tuberculosis and maternal deaths by half again. HIV, that modern plague, is also being held back, with deaths from AIDS-related illnesses down by 24 percent since 2005. In short, fewer people are dying untimely deaths. And that’s not only true in rich countries: life expectancy has gone up between 1990 and 2011 in every WHO income bracket. The gains are even more dramatic if you take the long view: global life expectancy was 47 in the early 1950s, but had risen to 70 — a 50 percent jump — by 2011. For even more perspective, the average Briton in 1850 — when the British Empire had reached its apex — was 40. The average person today should expect to live almost twice as long as the average citizen of the world’s wealthiest and most powerful country in 1850. In real terms, this means millions of fewer dead adults and children a year, millions fewer people who spend their lives suffering the pains and unfreedoms imposed by illness, and millions more people spending their twilight years with loved ones. And the trends are all positive — “progress has accelerated in recent years in many countries with the highest rates of mortality,” as the WHO rather bloodlessly put it. What’s going on? Obviously, it’s fairly complicated, but the most important drivers have been technological and political innovation. The Enlightenment-era advances in the scientific method got people doing high-quality research, which brought us modern medicine and the information technologies that allow us to spread medical breakthroughs around the world at increasingly faster rates. Scientific discoveries also fueled the Industrial Revolution and the birth of modern capitalism, giving us more resources to devote to large-scale application of live-saving technologies. And the global spread of liberal democracy made governments accountable to citizens, forcing them to attend to their health needs or pay the electoral price. We’ll see the enormously beneficial impact of these two forces, technology and democracy, repeatedly throughout this list, which should tell you something about the foundations of human progress. But when talking about improvements in health, we shouldn’t neglect foreign aid. Nations donating huge amounts of money out of an altruistic interest in the welfare of foreigners is historically unprecedented, and while not all aid has been helpful, health aid has been a huge boon. Even Deaton, who wrote one of 2013′s harshest assessments of foreign aid, believes “the case for assistance to fight disease such as HIV/AIDS or smallpox is strong.” That’s because these programs have demonstrably saved lives — the President’s Emergency Plan for AIDS Relief (PEPFAR), a 2003 program pushed by President Bush, paid for anti-retroviral treatment for over 5.1 million people in the poor countries hardest-hit by the AIDS epidemic. So we’re outracing the Four Horseman, extending our lives faster than pestilence, war, famine, and death can take them. That alone should be enough to say the world is getting better. 2. Fewer people suffer from extreme poverty, and the world is getting happier. There are fewer people in abject penury than at any other point in human history, and middle class people enjoy their highest standard of living ever. We haven’t come close to solving poverty: a number of African countries in particular have chronic problems generating growth, a nut foreign aid hasn’t yet cracked. So this isn’t a call for complacency about poverty any more than acknowledging victories over disease is an argument against tackling malaria. But make no mistake: as a whole, the world is much richer in 2013 than it was before. 721 million fewer people lived in extreme poverty ($1.25 a day) in 2010 than in 1981, according to a new World Bank study from October. That’s astounding — a decline from 40 to about 14 percent of the world’s population suffering from abject want. And poverty rates are declining in every national income bracket: even in low income countries, the percentage of people living in extreme poverty ($1.25 a day in 2005 dollars) a day gone down from 63 in 1981 to 44 in 2010. We can be fairly confident that these trends are continuing. For one thing, they survived the Great Recession in 2008. For another, the decline in poverty has been fueled by global economic growth, which looks to be continuing: global GDP grew by 2.3 percent in 2012, a number that’ll rise to 2.9 percent in 2013 according to IMF projections. The bulk of the recent decline in poverty comes form India and China — about 80 percent from China \*alone\*. Chinese economic and social reform, a delayed reaction to the mass slaughter and starvation of Mao’s Cultural Revolution, has been the engine of poverty’s global decline. If you subtract China, there are actually more poor people today than there were in 1981 (population growth trumping the percentage declines in poverty). But we shouldn’t discount China. If what we care about is fewer people suffering the misery of poverty, then it shouldn’t matter what nation the less-poor people call home. Chinese growth should be celebrated, not shunted aside. The poor haven’t been the only people benefitting from global growth. Middle class people have access to an ever-greater stock of life-improving goods. Televisions and refrigerators, once luxury goods, are now comparatively cheap and commonplace. That’s why large-percentage improvements in a nation’s GDP appear to correlate strongly with higher levels of happiness among the nation’s citizens; people like having things that make their lives easier and more worry-free. Global economic growth in the past five decades has dramatically reduced poverty and made people around the world happier. Once again, we’re better off. 3. War is becoming rarer and less deadly. APTOPIX Mideast Libya CREDIT: AP Photo/ Manu Brabo Another massive conflict could overturn the global progress against disease and poverty. But it appears war, too, may be losing its fangs. Steven Pinker’s 2011 book The Better Angels Of Our Nature is the gold standard in this debate. Pinker brought a treasure trove of data to bear on the question of whether the world has gotten more peaceful, and found that, in the long arc of human history, both war and other forms of violence (the death penalty, for instance) are on a centuries-long downward slope. Pinker summarizes his argument here if you don’t own the book. Most eye-popping are the numbers for the past 50 years; Pinker finds that “the worldwide rate of death from interstate and civil war combined has juddered downward…from almost 300 per 100,000 world population during World War II, to almost 30 during the Korean War, to the low teens during the era of the Vietnam War, to single digits in the 1970s and 1980s, to less than 1 in the twenty-ﬁrst century.” Here’s what that looks like graphed: Pinker CREDIT: Steven Pinker/The Wall Street Journal So it looks like the smallest percentage of humans alive since World War II, and in all likelihood in human history, are living through the horrors of war. Did 2013 give us any reason to believe that Pinker and the other scholars who agree with him have been proven wrong? Probably not. The academic debate over the decline of war really