### Off

Restrictions are prohibitions on action --- the aff is not

Jean Schiedler-Brown 12, Attorney, Jean Schiedler-Brown & Associates, Appellant Brief of Randall Kinchloe v. States Dept of Health, Washington, The Court of Appeals of the State of Washington, Division 1, http://www.courts.wa.gov/content/Briefs/A01/686429%20Appellant%20Randall%20Kincheloe%27s.pdf

3. The ordinary definition of the term "restrictions" also does not include the reporting and monitoring or supervising terms and conditions that are included in the 2001 Stipulation. ¶ Black's Law Dictionary, 'fifth edition,(1979) defines "restriction" as; ¶ A limitation often imposed in a deed or lease respecting the use to which the property may be put. The term "restrict' is also cross referenced with the term "restrain." Restrain is defined as; To limit, confine, abridge, narrow down, restrict, obstruct, impede, hinder, stay, destroy. To prohibit from action; to put compulsion on; to restrict; to hold or press back. To keep in check; to hold back from acting, proceeding, or advancing, either by physical or moral force, or by interposing obstacle, to repress or suppress, to curb. ¶ In contrast, the terms "supervise" and "supervisor" are defined as; To have general oversight over, to superintend or to inspect. See Supervisor. A surveyor or overseer. . . In a broad sense, one having authority over others, to superintend and direct. The term "supervisor" means an individual having authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but required the use of independent judgment. ¶ Comparing the above definitions, it is clear that the definition of "restriction" is very different from the definition of "supervision"-very few of the same words are used to explain or define the different terms. In his 2001 stipulation, Mr. Kincheloe essentially agreed to some supervision conditions, but he did not agree to restrict his license.

Restrictions on authority are distinct from conditions

William Conner 78, former federal judge for the United States District Court for the Southern District of New York United States District Court, S. D. New York, CORPORACION VENEZOLANA de FOMENTO v. VINTERO SALES, http://www.leagle.com/decision/19781560452FSupp1108\_11379

Plaintiff next contends that Merban was charged with notice of the restrictions on the authority of plaintiff's officers to execute the guarantees. Properly interpreted, the "conditions" that had been imposed by plaintiff's Board of Directors and by the Venezuelan Cabinet were not "restrictions" or "limitations" upon the authority of plaintiff's agents but rather conditions precedent to the granting of authority. Essentially, then, plaintiff's argument is that Merban should have known that plaintiff's officers were not authorized to act except upon the fulfillment of the specified conditions.

Increase means from a baseline

Rogers 5 Judge, STATE OF NEW YORK, ET AL., PETITIONERS v. U.S. ENVIRONMENTAL PROTECTION AGENCY, RESPONDENT, NSR MANUFACTURERS ROUNDTABLE, ET AL., INTERVENORS, 2005 U.S. App. LEXIS 12378, \*\*; 60 ERC (BNA) 1791, 6/24, lexis

 [\*\*48]  Statutory Interpretation. HN16While the CAA defines a "modification" as any physical or operational change that "increases" emissions, it is silent on how to calculate such "increases" in emissions. 42 U.S.C. § 7411(a)(4). According to government petitioners, the lack of a statutory definition does not render the term "increases" ambiguous, but merely compels the court to give the term its "ordinary meaning." See Engine Mfrs.Ass'nv.S.Coast AirQualityMgmt.Dist., 541 U.S. 246, 124 S. Ct. 1756, 1761, 158 L. Ed. 2d 529(2004); Bluewater Network, 370 F.3d at 13; Am. Fed'n of Gov't Employees v. Glickman, 342 U.S. App. D.C. 7, 215 F.3d 7, 10 [\*23]  (D.C. Cir. 2000). Relying on two "real world" analogies, government petitioners contend that the ordinary meaning of "increases" requires the baseline to be calculated from a period immediately preceding the change. They maintain, for example, that in determining whether a high-pressure weather system "increases" the local temperature, the relevant baseline is the temperature immediately preceding the arrival of the weather system, not the temperature five or ten years ago. Similarly,  [\*\*49]  in determining whether a new engine "increases" the value of a car, the relevant baseline is the value of the car immediately preceding the replacement of the engine, not the value of the car five or ten years ago when the engine was in perfect condition.

