### Case

#### Multiple conceded impacts

#### Collapse of drone wars causes collapse of strategic stability because states will engage in drone overflights---causes nuke war

#### Second, permissive drone norms lead to power disparities between drone haves and have-nots---causes oppression of weaker states and internal dissenters which turns the Ks

#### Third is preventive strike norm causes the US and other powers to lashout globally---that both causes nuclear escalation and exposes people in less powerful states to unchecked intervention which also turns the K

#### Also conceded norms on war constrain escalation---that’s Vasquez---puts a cap on impact magnitude for any of their K’s

#### Bush was unsuccessful in creating a new norm

Johanne Glavind 11, currently Assistant Prof in the Dept of Poli Sci and Govt at Aarhus University, 3 January 2011, “Can Great Powers Change Fundamental Norms?” dissertation for PhD in Political Science, http://politica.dk/fileadmin/politica/Dokumenter/ph.d.-afhandlinger/johanne\_glavind.pdf

The analysis shows that the Bush administration did not succeed in its norm challenge, as the new norm on preventive force did not make it beyond the stage of emergence in the process of norm evolvement. The Bush administration’s decision to apply the new norm on Iraq met considerable opposition from a majority of the states in the UN, by international organisations, great powers and so-called vulnerable states. In general, the new norm was dismissed on the basis that it undermined international law and would lead to a dangerous use of force. In other words, it was seen as highly illegal and illegitimate and as destabilising the order of international society.

#### Legal restrictions work

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

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

#### Ex post solves

Paul Taylor 13, Senior Fellow at the Center for Policy & Research with a focus on national security policy, international relations, targeted killings, and drone operations, JD from Seton Hall University School of Law, “A FISC for Drones?” http://transparentpolicy.org/2013/02/a-fisc-for-drones/

Judges would likely be much more comfortable with ex post review. Ex post review would free them from any implication that they are issuing a “death warrant” and would place them in a position that they are much more comfortable with: reviewing executive uses of force after the fact. While there are clearly parallels that could be drawn between the ex ante review proposed here and the search and seizure warrants that judges routinely deal with, there are also important differences. First and foremost is that this implicates not the executive’s law enforcement responsibility but its war-making and foreign relations responsibilities, with which courts are loath to interfere, but are sometimes willing to review for abuse.¶ Additionally, in search and seizure warranting, there an ex post review will eventually be available. That will likely not be the case in drone strikes and other targeted killings unless such a process is specifically created. There are simply too many hurdles to judicial review (including state secrets, political questions, discovery problems, etc) for the courts to create such an opportunity without congressional action.¶ Chesney also noted that executive officials involved in the nomination process would prefer an ex ante review to shield them from unexpected civil liability by the victims or their families. I’m sure that it is true that administration officials would like to have “certainty ex ante that they would not face a lawsuit.” However, this is not a guarantee that the courts can provide to the executive. As noted above, as with search and seizure warrants, there are issues to consider after the approval of the executive action. Ex ante review does not allow for inquiry into important ancillary issues, such as the balancing of risk to civilian bystanders. Also, it provides no assurances that new, exculpatory intelligence forces a reassessment of the targeting decision. Only ex post review would achieve this.¶ There is also the problem that typified the FISC: permissiveness. Of the tens of thousands of FISA warrant requests, only a handful have been rejected. When allowing for modification of the requests, it is not clear whether any have been finally rejected. There is little reason to believe that the proposed “drone court” will be much different. It is far too likely that a court will hesitate to impede an operation that the executive believes is required to protect out national security. Once the operation is complete, however, the court will not be inclined to hold back its criticism on all manner of aspects of the operation, from the initial targeting decision to the final execution.

### Drone

#### Framework---you should simulate plan passage and weigh our advantages against the alt---key to clash because there are innumerable angles from which to kritik our 1AC so the merits of the plan are the only reliable basis for offense. That’s key to clash and education---K debates are only productive if we have offense to weigh, otherwise it’s just one team lecturing the other.