exploded in 2013, but the “declinist” thesis has fared pretty well. Challenges to Pinker’s conclusion that battle deaths have gone down over time have not withstood scrutiny. The most compelling critique, a new paper by Bear F. Braumoeller, argues that if you control for the larger number of countries in the last 50 years, war happens at roughly the same rates as it has historically. There are lots of things you might say about Braumoeller’s argument, and I’ve asked Pinker for his two cents (update: Pinker’s response here). But most importantly, if battle deaths per 100,000 people really has declined, then his argument doesn’t mean very much. If (percentage-wise) fewer people are dying from war, then what we call “war” now is a lot less deadly than “war” used to be. Braumoeller suggests population growth and improvements in battle medicine explain the decline, but that’s not convincing: tell me with a straight face that the only differences in deadliness between World War II, Vietnam, and the wars you see today is that there are more people and better doctors. There’s a more rigorous way of putting that: today, we see many more civil wars than we do wars between nations. The former tend to be less deadly than the latter. That’s why the other major challenge to Pinker’s thesis in 2013, the deepening of the Syrian civil war, isn’t likely to upset the overall trend. Syria’s war is an unimaginable tragedy, one responsible for the rare, depressing increase in battle deaths from 2011 to 2012. However, the overall 2011-2012 trend “fits well with the observed long-term decline in battle deaths,” according to researchers at the authoritative Uppsala Conflict Data Program, because the uptick is not enough to suggest an overall change in trend. We should expect something similar when the 2013 numbers are published. Why are smaller and smaller percentages of people being exposed to the horrors of war? There are lots of reasons one could point to, but two of the biggest ones are the spread of democracy and humans getting, for lack of a better word, better. That democracies never, or almost never, go to war with each other is not seriously in dispute: the statistical evidence is ridiculously strong. While some argue that the “democratic peace,” as it’s called, is caused by things other than democracy itself, there’s good experimental evidence that democratic leaders and citizens just don’t want to fight each other. Since 1950, democracy has spread around the world like wildfire. There were only a handful of democracies after World War II, but that grew to roughly 40 percent of all by the end of the Cold War. Today, a comfortable majority — about 60 percent — of all states are democracies. This freer world is also a safer one. Second — and this is Pinker’s preferred explanation — people have developed strategies for dealing with war’s causes and consequences. “Human ingenuity and experience have gradually been brought to bear,” Pinker writes, “just as they have chipped away at hunger and disease.” A series of human inventions, things like U.N. peacekeeping operations, which nowadays are very successful at reducing violence, have given us a set of social tools increasingly well suited to reducing the harm caused by armed conflict. War’s decline isn’t accidental, in other words. It’s by design. 4. Rates of murder and other violent crimes are in free-fall. Britain Unrest CREDIT: Akira Suemori/AP Photos Pinker’s trend against violence isn’t limited just to war. It seems likes crimes, both of the sort states commit against their citizens and citizens commit against each other, are also on the decline. Take a few examples. Slavery, once commonly sanctioned by governments, is illegal everywhere on earth. The use of torture as legal punishment has gone down dramatically. The European murder rate fell 35-fold from the Middle Ages to the beginning of the 20th century (check out this amazing 2003 paper from Michael Eisner, who dredged up medieval records to estimate European homicide rates in the swords-and-chivalry era, if you don’t believe me). The decline has been especially marked in recent years. Though homicide crime rates climbed back up from their historic lows between the 1970s and 1990s, reversing progress made since the late 19th century, they have collapsed worldwide in the 21st century. 557,000 people were murdered in 2001 — almost three times as many as were killed in war that year. In 2008, that number was 289,000, and the homicide rate has been declining in 75 percent of nations since then. Statistics from around the developed world, where numbers are particularly reliable, show that it’s not just homicide that’s on the wane: it’s almost all violent crime. US government numbers show that violent crime in the United States declined from a peak of about 750 crimes per 100,000 Americans to under 450 by 2009. G7 as a whole countries show huge declines in homicide, robbery, and vehicle theft. So even in countries that aren’t at poor or at war, most people’s lives are getting safer and more secure. Why? We know it’s not incarceration. While the United States and Britain have dramatically increased their prison populations, others, like Canada, the Netherlands, and Estonia, reduced their incarceration rates and saw similar declines in violent crime. Same thing state-to-state in the United States; New York imprisoned fewer people and saw the fastest crime decline in the country. The Economist’s deep dive into the explanations for crime’s collapse provides a few answers. Globally, police have gotten better at working with communities and targeting areas with the most crime. They’ve also gotten new toys, like DNA testing, that make it easier to catch criminals. The crack epidemic in the United States and its heroin twin in Europe have both slowed down dramatically. Rapid gentrification has made inner-city crime harder. And the increasing cheapness of “luxury” goods like iPods and DVD players has reduced incentives for crime on both the supply and demand sides: stealing a DVD player isn’t as profitable, and it’s easier for a would-be thief to buy one in the first place. But there’s one explanation The Economist dismissed that strikes me as hugely important: the abolition of lead gasoline. Kevin Drum at Mother Jones wrote what’s universally acknowledged to be the definitive argument for the lead/crime link, and it’s incredibly compelling. We know for a fact that lead exposure damages people’s brains and can potentially be fatal; that’s why an international campaign to ban leaded gasoline started around 1970. Today, leaded gasoline is almost unheard of — it’s banned in 175 countries, and there’s been a decline in lead blood levels by about 90 percent. Drum marshals a wealth of evidence that the parts of the brain damaged by lead are the same ones that check people’s aggressive impulses. Moreover, the timing matches up: crime shot up in the mid-to-late-20th century as cars spread around the world, and started to decline in the 70s as the anti-lead campaign was succeeding. Here’s close the relationship is, using data from the United States: Lead\_Crime\_325 Now, non-homicide violent crime appears to have ticked up in 2012, based on U.S. government