Violation - The aff does not restrict presidential authority, they are a legal FYI.

Limits

a) Ground - They make the topic bi-directional. Affs can claim, like they do, that existing presidential actions on an issue are topical - or worse, refuse to take a stance on such authority.

b.) Precision - Our evidence clearly defines restrictions in the context of authority - you should reject all other definitions because they turn debate into a scrabble board. Precision is key to generate topic education and research.

### Off

The 1AC brackets the full complexity of crisis and the value questions behind their scenarios—Preventing the ADAPTATION and RESILIENCE necessary for a viable future.

Mangalagiu 2011 (Diana Mangalagiu, Prof of Strategy at Smith School of Enterprise and Environment-University of Oxford “Risk and resilience in times of globalization” An emerging research program for Global Systems Science: Assessing the state of the art, 10/4/11, http://www.gsdp.eu/)

The recent financial crisis highlights the challenges of, and the potential of catastrophic impacts from the failure to address global, systemic and long term risks. The crisis was neither prevented, nor effectively anticipated, by the hosts of experts in risks and futures employed by the industry. Despite the sophisticated strategic planning and risk management approaches adopted by individual banks and regulators, the lack of reflexivity in anticipatory knowledge processes, coupled with overconfidence in calculable and manageable risks, contributed to the denial, dismissal and ignorance of new forms of vulnerability and, in particular, systemic risk (Wilkinson and Ramirez, 2010; Selsky et al, 2008). It also highlights that risk management approaches that focus on stress testing the parts (e.g. individual banks, companies, governments, cities etc.) of a system are no longer enough. The notion of systemic risk and practices of systemic risk management are being influenced by multiple traditions in scholarship (e.g. complexity science, resilience concepts), contesting theories of risk (e.g. social, mathematical, psychological) and the practical experiences harvested through professional bodies focused on risk management in banking and financial services, environmental management, urban planning, insurance and reinsurance, etc. In this WP, we focus on identifying and comparing how risk management, the search for resilience and their respective approaches to strategic foresight and anticipatory knowledge might be better related and more effectively practiced in a range of different contexts such as at the organizational, sectoral-, national- and international-systems levels. Our aim is to: - Unpack what systemic risk means and how it is shaped by different disciplines and different traditions of risk management; also unpack what resilience means; - Reveal and clarify how systemic risk and resilience are being operationalized in a range of settings and situations; - Formulate research questions and develop knowledge, methodologies and guidance in order to reveal, inform and create so-called best and next practices in systemic risk management and governance and search for resilience. Our first year deliverable is the state of the art concerning risk, systemic risk and resilience in times of globalization. ¶ **2. Preliminary state of the art on risk and systemic risk** ¶ 2.a. General conceptions of risk 4 The conventional risk management paradigm assumes that a loss event is relatively limited, specific and isolated and with proper analysis can be anticipated and thus, avoided or contained and mitigated. In the conventional risk management paradigm the default is to forecast the future - or a probabilistic analysis – i.e. the assumption that the future is knowable. Formal interest in risk and risk management originates from the fields of engineering and epidemiology in the 20th century (Kates & Kasperson, 1983) and from interdisciplinary studies of natural hazards (White & Haas, 1975). Since then the social sciences created significant independent contributions to risk research (Golding, 1992). Krimsky (1992) summarized the roles theory can take in risk analysis, which are quantitative laws, taxonomic frameworks, models, functionalist explanations, cognitive explanations, or analogical models and interpretive representations. Beck (1992, 1994) and Giddens (1991, 1999) pointed to the elaborate role risk plays in the macro organizational levels of modern society. Societies are self-reflective in the sense that they seek to govern their own behavior to avoid catastrophic consequences. As such, the concept of risk is also politically relevant (Lupton, 1999). Providing an overview of the different perspectives on risk research, Renn (1992) distinguishes the technical perspective on risk (expected or modeled value, probabilistic risk assessment), economic perspectives (risk-benefit analysis), psychological perspectives (psychometric and cognitive analyses), sociological perspectives (plurality of approaches), and cultural perspectives (grid-group analysis). While economic and technical risk assessments are similar