#### Perm

#### No link to drone focus---entire prev war adv is about how it won’t be limited to particular weapon systems and how we need to address overall likelihood

#### Other types of lashout are constrained by public attitudes

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

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

#### Drones are not---means they’re esp import

Judah A. Druck 12, Editor of the Cornell Law Review, Nov 15 2012, “Droning On: The War Powers Resolution and the Numbing Effect of Technology-Driven Warfare,” Cornell Law Review Vol. 98, No. 1, pp. 209, http://www.lawschool.cornell.edu/research/cornell-law-review/upload/Druck-final.pdf

The practical effects of this move toward a technology-driven, and therefore limited, proxy style of warfare are mixed. On the one hand, the removal of American soldiers from harm’s way is a clear benefit,124as is the reduced harm to the American public in general. For that, we should be thankful. But there is another effect that is less easy to identify: public apathy. By increasing the use of robotics and decreas-ing the probability of harm to American soldiers, modern warfare has “affect[ed] the way the public views and perceives war” by turning it into “the equivalent of sports fans watching war, rather than citizens sharing in its importance.”125 As a result, the American public has slowly fallen victim to the numbing effect of technology-driven war-fare; when the risks of harm to American soldiers abroad and civilians at home are diminished, so too is the public’s level of interest in for-eign military policy.126¶ In the political sphere, this effect snowballs into both an uncaring public not able (or willing) to effectively mobilize in order to chal-lenge presidential action and enforce the WPR, and a Congress whose own willingness to check presidential military action is heavily tied to public opinion.127Recall, for example, the case of the Mayaguez, where potentially unconstitutional action went unchecked because the mission was perceived to be a success.128 Yet we can imagine that most missions involving drone strikes will be “successful” in the eyes of the public: even if a strike misses a target, the only “loss” one needs to worry about is the cost of a wasted missile, and the ease of deploying another drone would likely provide a quick remedy. Given the politi-cal risks associated with making critical statements about military ac-tion, especially if that action results in success,129 we can expect even less congressional WPR enforcement as more military engagements are supported (or, at the very least, ignored) by the public. In this respect, the political reaction to the Mayaguez seems to provide an ex-ample of the rule, rather than the exception, in gauging political reac-tions within a technology-driven warfare regime.¶ Thus, when the public becomes more apathetic about foreign af-fairs as a result of the limited harms associated with technology-driven warfare, and Congress’s incentive to act consequently diminishes, the President is freed from any possible WPR constraints we might expect him to face, regardless of any potential legal issues.130 Perhaps unsur-prisingly, nearly all of the constitutionally problematic conflicts car-ried out by presidents involved smaller-scale military actions, rarely totaling more than a few thousand troops in direct contact with hos-tile forces.131 Conversely, conflicts that have included larger forces, which likely provided sufficient incentive for public scrutiny, have generally complied with domestic law.132The result is that as wars become more limited,133 unilateral pres-idential action will likely become even more unchecked as the triggers for WPR enforcement fade away. In contrast with the social and politi-cal backlash witnessed during the Civil War, World War I, the Vietnam War, and the Iraq War, contemporary military actions provide insuffi-cient incentive to prevent something as innocuous and limited as a drone strike. Simply put, technology-driven warfare is not conducive to the formation of a substantial check on presidential action.134

#### No necroptx link---we say that these are bad ideas and the US is wrong to do it, law=a means to an end

#### No prior questions

Owen 2 [David Owen, Reader of Political Theory at the Univ. of Southampton, Millennium Vol 31 No 3 2002 p. 655-7]