surveys of victims of crime, but it’s very possible that’s just a blip: the official Department of Justice report says up-front that “the apparent increase in the rate of violent crimes reported to police from 2011 to 2012 was not statistically significant.” So we have no reason to believe crime is making a come back, and every reason to believe the historical decline in criminal violence is here to stay. 5. There’s less racism, sexism, and other forms of discrimination in the world. Nelson Mandela CREDIT: Theana Calitz/AP Images Racism, sexism, anti-Semitism, homophobia, and other forms of discrimination remain, without a doubt, extraordinarily powerful forces. The statistical and experimental evidence is overwhelming — this irrefutable proof of widespread discrimination against African-Americans, for instance, should put the “racism is dead” fantasy to bed. Yet the need to combat discrimination denial shouldn’t blind us to the good news. Over the centuries, humanity has made extraordinary progress in taming its hate for and ill-treatment of other humans on the basis of difference alone. Indeed, it is very likely that we live in the least discriminatory era in the history of modern civilization. It’s not a huge prize given how bad the past had been, but there are still gains worth celebrating. Go back 150 years in time and the point should be obvious. Take four prominent groups in 1860: African-Americans were in chains, European Jews were routinely massacred in the ghettos and shtetls they were confined to, women around the world were denied the opportunity to work outside the home and made almost entirely subordinate to their husbands, and LGBT people were invisible. The improvements in each of these group’s statuses today, both in the United States and internationally, are incontestable. On closer look, we have reason to believe the happy trends are likely to continue. Take racial discrimination. In 2000, Harvard sociologist Lawrence Bobo penned a comprehensive assessment of the data on racial attitudes in the United States. He found a “national consensus” on the ideals of racial equality and integration. “A nation once comfortable as a deliberately segregationist and racially discriminatory society has not only abandoned that view,” Bobo writes, “but now overtly positively endorses the goals of racial integration and equal treatment. There is no sign whatsoever of retreat from this ideal, despite events that many thought would call it into question. The magnitude, steadiness, and breadth of this change should be lost on no one.” The norm against overt racism has gone global. In her book on the international anti-apartheid movement in the 1980s, Syracuse’s Audie Klotz says flatly that “the illegitimacy of white minority rule led to South Africa’s persistent diplomatic, cultural, and economic isolation.” The belief that racial discrimination could not be tolerated had become so widespread, Klotz argues, that it united the globe — including governments that had strategic interests in supporting South Africa’s whites — in opposition to apartheid. In 2011, 91 percent of respondents in a sample of 21 diverse countries said that equal treatment of people of different races or ethnicities was important to them. Racism obviously survived both American and South African apartheid, albeit in more subtle, insidious forms. “The death of Jim Crow racism has left us in an uncomfortable place,” Bobo writes, “a state of laissez-faire racism” where racial discrimination and disparities still exist, but support for the kind of aggressive government policies needed to address them is racially polarized. But there’s reason to hope that’ll change as well: two massive studies of the political views of younger Americans by my TP Ideas colleagues, John Halpin and Ruy Teixeira, found that millenials were significantly more racially tolerant and supportive of government action to address racial disparities than the generations that preceded them. Though I’m not aware of any similar research of on a global scale, it’s hard not to imagine they’d find similar results, suggesting that we should have hope that the power of racial prejudice may be waning. The story about gender discrimination is very similar: after the feminist movement’s enormous victories in the 20th century, structural sexism still shapes the world in profound ways, but the cause of gender equality is making progress. In 2011, 86 percent of people in a diverse 21 country sample said that equal treatment on the basis of gender was an important value. The U.N.’s Human Development Report’s Gender Inequality Index — a comprehensive study of reproductive health, social empowerment, and labor market equity — saw a 20 percent decline in observable gender inequalities from 1995 to 2011. IMF data show consistent global declines in wage disparities between genders, labor force participation, and educational attainment around the world. While enormous inequality remains, 2013 is looking to be the worst year for sexism in history. Finally, we’ve made astonishing progress on sexual orientation and gender identity discrimination — largely in the past 15 years. At the beginning of 2003, zero Americans lived in marriage equality states; by the end of 2013, 38 percent of Americans will. Article 13 of the European Community Treaty bans discrimination on the grounds of sexual orientation, and, in 2011, the UN Human Rights Council passed a resolution committing the council to documenting and exposing discrimination on orientation or identity grounds around the world. The public opinion trends are positive worldwide: all of the major shifts from 2007 to 2013 in Pew’s “acceptance of homosexuality” poll were towards greater tolerance, and young people everywhere are more open to equality for LGBT individuals than their older peers. best\_year\_graphics-04 Once again, these victories are partial and by no means inevitable. Racism, sexism, homophobia, and other forms of discrimination aren’t just “going away” on their own. They’re losing their hold on us because people are working to change other people’s minds and because governments are passing laws aimed at promoting equality. Positive trends don’t mean the problems are close to solved, and certainly aren’t excuses for sitting on our hands. That’s true of everything on this list. The fact that fewer people are dying from war and disease doesn’t lessen the moral imperative to do something about those that are; the fact that people are getting richer and safer in their homes isn’t an excuse for doing more to address poverty and crime. But too often, the worst parts about the world are treated as inevitable, the prospect of radical victory over pain and suffering dismissed as utopian fantasy. The overwhelming force of the evidence shows that to be false. As best we can tell, the reason humanity is getting better is because humans have decided to make the world a better place. We consciously chose to develop lifesaving medicine and build freer political systems; we’ve passed laws against workplace discrimination and poisoning children’s minds with lead. So far, these choices have more than paid off. It’s up to us to make sure they continue to.