with regard to their reductionist and one-dimensional view of the world, narrowing down risk analysis to a form of quantifiable expected value, psychometric, sociological, and cultural views take a multi-dimensional view that is concerned with 5 the myriad forms of risk perception. In Renn’s (1992) systemic classification of risk perspectives the main applications of the latter group are therefore seen in policy making, regulations, mediation, and risk communication, whereas the former be applicable for decision making (insurance, health, environmental protection, and safety engineering). The different research strands can further be summarized regarding their theoretical focus on either the actual assessment of risk, the perception of risk, or blended approaches. Technical, economic, and quantitative social benefit approaches to measure risk can be counted towards those perspectives concerned with practical risk assessment (see e.g. Just, Heuth, & Schmitz, 1982; Lowrance, 1976; Starr, 1969), also apparent in the broad use of the value at risk concept in finance, which basically attempts to calculate an expected value of losses (see e.g. Jorion, 2007). The psychological perspectives look into the perception of risk at an individual level (see e.g. Boholm, 1998; Slovic, 1987; Tversky & Kahneman, 1974) while the cultural theories of risk are concerned with the perception of risk at a collective level, as they see risk as the result of what different groups within a society – shaped by their social norms, values, and ontological assumptions – perceive as potential hazards (see Douglas & Wildavsky, 1982; Rayner, 1992; Thompson et al, 1990). In a way, cultural theories of risk attempt a form of risk assessment in a qualitative and social constructivist manner, while psychological theory examines the different perceptions of objective risks. Cultural theory has been criticized for seeing individuals only in aggregate, as being too simplistic, rather descriptive, and as being difficult to measure empirically (Renn, 1992). Marris et al. (1998) find some support for both the psychological and the cultural theory paradigms, although the cultural theory explains only very little variance in risk perception. As the only common denominator of sociological theories of risk is their awareness that human actors can only perceive the world through subjective social and cultural influences (Renn, 1992), they may best be seen as blended approaches leaning towards either weak or strong constructivist positions. Sociological perspectives further take into account what consequences arise from risk for the society (see e.g. Beck, 1992; Giddens, 1999) and bring fairness and competences into the picture, which can provide a basis for normative conclusions regarding risk policies (Renn, 1992). The different theoretical conceptions of risk are non‐exclusive and can nurture each other. One attempt to integrate different perspectives consists in the Amplification of Risk framework, which builds on the analogy of signaling theory and sees risks to emerge from signals of initial real risks amplified in several steps of social interaction processes influenced by cultural setting (see Kasperson, et al., 1988; Kasperson, 1992; Kasperson, et al, 2003; Renn, et al, 1992). 2.b Systemic risk in the futures literature In the futures literature2, the term ‘systemic risk’ is not featured frequently and has only been used recently (Checkley 2009). Other terms akin to systemic risk are in more frequent use. They comprise complex hazards (de Souza Porto & De Freitas 2003), extreme risks (Nakau 2004), emerging risks from science and technology (Wiedemann et al. 2005), catastrophic risk (Geiger 2005), natural disaster-triggered technological (natech) disasters (Cruz et al. 2006), extreme risks and human extinction (Tonn & MacGregor 2009), and high impact low probability events (Ord et al. 2010). While the last view of systemic risk (high impact with low probability event) comes closest to a definition, no coherent understanding of systemic risk yet exists. Arguments for post-normal approaches to science and decision-making have been made in the literature, especially so for systemic risk (or close terms), but the explicit treatment of systemic risk so far is limited to case studies and selective areas of threats in the future. It seems that catastrophic or systemic risks per se have been of greater interest in the futures literature so far than the methods and tools to deal with them. One stream of literature focuses on a conceptual approach to systemic risk. In this stream, three groups can be distinguished. The first follows a positivistic endeavor akin to classic risk management approaches quantifying systemic risk to make it measurable and in consequence manageable. The second group applies narrative scenario techniques and describes possible future systemic risks. The third class of works considers a classification of the severity of threats to mankind, and aims to identify the most threatening ones. In an attempt to answer the question how much costs are bearable to protect against a catastrophic event, Nakau (2004) proposed a risk evaluation model, which classifies extreme events quantitatively. Based on stochastic probability he introduces tolerable levels of failure probabilities as a sustainability criterion, i.e. how many victims constitute a certain level of impact. Checkley (2009) employed an empirical test that explains the creation of systemic risk in a venture capitalist context, seeing systemic risk as risks affecting all parties. They argue that such risk occurs as mutual funds diversify their investment among several venture capitalists, but those syndicate for investment projects – so, diversification effects are unmade and are thus pseudo, which in turn gives rise to systemic risk. A series of scenario works in 2009 have considered narratives explaining possible paths to the extinction of the human race (see Coates 2009; Goux-Baudiment 2009; Tonn & MacGregor 2009). Tonn & MacGregor (2009) describe a chain of events that can lead to the extinction of the human race over the next 1000 years. Goux-Baudiment (2009) on the other hand imagines a chain of events that could lead to human extinction in only 150 years. He further investigates the human agency in this scenario, and whether and how human interaction could break this disastrous chain of events. Tonn (2009) adds to those perspectives as he derives a theoretically acceptable risk level of human extinction from qualitative criteria (i.e. fairness, unfinished business, and maintaining options). He finds that the objectively acceptable level is lower than the currently (subjectively) expected level and concludes that risk must therefore be reduced. In a different approach, Coates (2009) discussed extreme risks that humankind faces. He developed a classification system for those events, which centers on the severity of extreme events. The approach is similar to Nakau (2004) as it attempts to evaluate severity of risks, but different as it does not rely on quantitative criteria. Coates concludes that a nuclear winter, the use of nuclear weapons, and the eruption of a super-volcano are the most severe threats to civilization and humankind, but that other events such as asteroids also bear some risk. Another stream of literature focuses on the perception and social construction of systemic risk. First, studies look into the paradoxical situation of policy makers to stimulate innovation but also to regulate risks arising from accelerating innovation. This argument is put forward to support post-normal science and decision-making as the appropriate approach to modern (systemic) risk management situations. Then, risk perception biases for catastrophic risk have been examined and ultimately, the classic reductionist treatment of risk management was held responsible for rising occupation with risk in society. Public actors play a paradoxical role in the relationship between risk and innovation, between the interests of the public and private actors (Ravetz, 2003). Ravetz sees accelerating innovation as a necessary tool for private companies to compete in a ‘globalizing knowledge economy’ and the role of the public to ensure an environment in which speedy innovation can take place. On the other hand, public actors need to ensure the safety of new technologies and innovation acting as an agent for their citizens, remaining the source of public trust and safety provider for citizens. Besides this paradoxical role, technological innovation threatens the global environmental system; so, how much technological 7 innovation is desirable and how much risk in it acceptable? Ravetz argues that finding appropriate answers to this question can only be found in a policy-making process that involves the public in dialogues about scientific findings and by disclosing ambiguities in scientific finding, thus embracing policy principles for a post-normal world of science. [Continued (8 pages later)… ] 4. Preliminary state of the art on resilience In contrast to the conventional risk management approach and linear risk paradigm, the search for resilience tends to emphasize that there is no such thing as a ‘zero risk society’ and suggests, instead, that there is a need for groups and organizations to collaborate in building the adaptive capacity that enables the whole system to organize and re-organize in the face of inherent uncertainty, emergence and inevitable surprise. The resilience approach accepts change as inevitable and endemic and focuses on building the adaptive capacity of the system and its ability to re-organize and transform after a disturbance. Resilience is most commonly used to describe the ability of an entity to withstand and respond to shocks in the external environment. The concept of resilience is becoming a core concept in the social and physical sciences and in matters of public policy. Definitions of resilience, however, vary. There is neither scientific nor professional agreement on what constitutes resilience principles and the operationalization of these principles in practice. However, as a general definition of the resilience of a particular system – the ability to maintain critical functions in the face of