Commenting on the ‘philosophical turn’ in IR, Wæver remarks that ‘[a] frenzy for words like “epistemology” and “ontology” often signals this philosophical turn’, although he goes on to comment that these terms are often used loosely.4 However, loosely deployed or not, it is clear that debates concerning ontology and epistemology play a central role in the contemporary IR theory wars. In one respect, this is unsurprising since it is a characteristic feature of the social sciences that periods of disciplinary disorientation involve recourse to reflection on the philosophical commitments of different theoretical approaches, and there is no doubt that such reflection can play a valuable role in making explicit the commitments that characterise (and help individuate) diverse theoretical positions. Yet, such a philosophical turn is not without its dangers and I will briefly mention three before turning to consider a confusion that has, I will suggest, helped to promote the IR theory wars by motivating this philosophical turn. The first danger with the philosophical turn is that it has an inbuilt tendency to prioritise issues of ontology and epistemology over explanatory and/or interpretive power as if the latter two were merely a simple function of the former. But while the explanatory and/or interpretive power of a theoretical account is not wholly independent of its ontological and/or epistemological commitments (otherwise criticism of these features would not be a criticism that had any value), it is by no means clear that it is, in contrast, wholly dependent on these philosophical commitments. Thus, for example, one need not be sympathetic to rational choice theory to recognise that it can provide powerful accounts of certain kinds of problems, such as the tragedy of the commons in which dilemmas of collective action are foregrounded. It may, of course, be the case that the advocates of rational choice theory cannot give a good account of why this type of theory is powerful in accounting for this class of problems (i.e., how it is that the relevant actors come to exhibit features in these circumstances that approximate the assumptions of rational choice theory) and, if this is the case, it is a philosophical weakness—but this does not undermine the point that, for a certain class of problems, rational choice theory may provide the best account available to us. In other words, while the critical judgement of theoretical accounts in terms of their ontological and/or epistemological sophistication is one kind of critical judgement, it is not the only or even necessarily the most important kind. The second danger run by the philosophical turn is that because prioritisation of ontology and epistemology promotes theory-construction from philosophical first principles, it cultivates a theory-driven rather than problem-driven approach to IR. Paraphrasing Ian Shapiro, the point can be put like this: since it is the case that there is always a plurality of possible true descriptions of a given action, event or phenomenon, the challenge is to decide which is the most apt in terms of getting a perspicuous grip on the action, event or phenomenon in question given the purposes of the inquiry; yet, from this standpoint, ‘theory-driven work is part of a reductionist program’ in that it ‘dictates always opting for the description that calls for the explanation that flows from the preferred model or theory’.5 The justification offered for this strategy rests on the mistaken belief that it is necessary for social science because general explanations are required to characterise the classes of phenomena studied in similar terms. However, as Shapiro points out, this is to misunderstand the enterprise of science since ‘whether there are general explanations for classes of phenomena is a question for social-scientific inquiry, not to be prejudged before conducting that inquiry’.6 Moreover, this strategy easily slips into the promotion of the pursuit of generality over that of empirical validity. The third danger is that the preceding two combine to encourage the formation of a particular image of disciplinary debate in IR—what might be called (only slightly tongue in cheek) ‘the Highlander view’—namely, an image of warring theoretical approaches with each, despite occasional temporary tactical alliances, dedicated to the strategic achievement of sovereignty over the disciplinary field. It encourages this view because the turn to, and prioritisation of, ontology and epistemology stimulates the idea that there can only be one theoretical approach which gets things right, namely, the theoretical approach that gets its ontology and epistemology right. This image feeds back into IR exacerbating the first and second dangers, and so a potentially vicious circle arises.

#### Their discourse focus is bad

Adrian Hyde-Price (Professor of International Politics at Bath) 2001 “Europes new security challenges” p. 39

Securitization thus focuses almost exclusively on the discursive domain and eschews any attempt to determine empirically what constitutes security concerns. It does not aspire to comment on the reality behind a securitization discourse or on the appropriate instruments for tackling security problems. Instead, it suggests that security studies – or what Waever calls securitization studies –should focus on the discursive moves whereby issues are securitized. The Copenhagen school thus emphasizes the need to understand the “speech acts” that accomplish a process of securitization. Their focus is on the linguistic and conceptual dynamics involved, even though they recognize the importance of the institutional setting within which securitization takes place. The concept of securitization offers some important insights for security studies. However, it is too epistemologically restricted to contribute to a significant retooling of security studies. On the positive side, it draws attention to the way in which security agendas are constructed bgy politicians and other political actors. It also indicates the utility of discourse analysis as an additional tool of analysis for security studies. However, at best, securitization studies can contribute one aspect of security studies. It cannot provide the foundations for a paradigm shift in the subdiscipline. Its greatest weakness is its epistemological hypochondria. That is, its tendency to reify epistemological problems and push sound observations about knowledge claims to their logical absurdity. Although it is important to understand the discursive moves involved in perception of security in, say, the Middle East, it is also necessary to make some assessment of nondiscursive factors like the military balance or access to freshwater supplies. For the Copenhagen school, however, these nondiscursive factors are relegated to second place. They are considered only to the extent that they facilitate or impede the speech act. In this way, the Copenhagen school is in danger of cutting security studies off from serious empirical research and setting it adrift on a sea of floating signifiers.