### Anthro K

#### Prioritize human existence --- we’re the only species that can protect the entire biosphere from inevitable asteroid strikes --- vegetarianism is I/E in the long term and the lives we kill in the interim are OUTWEIGHED by asteroid extinction --- BOOM!

Matheny 9 (Jason Gaverick, research associate with the Future of Humanity Institute at Oxford University, where his work focuses on technology forecasting and risk assessment - particularly of global catastrophic risks and existential risks, Sommer Scholar and PhD candidate in Applied Economics at Johns Hopkins University, March 14, “Ought we worry about human extinction? [1]”, http://jgmatheny.org/extinctionethics.htm)

At the same time, we’re probably the only animal on Earth that routinely demonstrates compassion for other species. Such compassion is nearly universal in developed countries but we usually know too little, too late, for deeply ingrained habits, such as diets, to change. If improvements in other public morals were possible without any significant biological change in human nature, then the same should be true for our treatment of nonhuman animals, though it will take some time. Even without any change in public morals, it seems unlikely we will continue to use animals for very long – at least, nowhere near 50 billion per year. Our most brutal use of animals results not from sadism but from old appetites now satisfied with inefficient technologies that have not fundamentally changed in 10,000 years. Ours is the first century where newer technologies -- plant or in vitro meats, or meat from brainless animals -- could satisfy human appetites for meat more efficiently and safely (Edelman et al, 2005). As these technologies mature and become cheaper, they will likely replace conventional meat. If the use of sentient animals survives much beyond this century, we should be very surprised. This thought is a cure for misanthropy. As long as most humans in the future don't use sentient animals, the vast number of good lives we can create would outweigh any sins humanity has committed or is likely to commit. Even if it takes a century for animal farming to be replaced by vegetarianism (or in vitro meats or brainless farm animals), the century of factory farming would represent around 10^12 miserable life-years. That is one-billionth of the 10^21 animal life-years humanity could save by protecting Earth from asteroids for a billion years. The century of industrialized animal use would thus be the equivalent of a terrible pain that lasts one second in an otherwise happy 100-year life. **To accept human extinction now would be like** committing suicide to end an unpleasant itch**.** If human life is extinguished, all known animal life will be extinguished when the Sun enters its Red Giant phase, if not earlier. Despite its current mistreatment of other animals, humanity is the animal kingdom’s best long-term hope for survival.

#### Alt fails --- it’s utopian to expect every human to suddenly embrace animal equality --- prefer pragmatic steps like the plan

Light 2 [Light, Andrew, Assistant Professor of Environmental Philosophy and Director, Environmental Conservation Education Program, 2002 (Environmental Ethics: What Really Matters What Really Works David Schmidtz and Elizabeth Willott, p. 556-57)]

In recent years a critique of this predominant trend in environmental ethics has emerged from within the pragmatist tradition in American philosophy.' The force of this critique is driven by the intuition that environmental philosophy cannot afford to be qui­escent about the public reception of ethical argu­ments over the value of nature. The original moti­vations of environmental philosophers for turning their philosophical insights to the environment sup­port such a position., Environmental philosophy evolved out of a concern about the state of the grow­ing environmental crisis, and a conviction that a philosophical contribution could be made to the res­olution of this crisis. But if environmental philoso­phers spend all of their time debating non­-human centered forms of value theory they will ar­guably never get very far in making such a contri­bution. For example, to continue to ignore human motivations for the act of valuing nature causes many in the field to overlook the fact that most people find it very difficult to extend moral consideration to plants and animals on the grounds that these entities possess some form of intrinsic, inherent, or other­wise conceived nonanthropocentric value. It is even more difficult for people to recognize that non­humans could have rights. Claims about the value of nature as such do not appear to resonate with the or­dinary moral intuitions of most people who, after all, spend most of their livesthinking of value, moral obligations, and rights in exclusively human terms. Indeed, while most environmental philosophers be­gin their work with the assumption that most people think of value in human-centered terms (a problem that has been decried since the very early days of the field), few have considered the problem of how a non-human-centered approach to valuing nature can ever appeal to such human intuitions. The particular version of the pragmatist critique of environmental ethics that I have endorsed recognizes that we need to rethink the utility of anthropocentric arguments in environmental moral and political theory, not nec­essarily because the traditional nonanthropocentric arguments in the field are false, but because they hamper attempts to contribute to the public discus­sion of environmental problems, in terms familiar to the public.

The alternative dooms millions of animals to extinction

Michael Pollan 2, Professor of Journalism at UC-Berkeley, “An Animal’s Place,” The New York Times Magazine, 11-10-02, http://michaelpollan.com/articles-archive/an-animals-place/

For any animal, happiness seems to consist in the opportunity to express its creaturely character -- its essential pigness or wolfness or chickenness. Aristotle speaks of each creature's ''characteristic form of life.'' For domesticated species, the good life, if we can call it that, cannot be achieved apart from humans -- apart from our farms and, therefore, our meat eating. This, it seems to me, is where animal rightists betray a profound ignorance about the workings of nature. To think of domestication as a form of enslavement or even exploitation is to misconstrue the whole relationship, to project a human idea of power onto what is, in fact, an instance of mutualism between species. Domestication is an evolutionary, rather than a political, development. It is certainly not a regime humans imposed on animals some 10,000 years ago. Rather, domestication happened when a small handful of especially opportunistic species discovered through Darwinian trial and error that they were more likely to survive and prosper in an alliance with humans than on their own. Humans provided the animals with food and protection, in exchange for which the animals provided the humans their milk and eggs and -- yes -- their flesh. Both parties were transformed by the relationship: animals grew tame and lost their ability to fend for themselves (evolution tends to edit out unneeded traits), and the humans gave up their hunter-gatherer ways for the settled life of agriculturists. (Humans changed biologically, too, evolving such new traits as a tolerance for lactose as adults.) From the animals' point of view, the bargain with humanity has been a great success, at least until our own time. Cows, pigs, dogs, cats and chickens have thrived, while their wild ancestors have languished. (There are 10,000 wolves in North America, 50,000,000 dogs.) Nor does their loss of autonomy seem to trouble these creatures. It is wrong, the rightists say, to treat animals as ''means'' rather than ''ends,'' yet the happiness of a working animal like the dog consists precisely in serving as a ''means.'' Liberation is the last thing such a creature wants. To say of one of Joel Salatin's caged chickens that ''the life of freedom is to be preferred'' betrays an ignorance about chicken preferences -- which on this farm are heavily focused on not getting their heads bitten off by weasels. But haven't these chickens simply traded one predator for another -- weasels for humans? True enough, and for the chickens this is probably not a bad deal. For brief as it is, the life expectancy of a farm animal would be considerably briefer in the world beyond the pasture fence or chicken coop. A sheep farmer told me that a bear will eat a lactating ewe alive, starting with her udders. ''As a rule,'' he explained, ''animals don't get 'good deaths' surrounded by their loved ones.'' The very existence of predation -- animals eating animals -- is the cause of much anguished hand-wringing in animal rights circles. ''It must be admitted,'' Singer writes, ''that the existence of carnivorous animals does pose one problem for the ethics of Animal Liberation, and that is whether we should do anything about it.'' Some animal rightists train their dogs and cats to become vegetarians. (Note: cats will require nutritional supplements to stay healthy.) Matthew Scully calls predation ''the intrinsic evil in nature's design . . . among the hardest of all things to fathom.'' Really? A deep Puritan streak pervades animal rights activists, an abiding discomfort not only with our animality, but with the animals' animality too.