regular disturbance from a range of shocks (threats) combined with ability to adopt adaptive behavior when facing unknowable or unexampled disturbances – is the commonly used one. Intellectual traditions on resilience are a still emerging and chaotic field, fragmented across different disciplines and professional practices. The concept of 'resilience' has already been constructed in a 10 variety of fields and traditions, including engineering, systems ecology, political sciences, management and organization theory, cultural theory, complex adaptive systems, cybernetics and psychology. An initial review of the literatures relating to resilience reveals a fragmented field. In social ecology, resilience is concerned with the longer-term survival and functioning of ecosystems – species, populations and services in a changing or fluctuating operating environment. The social ecology approach introduced by Holling (1973) argues ecological systems are non-deterministic because of inherent complexity. characterizes the ecosystem as complex set of elements and parts existing in dynamic interrelationship and interdependency. The key contribution of the ecological view of resilience is to provide a focus on the systemic nature of the problems and on the longer-term demands on policy and management. It emphasizes the need to keep options open, while appreciating heterogeneity and keeping a broader than local view organization – this is in contrast to dominant management approaches which are concerned with compartmentalizing issues, limiting change to the margins and views of the future rooted in attempt to preserve the present. **The critical distinction is that between resilience and stability**. The stability/equilibrium paradigm approaches the future with the aim of strengthening the status quo by making the present system “resilient to change” and aiming to achieve stability and constancy. In the management literature, the focus when using the resilience concept is on the persistence and survival of individual businesses and institutions in face of change. A bulk of the management literature on organizations focuses on the strategies for individual businesses to be ‘resilient’ to change -- on innovation, experimentation and leadership to ensure survival and growth of a specific institution/business -- however the ecosystem perspective requires us to think about the health and of the forest and the services its provides rather than the role of individual species! What are the sources of resilience in the system and or an organization? The process of increasing resilience is different from optimization and improving system performance in existing conditions – what organizational characteristics build resilience. Successful adaptation requires for individual organizations, agents and businesses to continue to full fill their own goal and function but must also include measures of promoting adaptive capacity of the system. Despite the richness in conceptual thinking underpinning the concept of resilience, there is limited evidence of how groups, organizations are societies are translating the notion of resilience into practice. The constructivist tradition in social theory argues that social response is non- deterministic because of plural perception and the negotiations of values, cultures, choices and epistemologies. The managers are part of the system that is being managed and define the system and its characteristics in different ways. Understanding the loss, creation and maintenance of resilience through the process of co-discovery – scientists, policy makers, practitioners, stakeholders and citizens is at the heart of building the capacity to deal with whatever the future might bring. Anecdotal evidence suggests that some societies are organizing for resilience. For example, both the governments of Canada and Singapore have resilience as the goal of their national strategic plans. There is a nascent literature emerging, as yet unmapped, on operationalizing resilience beyond the organizational level. For example, in an approach to adapting an urban delta to uncertain climate change, Wardekkar et al. (2009) identify five options for resilience: (1) homeostasis: incorporation of feedback loops; (2) omnivory: having several different ways of fulfilling needs; (3) flatness: preventing a system from becoming too top heavy enables more effective localized responses, self-reliance and self-organization; (4) buffering: the ability to absorb disturbances to a certain extent and (5) redundancy: having multiple options – routes, supply chains, etc – so that if one fails, others can be used. 11 The resilience frame opens the opportunity to think in terms of nonlinear and non-deterministic futures and, in doing so, to displace practices in probable futureswith plausible and preferable futures. The resilience frame also invites attention to realizing transformation, rather than future proofing of established structures, identities and values. It invites consideration of the uncertainty as irreducible and inherent, going beyond the lack of knowledge and encompassing ambiguity and ignorance.