### Colon

Case t/ k

Can solve prox cause

Perm---we solve

We are an acknowledgement---Boyle proves we see how it’s bound up in those

#### Case turns the K

Andrew Bacevich 12, Prof of History and IR at Boston University, PhD in American Diplomatic History from Princeton, visiting fellow at the Kroc Institute for International Peace Studies at the University of Notre Dame, “The New American Way of War,” http://www.lrb.co.uk/blog/2012/02/13/andrew-bacevich/the-new-american-way-of-war/

For a democracy, waging endless war poses a challenge. There are essentially two ways to do it. The first is for the state to persuade the people that the country faces an existential threat. This is what the Bush administration attempted to do after 9/11, for a time with notable success. Scaremongering made possible the invasion of Iraq. Had Operation Iraqi Freedom produced the victory expected by its architects, scaremongering would probably have led in due course to Operation Iranian Freedom and Operation Syrian Freedom. But Iraq led to an outcome that Americans proved unwilling to underwrite.¶ The second way is for the state to insulate the people from war’s effects, thereby freeing itself from constraints. A people untouched (or seemingly untouched) by war are far less likely to care about it. Persuaded that they have no skin in the game, they will permit the state to do whatever it wishes to do. This is the approach the Obama administration is now pursuing: first through the expanded use of aerial drones for both intelligence gathering and ‘targeted’ assassination; and, second, through the expanded deployment of covert special operations forces around the world, such as the team that killed Osama bin Laden. The New York Times reported today that the head of the Special Operations Command ‘is seeking new authority to move his forces faster and outside of normal Pentagon deployment channels’.¶ Drones and special forces are the essential elements of a new American way of war, conducted largely in secret with minimal oversight or accountability and disregarding established concepts of sovereignty and international law. Bush’s critics charge him with being a warmonger. But Obama has surpassed his predecessor in shedding any remaining restraints on waging war.

#### The plan is necessary to constrain imperial violence

David Chandler **9**, Professor of International Relations at the Department of Politics and International Relations, University of Westminster, War Without End(s): Grounding the Discourse of `Global War', Security Dialogue 2009; 40; 243