#### Perm---do both---you can endorse the 1AC to avoid needless short-term suffering, while acknowledging that civilization is doomed---the perm is key to value the lives of those who are dying now

Allison Cobb 13, “The luxury of learning to die,” http://allisoncobb.net/2013/11/12/the-luxury-of-learning-to-die/

Once we understand, he says, that our civilization is already dead—meaning, no longer tenable—we “can get down to the hard work of adapting, with mortal humility, to our new reality.” I realized I found that comforting, uplifting even, in the same melancholy way that gazing over ruins uplifted Romantic poets. If the end has already happened, well, the danger has passed, and we can get on with mourning and rebuilding. One thing about the death of civilization, though—all these individual deaths keep haunting me. You know, the ones going on right now in the Philippines, hit two days before Scranton published his op-ed in the Times by one of the largest typhoons ever recorded. Here is the Filipino climate chief tearfully calling the world to act at the UN Climate Conference going on now in Poland. Scranton has faced his own death. He was a soldier in Iraq. According to his essay, he faced his individual death admirably, with philosophy to help him. I’ve never experienced the kind of threat he lived through—and I hope never to—so I can’t say anything about it. Scranton notes, however, that even facing death he was “statistically” … “pretty safe,” given his membership in “the most powerful military the world has ever seen.” He only glancingly mentions the fate of Iraqis, more than one hundred thousand of whom have died since 2003, and he barely alludes to deaths from Hurricane Katrina, where he watched on TV the same chaos and collapse he had seen in Baghdad, complete with uniformed officers shooting civilians. Scranton glances past them, but there they are, the lives. They demand some response from us, don’t they? While those of us who have the luxury are learning how to die, what do we do about all the people who are actually dying?

#### Perm solves best---non-human-centric ethics can be combined with a concern for future generations---convergence theory proves both are effective routes to valuing nonhumans

Neil Carter 8, Prof of Politics at the University of York, “The Politics of the Environment: Ideas, Activism, Policy,” page 35, google books

This observation resonates with the ‘convergence thesis’ outlined by Norton (1991).20 He argues that the differences between opposing wings of the environment movement are more apparent than real: in particular, although ecocentric and anthropocentric defences of the non-human world may come from different starting points and apply different value systems, they can end up producing more or less similar solutions. Norton emphasizes the importance of anthropocentric arguments that act in the interests of future generations (see Box 3.4):¶ introducing the idea that other species have intrinsic value, that humans should be ‘fair’ to all other species, provides no operationally recognizable constraints on human behaviour that are not already implicit in the generalized, cross-temporal obligations to protect a healthy, complex, and autonomously functioning system for the benefit of future generations of human beings. Deep ecologists, who cluster around the principle that nature has independent value, should therefore not differ from longsighted anthropocentrists in their policy goals for the protection of biological diversity. (Norton 1991: 226-7)¶ The policy convergence that Norton perceives between ecocentrics and future-generation anthropocentric perspectives provides a good illustration of value eclecticism in practice. From this perspective, rather than regarding ecocentrism as an attempt to replace conventional human-centered moral principles with a new framework that encompasses the natural world, it might be regarded as a new supplementary dimension that can contribute to a richer, more informed moral synthesis.

#### No root cause---particulars of each case must be accounted for

Azar Gat 9, Chair of the Department of Political Science at Tel Aviv University, “So Why Do People Fight? So Why Do People Fight? Evolutionary Theory and the Causes of War”, European Journal of International Relations 2009 15: 571-599

This article’s contribution is two-pronged: it argues that IR theory regarding the causes of conflict and war is deeply flawed, locked for decades in ultimately futile debates over narrow, misconstrued concepts; this conceptual confusion is untangled and the debate is transcended once a broader, comprehensive, and evolutionarily informed perspective is adopted. Thus attempts to find the root cause of war in the nature of either the individual, the state, or the international system are fundamentally misplaced. In all these ‘levels’ there are necessary but not sufficient causes for war, and **the whole cannot be broken into pieces**.13 People’s needs and desires — which may be pursued violently — as well as the resulting quest for power and the state of mutual apprehension which fuel the security dilemma are **all molded in human nature** (some of them existing only as options, potentials, and skills in a behavioral ‘tool kit’); they are so molded because of strong evolutionary pressures that have shaped humans in their struggle for survival over geological times, when all the above literally constituted matters of life and death. The violent option of human competition has been largely curbed within states, yet is occasionally taken up on a large scale between states because of the anarchic nature of the inter-state system. However, returning to step one, international anarchy in and of itself would not be an explanation for war were it not for the potential for violence in a fundamental state of competition over scarce resources that is imbedded in reality and, consequently, in human nature. The necessary and sufficient causes of war — that obviously have to be filled with the particulars of the case in any specific war — are thus as follows: politically organized actors that operate in an environment where no superior authority effectively monopolizes power resort to violence when they assess it to be their most cost-effective option for winning and/or defending evolution-shaped objects of desire, and/or their power in the system that can help them win and/or defend those desired goods.

#### Congress checks on exec terror policy prevents state of exception

Mitzen 11 Dr. Jennifer, Associate Professor of Political Science at Ohio State University and Michael Newell, PhD student in Political Science at the Maxwell School of Citizenship and Public Affairs, “Crisis Authority, the War on Terror and the Future of Constitutional Democracy,” JUROS Arts & Humanities Vol. 2, http://libeas01.it.ohio-state.edu/ojs/index.php/juros/article/download/1265/1791

As Benjamin Wittes notes, the “presidential power model has failed,” and “Only Congress can ultimately write the law of this long war” (Wittes, 2008). The pursuit of terrorist policies through the exception has not resulted in clear, transparent and legally correct outcomes because the exception has been entirely controlled by “unilateral presidential actions” (Wittes, 2008). Instead, Congress “can build comprehensive legal systems and do so in the name of the political system as a whole” (Wittes, 2008). What this would entail would be a “law of terrorism” that would “at once restrain and empower the executive branch” in its actions in the War on Terror (Wittes, 2008). Simply allowing the executive to continue to unilaterally decide the fate of suspected terrorists and anti-terrorism policy will prove Agamben correct: that the American system of checks on power has been replaced with the primacy of the executive. It should then be Congress’ goal to step forward and outline the exact legal policies in the War on Terror, allowing President Obama this role will only prolong the elements of the exception that Agamben has given such dire warnings about.¶ Conclusion¶ The state of exception has been the standard response to crises for American presidents and other world leaders since the emergence of constitutional law and democratic government. Its creation and longevity as a political and legal tool should not be surprising. Constitutional democracies were not and are not designed to have laws and rules governing every potential complication that the country could face. Instead, it has been consistently argued that exceptional times require exceptional measures. The use of these measures when the public is ready and willing to accept the securitizing speech-act almost invariably lead to breaches of the law, and in Agamben’s opinion the expansion of executive authority. The War on Terror has seemingly reinforced Agamben’s argument, as the breadth and magnitude of legal issues resulting from this war have made the legal recovery extremely complicated.¶ However, some scholars suggest that the War on Terror has actually undermined the ability of the sovereign to invoke the state of exception, stating that instead:¶ In so far as it pursues this end, the effect of such commentary is to compound efforts to curtail the experience of deciding on/in the exception – efforts that are already well under way at Guantánamo Bay. For notwithstanding all the liberal heartache that they provoke, the law and legal institutions of Guantánamo Bay are working to negate the exception (Johns, 2005).¶ Johns suggests that the policies of the War on Terror are leading towards a tendency to condemn the state of exception and crisis authority. Johns bases his argument in the abundance of legal scholarship calling for “a newly fashioned emergency regime” that would “rescue the concept [of emergency power] from fascist thinkers like Carl Schmitt” (Johns, 2005). This logic would suggest that Agamben’s prediction is not coming true, that the executive will now be limited by what actions they can pursue during future crises and that the legal authority acquired by the executive during the War on Terror has been ceded back to its designated proprietors.¶ But for Johns to be proven right, it requires a change in long established habits. Citizens cannot expect the executive to singularly react to any complication the country faces. Indeed, Agamben’s warnings and the results of the War on Terror suggest that doing so will continue to produce dissatisfying results at best, immoral quagmires at worst. For democracy and constitutional governance to survive, it is the responsibility of officials and citizens alike to adapt existing legal structures to novel threats, and to not rely on executive mandate alone.

#### Legal restrictions are effective policy tools and the aff’s technical approach is the best heuristic for mediating ethical concerns and legal manipulability---the alt’s moralism fails

Ioannis Kalpouzos 7, Professor of Law at The City Law School, "David Kennedy, Of War and Law", J Conflict Security Law, (2007) 12 (3): 485-492, jcsl.oxfordjournals.org/content/12/3/485.full

It is important, however, not to sweepingly and debilitatingly generalise discontent about the current situation. The structural disconnects of the legal system do not mean that law and legal language cannot be part of the solution. Actions and motives are abstracted in logical categories that seem to reflect a normative consensus or a structural status quo. Admittedly, the intercession of the law-creating process by the structural and conceptual wall of sovereignty differentiates it from the equivalent process in national legal orders. The often-described weaknesses of the international system, the absence of a sovereign to impose formal validity and the often-disheartening problems of enforcement are very real difficulties that plague international law and, especially, the laws of war. The stakes there may seem higher and the scrutinising process weaker. Such problems are sometimes intimidating for legal analysis, but should not be off-putting and they should not lead to disregard of the importance of law as a tool in the international system. To the extent that war is the continuation of politics with the admixture of other means, and that politics is the interaction between different actors in society, legal regulation of such an interaction, in peace or war, is possible and, indeed, necessary. The task might be discouragingly complex but the better the use of legal tools, the more accurate the observation of practice, and the more legitimate the processes of legal abstraction are, the more the rules will be valid and effective.¶ Ultimately, Kennedy's diagnosis warrants a prescription. The question that arises is, to which extent focusing on ‘lawfare’ holds interpretative value in order to address the issues at hand. Although the conflicts within legal concepts and among legal institutions cannot, of course, be resolved once and for all and although there will always be room for manipulation and instrumentalisation of the rules, any approach should seek to clarify the interrelations between concepts and actors. Kennedy does provide interesting insights on this interrelation, but he does so at a rather macroscopic level. The diagnosis of structural and conceptual confusion warrants a technical legal approach for dealing with the specific issues that arise from it. Formal legal thoroughness will never substitute personal moral choices, but it can be an important tool in the effort to minimise the uncertainty in the use of the rules and the weakness of the institutional structure. The law or even a formal expert consensus will never substitute the necessary choices by soldiers on the ground or by politicians deciding to wage war, but legal language provides a formal platform for claims to be supported and actions to be justified. This will not substitute the important moral choices, but it can ground them in a legal structure that reflects substantive core values and provides useful tools to assess them.¶ Furthermore, there is a fear that by focusing on ‘lawfare’ one can come very close to accept it. Accordingly, the relativisation of the formal validity of legal claims can clear the way for supporting utterly subjective decisions, allowing more powerful actors to manipulate the loopholes. The structural and substantive loopholes of the legal system are real enough, and Kennedy is right to point that out, but by accepting the practice of ‘lawfare’, a degree of unwarranted justification can be attached to the exploitation of these loopholes. This, arguably, will not work in favour of the cohesiveness of the legal system, especially in an area as legally contentious as the laws of war. Kennedy's disenchantment with the expert consensus and its practical use is perhaps understandable, and his exhortation to ‘experience politics as our vocation and responsibility as our fate’ (p. 172) is altogether laudable, but we need more than that. We need to know exactly how to assess decisions and actions on the ground, and professionalism in ‘lawfare’ and moral exhortations are not substitutes for legal analysis. Both the strengths and weaknesses of this book reinforce the need for a clearer understanding of the relevant legal rules, their interaction and the nature of the existing legal regime.