Western governments appear to portray some of the distinctive characteristics that Schmitt attributed to ‘motorized partisans’, in that the shift from narrowly strategic concepts of security to more abstract concerns reflects the fact that Western states have tended to fight free-floating and non-strategic wars of aggression without real enemies at the same time as professing to have the highest values and the absolute enmity that accompanies these. The government policy documents and critical frameworks of ‘global war’ have been so accepted that it is assumed that it is the strategic interests of Western actors that lie behind the often irrational policy responses, with ‘global war’ thereby being understood as merely the extension of instrumental struggles for control. This perspective seems unable to contemplate the possibility that it is the lack of a strategic desire for control that drives and defines ‘global’ war today. ¶ Very few studies of the ‘war on terror’ start from a study of the Western actors themselves rather than from their declarations of intent with regard to the international sphere itself. This methodological framing inevitably makes assumptions about strategic interactions and grounded interests of domestic or international regulation and control, which are then revealed to explain the proliferation of enemies and the abstract and metaphysical discourse of the ‘war on terror’ (Chandler, 2009a). For its radical critics, the abstract, global discourse merely reveals the global intent of the hegemonizing designs of biopower or neoliberal empire, as critiques of liberal projections of power are ‘scaled up’ from the international to the global.¶ Radical critics working within a broadly Foucauldian problematic have no problem grounding global war in the needs of neoliberal or biopolitical governance or US hegemonic designs. These critics have produced numerous frameworks, which seek to assert that global war is somehow inevitable, based on their view of the needs of late capitalism, late modernity, neoliberalism or biopolitical frameworks of rule or domination. From the declarations of global war and practices of military intervention, rationality, instrumentality and strategic interests are read in a variety of ways (Chandler, 2007). Global war is taken very much on its own terms, with the declarations of Western governments explaining and giving power to radical abstract theories of the global power and regulatory might of the new global order of domination, hegemony or empire¶ The alternative reading of ‘global war’ rendered here seeks to clarify that the declarations of global war are a sign of the lack of political stakes and strategic structuring of the international sphere rather than frameworks for asserting global domination. We increasingly see Western diplomatic and military interventions presented as justified on the basis of value-based declarations, rather than in traditional terms of interest-based outcomes. This was as apparent in the wars of humanitarian intervention in Bosnia, Somalia and Kosovo – where there was no clarity of objectives and therefore little possibility of strategic planning in terms of the military intervention or the post-conflict political outcomes – as it is in the ‘war on terror’ campaigns, still ongoing, in Afghanistan and Iraq. ¶ There would appear to be a direct relationship between the lack of strategic clarity shaping and structuring interventions and the lack of political stakes involved in their outcome. In fact, the globalization of security discourses seems to reflect the lack of political stakes rather than the urgency of the security threat or of the intervention. Since the end of the Cold War, the central problematic could well be grasped as one of withdrawal and the emptying of contestation from the international sphere rather than as intervention and the contestation for control. The disengagement of the USA and Russia from sub-Saharan Africa and the Balkans forms the backdrop to the policy debates about sharing responsibility for stability and the management of failed or failing states (see, for example, Deng et al., 1996). It is the lack of political stakes in the international sphere that has meant that the latter has become more open to ad hoc and arbitrary interventions as states and international institutions use the lack of strategic imperatives to construct their own meaning through intervention. As Zaki Laïdi (1998: 95) explains:¶ war is not waged necessarily to achieve predefined objectives, and it is in waging war that the motivation needed to continue it is found. In these cases – of which there are very many – war is no longer a continuation of politics by other means, as in Clausewitz’s classic model – but sometimes the initial expression of forms of activity or organization in search of meaning. . . . War becomes not the ultimate means to achieve an objective, but the most ‘efficient’ way of finding one. ¶ The lack of political stakes in the international sphere would appear to be the precondition for the globalization of security discourses and the ad hoc and often arbitrary decisions to go to ‘war’. In this sense, global wars reflect the fact that the international sphere has been reduced to little more than a vanity mirror for globalized actors who are freed from strategic necessities and whose concerns are no longer structured in the form of political struggles against ‘real enemies’. The mainstream critical approaches to global wars, with their heavy reliance on recycling the work of Foucault, Schmitt and Agamben, appear to invert this reality, portraying the use of military firepower and the implosion of international law as a product of the high stakes involved in global struggle, rather than the lack of clear contestation involving the strategic accommodation of diverse powers and interests.

### Cold Flame

Perm---endorse the plan and the alt

#### Plan is necessary as a means of resistance---that’s the Mutschler argument

#### The argument is backward---public debate constrains this

Anna Goppel 13, Assistant Professor, Department of Philosophy, University of Zurich, 2013, Killing Terrorists: A Moral and Legal Analysis, p. 1-2

Israel and the United States may be the only states that have publicly admitted to the use of targeted killings, but they are not the only states to make targeted killings part of their counter-terrorist strategies. Today, as in the past, these and other states have applied targeted killings in their fight against alleged terrorists. Provided the use of targeted killings has become public, states have been criticized for their conduct by politicians, in media statements, in the scholarly literature, and, though only in the case of Israel, in court. Targeted killings, however, have been defended equally forcefully. This lack of consensus as to whether states may resort to it is only one reason that demands a thorough assessment of the practice. It demands an analysis of the arguments with which the practice has been defended or attacked as well as of the principles and regulations governing state use of lethal force, on the grounds on which it may be accepted or condemned. The urgency of such an analysis is even more due to the nature of the practice itself, its disturbing consequences, which concern the existence of individual human beings as such, the personal integrity of those ordering, planning, and carrying out the killings, and the political credibility of states engaging in the practice. The analysis is all the more crucial because the public, without having comprehensively discussed and analysed the practice, appears to be increasingly comfortable with its application. Cases of targeted killings of alleged terrorists are reported in the press, but they generally do not trigger intense public discussion or criticism. And this is despite an absence of agreement on the justifiability of the practice.