## 1AR

### Risk K

#### Affective approaches fail to mobilize or change politics

Jeff Pruchnic 8, Wayne State University, "The Invisible Gland: Affect and Political Economy", Volume 50, Number 1, Winter, muse.jhu.edu/journals/criticism/v050/50.1.pruchnic.html

These chapters on affective labor also most explicitly foreground the difficulty of integrating affect into theories of political economy and possibilities for political action. Although contributors ably map how affect creates value in contemporary capitalism, they struggle somewhat with determining the value of affect—or, more precisely, the value of affect theory—in changing our responses to economic and cultural practices. Granted, many of the authors explicitly position their projects as diagnostic rather than prescriptive in nature. Wissinger concludes by suggesting that thinking about “preindividual forces of affectivity and bodily energies” provides a “new angle” on how imagining technologies constitute bodies (255). [End Page 165] Ducey similarly defers focus on possible responses to affective labor, arguing that since affect “is not subject to the usual forms of measurement and analysis . . . the political responses its modulations call forth are emergent and unpredictable” (205). The essays that do focus most explicitly on such responses are, ironically, those in which theories of affective labor are a starting-off point rather than a consistent resource in their analysis. As such, their conclusions tend to follow descriptions of the new importance of affect in economics and culture with fairly traditional suggestions for intervention based on collective organization and political recognition. For example, Melissa Ditmore concludes her sharp analysis of the Dunbar Mahila Samanwanya Committee, an organization that promotes the safety and welfare of its sixty thousand Indian sex workers, by noting irony “in the fact that the DMSC works with immaterial affect laborers in the world’s oldest, but as yet unrecognized, profession to advance their cause at a far deeper, more meaningful and effective level than has been achieved by recognized workers in affect labor” (184). However, the productive interventions identified here are fairly traditional, and because of the relative singularity of what Ditmore calls “the world’s oldest form of affective labor” (both generally and particularly in India, where the laws governing sex work are fairly ambiguous), it is difficult to imagine how the examples given here might be translated to other forms of affective labor (such as health care, “women’s work,” and modeling, to use the other industries assayed in this subject cluster) (170). Similarly, David Staples contributes a notable argument that affective labor is best approached through a Bataillean general economy rather than a restricted political economy, but his conclusion suggests that the best response to the devaluation of “women’s work” is to quantify the time of that labor; drawing on Derrida’s work on gift economies, Staples states that although the “ethical duty or responsibility implicit in child care cannot be measured, or estimated, or valorized as such,” the “time of child care can,” and can also be rewarded based on its duration, a measure he sees occurring in the commodification of child care generally and in the 1999 rewriting of the constitution of Venezuela in particular (145). Both the conclusions marking the unpredictability of future response and those relying on fairly traditional strategies of intervention speak to the relative difficulty of following up analyses of the operations of affect with techniques for mobilizing affect productively.¶ All of which is to say, though Affective Turn does a better job of introducing readers to the central issues surrounding the study of affect in the humanities and social sciences than any single work I am aware of, [End Page 166] its value comes as much from the way it underscores sticking points or aporias in this work as from the individual accomplishments of its contributors. Indeed, the above concerns are perhaps better taken not as criticisms of Affective Turn but of the segment of “the affective turn” to which the authors are most commonly responding—work, notably that of Sedgwick and Massumi, that has positioned affect theory as a productive alternative to “critique” in its traditional sense: a “way out” of the ostensibly moribund focus on relationships of dominance and subversion and the identification of this or that phenomenon as ideologically or socially constructed. Certainly such an endeavor has had a salutary effect on the contemporary critical terrain, both through its emphasis on the often-neglected role of human physiology and nervous processes in human subjectivity and ideation, as well as its antagonism toward the idea that beliefs and predispositions can somehow be made privative or defused when exposed to rational critique. However, the question of how to deploy these insights within the traditionally “rational” ecology of research in the humanities and social scientists has proven to be a thornier issue.¶ One could, for instance, abandon traditional registers of academic criticism, as do the more experimental and autoethnographical chapters in Affective Turn. These works remain somewhat unsatisfying, however, because even though they may succeed in producing a “feeling” of or for the affective phenomena under review, the motivational or persuasive import to the work is much less clear. One could also simply emphasize the importance of affect as a critique of “critique” itself, as do Goldberg and Willse, who in their piece marvel that even after the impact of deconstruction, “academic scholarship continues to engage media objects as exterior, applying theory against them to interpret or reveal their meanings and truths” (265). Similarly, Bianco positions her work as an intervention into the dominance of psychoanalytical and ideological approaches to film criticism. Yet, I take it, though such paradigms have not necessarily entered “straw man” territory at this time, we are seeing diminishing returns on such calls as they continue to multiply. Perhaps most telling is the emphasis, behind these approaches and throughout much of the work within the volume, on affect as not only primary in many dimensions of experience but also, unlike experience itself, ultimately irreducible and “unrepresentable.”¶ Such an emphasis makes the critical edge of the majority of chapters more what we might code “aesthetic” than rhetorical, or more focused on the description of affects and affective processes rather than their possible manipulation. The influence for this approach, it seems, is at least partially Massumi’s “The Autonomy [End Page 167] of Affect,” which looms large over much of Affective Turn. The terms and phrases used there to describe affect and affective “intensity”—“unassimilable,” “outside expectation and adaptation” (85), “in excess of any narrative or function line” (87), “irreducible excess” (87)—are recurrently paraphrased and alluded to throughout the volume.2 In Affective Turn, as in Massumi’s article, such depictions, as much as they are meant to be in some way “post-postmodern,” seem to at least equally take us back to a certain type of pseudo-modernist aestheticism. Indeed, the references cited above ring most clearly as descriptions of “the sublime” more than anything else. Perhaps, as Negri contends in another oft-cited work that also emphasizes the “immeasurability” of affect, “the Sublime has become normal.”3 However, it seems we have yet to find the way to move from describing affective processes in aesthetic terms to producing strategies for mobilizing those processes, or, perhaps more precisely, how we might use our recognition of the affective dimension of politics to leverage affect for political purposes.

#### Catastrophes empirically cause a focus on practical solutions---denial is false

Robert Wuthnow 10, Gerhard Andlinger Prof of Sociology at Princeton, PhD in Sociology from Cal Berkeley, “Be Very Afraid: The Cultural Response to Terror, Pandemics, Environmental Devastation, Nuclear Annihilation, and Other Threats,” p. 21, google books

The notable feature of the perilous times that humanity has faced over the past half century is that the response has made them seem manageable enough that we roll up our collective sleeves and work on practical solutions. There have been relatively few panics involving spontaneous outbreaks of irrational behavior. Work, family life, and other routine activities have continued. Individuals have sometimes shouldered the small tasks of learning about impending crises and pitching in to support research or protect their families. These responsibilities, though, have seldom required great sacrifices on the part of large populations, at least not in the Western world. Social movements have emerged and policies have been affected, but regimes have rarely been toppled as a result. None of this can be understood simply as denial. Were denial the correct interpretation, billions would not have been spent on weapons, deterrence programs, research, and communication. Millions of readers and television viewers would not have paid attention to warnings and documentaries. People responded, but in ways that incorporated the problem solving into ordinary roles and competencies. Nor can the normality of the response be explained by arguing that the dangers envisioned generated little upheaval because they never happened. A nuclear holocaust did not occur, but enough destruction did take place that people could imagine the results. There were also chemical spills, accidents at nuclear plants, terrorist attacks, and natural disasters. Enough went wrong, even with well-intentioned planning, that danger could not be ignored. Indeed, it is truly surprising that more chaos, more panic, more soul searching, and more enervating fear did not ensue.

### Anthro K

#### “No value to life” doesn’t outweigh---prioritize existence because value is subjective and could improve in the future

Torbjörn Tännsjö 11, the Kristian Claëson Professor of Practical Philosophy at Stockholm University, 2011, “Shalt Thou Sometimes Murder? On the Ethics of Killing,” online: http://people.su.se/~jolso/HS-texter/shaltthou.pdf

I suppose it is correct to say that, if Schopenhauer is right, if life is never worth living, then according to utilitarianism we should all commit suicide and put an end to humanity. But this does not mean that, each of us should commit suicide. I commented on this in chapter two when I presented the idea that utilitarianism should be applied, not only to individual actions, but to collective actions as well.¶ It is a well-known fact that people rarely commit suicide. Some even claim that no one who is mentally sound commits suicide. Could that be taken as evidence for the claim that people live lives worth living? That would be rash. Many people are not utilitarians. They may avoid suicide because they believe that it is morally wrong to kill oneself. It is also a possibility that, even if people lead lives not worth living, they believe they do. And even if some may believe that their lives, up to now, have not been worth living, their future lives will be better. They may be mistaken about this. They may hold false expectations about the future.¶ From the point of view of evolutionary biology, it is natural to assume that people should rarely commit suicide. If we set old age to one side, it has poor survival value (of one’s genes) to kill oneself. So it should be expected that it is difficult for ordinary people to kill themselves. But then theories about cognitive dissonance, known from psychology, should warn us that we may come to believe that we live better lives than we do.¶ My strong belief is that most of us live lives worth living. However, I do believe that our lives are close to the point where they stop being worth living. But then it is at least not very far-fetched to think that they may be worth not living, after all. My assessment may be too optimistic.¶ Let us just for the sake of the argument assume that our lives are not worth living, and let us accept that, if this is so, we should all kill ourselves. As I noted above, this does not answer the question what we should do, each one of us. My conjecture is that we should not commit suicide. The explanation is simple. If I kill myself, many people will suffer. Here is a rough explanation of how this will happen: ¶ ... suicide “survivors” confront a complex array of feelings. Various forms of guilt are quite common, such as that arising from (a) the belief that one contributed to the suicidal person's anguish, or (b) the failure to recognize that anguish, or (c) the inability to prevent the suicidal act itself. Suicide also leads to rage, loneliness, and awareness of vulnerability in those left behind. Indeed, the sense that suicide is an essentially selfish act dominates many popular perceptions of suicide. ¶ The fact that all our lives lack meaning, if they do, does not mean that others will follow my example. They will go on with their lives and their false expectations — at least for a while devastated because of my suicide. But then I have an obligation, for their sake, to go on with my life. It is highly likely that, by committing suicide, I create more suffering (in their lives) than I avoid (in my life).

#### Anti-militarism movements won’t be effective---state cooption

Martin Shaw 12, University of Sussex international relations professor, “Twenty-First Century Militarism: A Historical-Sociological Framework” https://docs.google.com/document/d/18fiBRAMCllbfvY3IG1rj3sWsKiln43j\_dTL6I\_2W2DA/edit

The potential of all these issues to generate substantial anti-militarist movements will depend partly on the nexus between the experience of harm and effective surveillance. In Western societies, the distance of the population from the systematic excesses of 'their' militaries may mean that, despite more developed and open systems of surveillance, even the repeated exposure of atrocities (which has been seen in the wars since 2001) may continue to fall short of what is required for extensive anti-militarist action. In the societies which are most directly experiencing the excesses of military power, in contrast, the weakness of domestic surveillance institutions in the face of powerful (semi-)authoritarian regimes, compounded by the distance of global surveillance institutions, will often restrict the possibilities of anti-militarism. The contrasting circumstances of anti-militarist movements reflect the differences between indirect, ideological and direct, practical experiences of armed force, but also how they are mediated by socio-economic, political and ideological forces. Thus the new relations of militarism involve many sites of contradiction, but how, where and when these will generate large-scale opposition remains unclear. Social-scientific analysis, such as that proposed in this chapter, can help to elucidate the contradictions and clarify the conditions of action, but it is for the actors to define their practical possibilities.