#### Their interrogation doesn’t solve

Sorensen 98 – British International Studies Association (Georg, IR Theory after the cold war, 87-88)

What, then, are the more general problems with the extreme versions of the postpositivist position? The first problem is that they tend to overlook, or downplay, the actual insights produced by non-post-positivists, such as, for example, neorealism. It is entirely true that anarchy is no given, ahistorical, natural condition to which the only possible reaction is adaptation. But the fact that anarchy is a historically specific, socially constructed product of human practice **does not make it less real**. In a world of sovereign states, anarchy is in fact **out there in the real world in some form**. In other words, it is not the acceptance of the real existence of social phenomena which produces objectivist reification. Reification is produced by the transformation of historically specific social phenomena into given, ahistorical, natural conditions.21 Despite their shortcomings, neorealism and other positivist theories have produced valuable insights about anarchy, including the factors in play in balance-of-power dynamics and in patterns of cooperation and conflict. Such insights are downplayed and even sometimes dismissed in adopting the notion of 'regimes of truth'. It is, of course, possible to appreciate the shortcomings of neorealism while also recognizing that it has merits. One way of doing so is set forth by Robert Cox. He considers neorealism to be a 'problem-solving theory' which 'takes the world as it finds it, with the prevailing social and power relationships . . . as the given framework for action . . . The strength of the problem-solving approach lies in its ability to fix limits or parameters to a problem area and to reduce the statement of a particular problem to a limited number of variables which are amenable to relatively close and precise examination'.22 At the same time, this 'assumption of fixity' is 'also an ideological bias . . . Problem-solving theories (serve) . . . particular national, sectional or class interests, which are comfortable within the given order'.23 In sum, objectivist theory such as neorealism contains a bias, **but that does not mean that it is without merit** in analysing particular aspects of international relations from a particular point of view. The second problem with post-positivism is the danger of extreme relativism which it contains. If there are no neutral grounds for deciding about truth claims so that each theory will define what counts as the facts, then the door is, at least in principle, **open to anything goes.** Steve Smith has confronted this problem in an exchange with Øyvind Østerud. Smith notes that he has never 'met a postmodernist who would accept that "the earth is flat if you say so". Nor has any postmodernist I have read argued or implied that "any narrative is as good as any other"'.24 But the problem remains that if we cannot find a minimum of common standards for deciding about truth claims a post-modernist position appears unable to come up with a metatheoretically substantiated critique of the claim that the earth is flat. In the absence of at least some common standards it appears difficult to reject that any narrative is as good as any other.25 The final problem with extreme post-positivism I wish to address here concerns change. We noted the post-modern critique of neorealism's difficulties with embracing change; their emphasis is on 'continuity and repetition'. But extreme post-positivists have their own problem with change, which follows from their metatheoretical position. In short, how can post-positivist ideas and projects of change be distinguished from pure utopianism and wishful thinking? Post-positivist radical subjectivism leaves no common ground for choosing between different change projects. A brief comparison with a classical Marxist idea of change will demonstrate the point I am trying to make. In Marxism, social change ( e.g. revolution) is, of course, possible. But that possibility is tied in with the historically specific social structures (material and non-material) of the world. Revolution is possible under certain social conditions but not under any conditions. Humans can change the world, but they are **enabled and constrained** by the social structures in which they live. There is a dialectic between social structure and human behaviour.26 The understanding of 'change' in the Marxist tradition is thus closely related to an appreciation of the historically specific social conditions under which people live; any change project is not possible at any time. Robert Cox makes a similar point in writing about critical theory: 'Critical theory allows for a normative choice in favor of a social and political order different from the prevailing order, but it limits the range of choice to alternative orders which are feasible transformations of the existing world . . . Critical theory thus contains an element of utopianism in the sense that it can represent a coherent picture of an alternative order, but its utopianism is constrained by its comprehension of historical processes. It must reject improbable alternatives just as it rejects the permanency of the existing order'.27 That constraint appears to be absent in post-positivist thinking about change, because radical post-positivism is **epistemologically and ontologically cut off from evaluating the relative merit** of different change projects. Anything goes, or so it seems. That view is hard to distinguish from utopianism and wishful thinking. If neorealism denies change in its overemphasis on continuity and repetition, then radical post-positivism is metatheoretically compelled to embrace any conceivable change project.28

### Day in Court

#### Ex post review doesn’t validate state violence

Steve Vladeck 2013, professor of law and the associate dean for scholarship at American University Washington College of Law, February 10, Steve, “Why a “Drone Court” Won’t Work–But (Nominal) Damages Might…” http://www.lawfareblog.com/2013/02/why-a-drone-court-wont-work/

Perhaps counterintuitively, I also believe that after-the-fact judicial review wouldn’t raise anywhere near the same prudential concerns as those noted above. Leaving aside how much less pressure judges would be under in such cases, it’s also generally true that damages regimes don’t have nearly the same validating effect on government action that ex ante approval does. Otherwise, one would expect to have seen a dramatic upsurge in lethal actions by law enforcement officers after each judicial decision refusing to impose individual liability arising out of a prior use of deadly force. So far as I know, no such evidence exists. Of course, damages actions aren’t a perfect solution here. It’s obvious, but should be said anyway, that in a case in which the government does act unlawfully, no amount of damages will make the victim (or his heirs) whole. It’s also inevitable that, like much of the Guantánamo litigation, most of these suits would be resolved under extraordinary secrecy, and so there would be far less public accountability for targeted killings than, ideally, we might want. That said, there are two enormous upsides to damages actions that, in my mind, make them worth it–even if they are deeply, fundamentally flawed:

Link of omission

Perm---can change both at once---not prior

#### Key to restrain the exec and restore power to individuals

Helen Duffy 8, Litigation Director of INTERIGHTS, the International Centre for the Legal Protection of Human Rights, http://www.icrc.org/eng/assets/files/other/irrc-871-duffy.pdf

Ultimately, the impact of litigation on human rights issues generally lies in its gradual contribution to social change. There has, for example, been a shift in public opinion (national and international) on Guantánamo, and arguably liti-gation may have been an important contributor. What is undoubtedly true is that litigation has to be understood not in isolation but as one small piece of a much bigger and more complex puzzle.¶ Finally, and perhaps most importantly, real cases serve to tell the victims’ stories. They provide often graphic illustrations of what euphemisms such as ‘extraordinary rendition’ and ‘enhanced interrogation techniques’ mean to hu-man beings like you or me. Judgments validate those stories and experiences. One of the essential characteristics of the ‘war on terror’ has been the attempt to put certain people beyond the reach of the law. Litigation can be a tool, as one English judge put it, not for transferring power from the executive to the judiciary, but for transferring power from the executive to the individual.72 If any particular case can bring an individual back into the legal framework, and reassert the individual as a rights-bearer and human being, then perhaps that is impact enough.

#### No deference---stats go aff

U Jin Wong 13, JD from Boston College Law School, “The Blank Check: Supreme Court Decision-Making in National Security Claims during Wartime,”April 22 2013, Dissertation for a PhD in Government at Georgetown University, http://repository.library.georgetown.edu/bitstream/handle/10822/558286/Wong\_georgetown\_0076D\_12276.pdf?sequence=1

The question asked is whether the context of national claims influences Supreme Court decision-making to be more deferential and more pro government in voting behavior. These findings suggest that the answer is ―No, national security claims do not influence Supreme Court voting in a deferential, pro-government fashion.‖ The reader should recall that the national security variable was statistically significant beyond the 99 percent confidence level and the coefficient sign is in the negative. The results indicate that the Supreme Court is statistically likely to vote against the government in cases with national security claims. This is, once again, a counterintuitive result. Like the wartime variable, this finding suggests that even in a national security case, the Court performs as a check against the executive branch. ¶ This finding suggests that the Court takes its responsibilities seriously. Even in a case that invokes the potential threat to the safety of the nation, the Court scrutinizes the government‘s case carefully. Justices may at times defer to the perceived greater expertise of the Executive in matters involving foreign affairs and national security but will not do so unthinkingly. Justices may give credence to the expertise of the government, but are able to make decisions using their own judgment. ¶ This finding shows that a claim of national security will not automatically gain a victory for the government‘s position. It explains why over the course of 70 years and 223 cases involving national security claims, the government is successful less than half the time – or 41.7 percent of the time. This lower percentage result correlates well with the statistical findings. Recall that the national security win rate is still lower than the overall win rate by government in all cases of 63.93 percent. It is not clear, however, why national security should invoke such a large decrease in win percentage. ¶ National security claims before the Justices motivate a different kind of calculus, one that involves the possibility of the Justices‘ own lack of competence in the issue at hand. Generally, the Justices still perform their normative role as a constitutional check against the other branches. National security claims may invoke a specter of threat towards the nation, and the urge to follow the executive branch‘s request may be quite difficult to resist in certain cases. The results, however, indicate that the Justices are capable of resisting such claims and generally do not vote in a deferential matter in national security cases.

#### Legal restrictions are effective at restraining violence---plan provides a new avenue of resistance

Colm O’Cinneide 8, Senior Lecturer in Law at University College London, “Strapped to the Mast: The Siren Song of Dreadful Necessity, the United Kingdom Human Rights Act and the Terrorist Threat,” Ch 15 in Fresh Perspectives on the ‘War on Terror,’ ed. Miriam Gani and Penelope Mathew, http://epress.anu.edu.au/war\_terror/mobile\_devices/ch15s11.html

It appears that, as Scheuerman has noted, it is too easy to assume that the liberal constitutional order is incapable of generating meaningful internal resistance to the unfolding counter-terrorism cycle.[151] The ‘relative autonomy’ of national and transnational legal processes from prevailing political winds opens up these processes as an avenue for activists to challenge the use of emergency powers and the apparently inevitable unfolding of the counter-terrorism cycle. This is not to underestimate the potency of the symbiosis between terror, repression and backlash. Nor is it to downplay the way in which the rhetoric of emergency and the distorting impact of counter-terrorism strategies can continue to dominate the government response to the terrorist threat. The views of the ‘civil libertarian pessimists’ as to the inevitable limits of the protection that legal processes can offer are not unfounded, being rooted in both history and contemporary events. They may however underestimate to some extent the ability of the new regime of human rights protection to generate some sort of ‘dampening’ effect.[152]¶ Conclusion¶ Over time, the UK experience has been that the counter-terrorism cycle of terror, panic and repression recurs again and again, with consequent negative results for civil liberties, the integrity of the law and suspect minorities. Interestingly, however, and perhaps contrary to some academic expectations, the HRA and ECHR have in the wake of 9/11 played a role in disrupting the repetition of the usual cycle of responses to terrorism. First, the existence of the HRA has very much restricted what the UK government has attempted to achieve using new anti-terrorist powers. It has forced the government to use ‘Convention-compliant’ routes. While these routes can readily be used to evade the requirements of the Convention, some real obstacles still remain in the path of the cycle. Second, the greater salience given to human rights discourse since the incorporation of the HRA, and in particular the symbolic impact of the Belmarsh decision, has galvanised political and media scepticism about the deployment of anti-terrorist powers.¶ It would be erroneous to argue that the HRA has fundamentally changed the political landscape. The UK government is still constantly pushing at the boundaries of what it can achieve within the constraints of the ECHR/HRA. Dorling has drawn an interesting contrast between Spain, the European country to suffer the worst terrorist attack since 9/11, and the UK. She notes that Spanish political office-holders remain committed to adhering to conventional human rights norms and the use of ordinary criminal law, while the UK government has in general been dismissive of human rights norms and attached to using its panoply of ever-expanding counter-terrorism powers.[153] However, the UK experience since 9/11 shows that the constraints imposed by legal processes that build in some commitment to human rights do have some teeth, even in ‘states of exception’. Legally-enforceable rights mechanisms are perhaps more durable than has been feared. Human rights may not prevent the siren song of ‘strict necessity’ from setting the course of state policy, but can play some role in impeding its traditional bulldozing progress.

#### Their argument is empirically disproven---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.