#### Our alternative is to interrogate the scholarship of the 1ac - the method of evidence selection used by the 1AC makes effective debate impossible

Stevens 2007 (Alex Stevens, Senior Researcher-European Institute of Social Services, School of Social Policy, Sociology and Social Research, Keynes College, University of Kent, “Survival of the Ideas that Fit: An Evolutionary Analogy for the Use of Evidence in Policy” Social Policy and Society 6:1, 25–35)

The proposed evolutionary analogy goes beyond the political/tactical model by also helping to explain how evidence can be used selectively to further the interests of powerful social groups, without relying solely on the deliberate connivance of policymakers. It sees social structure, in addition to political tactics, as important in supporting selection in the use of evidence. It uses an evolutionary approach to explain the pattern of selection. It starts from the assumption that a variety of ideas come from evidence and compete for attention in policy, as genes arise and compete for survival. The ideas may be facts, findings or recommendations that have been produced by academics, journalists, think tanks, pressure groups or others. Some of these ideas fit the interests of powerful groups and some do not. Ideas that do fit will find powerful supporters. Others will not. Those ideas that fit will therefore have groups and individuals that can carry them into policy, as would a gene be reproduced if it finds a place in organisms that survive. The ideas that do not fit will tend not to be picked up by people who have the power to translate them into policy. This evolutionary advantage leads to the survival of the ideas that fit. The major advantage of this analogy is that it illuminates the biased use of evidence without relying on policy makers to be irrational, or the ability of powerful social groups to coordinate a campaign to ignore unhelpful research. Mechanisms of selection In contrast to the reproduction of genes, it is not the idea that gives its carrier the increased potential to survive. And it is not, as Dawkins suggested for memes, that the idea is ‘advantageous to itself’ (Dawkins, 1976: 200). Rather, it is the power of the carriers, and the choices they make on which bits of evidence to pick up, that confer advantage to ideas that suit the interests of powerful groups. A similarity to biological evolution is that the process of selection is complicated, messy and sometimes brutal. Powerful social groups are not monolithic. They have diverse memberships and divergent interests. They struggle over what policies will be proclaimed and implemented, and use various mechanisms to attempt to ensure that the evidence that suits their purpose comes to be recognised as legitimate. Policy makers, businesses, political parties and pressure groups may ‘trawl’: fishing for evidence, hauling in the bits that suit their needs, and throwing back those that do not. They may also ‘farm’ evidence, by, for example, commissioning research, but only publishing and using those parts of it that meet the criteria that they set for the look and flavour of the evidence produced. Repetition is a useful tool in ensuring that attention is given to useful evidence. Groups that have a voice in the policy process can repeatedly refer to bits of evidence, which may be ripped out of context and based on methodologically suspect research. Through repetition, such evidence can become part of the accepted body of knowledge in a policy area. Powerful groups can also use ‘flak’ (Chomsky and Herman, 1988) to attack, silence or discredit evidence that comes into the public arena, but is not helpful to their interests. And they may be able to impose ‘strain’ (Chambliss, 1976) on people and organisations that produce and advocate unhelpful evidence, who may find that doing so is not conducive to a successful career or to organisational survival. There are limits to the research questions that can be asked that reinforce selection. These include limits that are set by legal, professional and ideological boundaries. Different groups will also have different narratives of how social problems arise and how they should be solved. These narratives provide a frame into which evidence must fit if it is to enter policy. The extent to which social groups can impose their own narratives and frames on a debate depends on their relative legal, professional, financial and ideological power (Green, 2000; Hajer, 1993). Limits are also set by the decisions of those people who pay for research on what they are interested in buying. Those groups with the most power in society will be most able to implement these mechanisms, and so bring attention to research that suits them, and encourage the ignorance of research that does not. This does not mean that their power dominates the use of evidence entirely. Weaker social groups, including trade unions, environmental pressure groups, other campaigning bodies and self-organisations of the poor and socially marginalised may also attempt to make these mechanisms work for them. However, they have less access to the sources of research and its dissemination; they are less able to impose their interpretations of research evidence on a wider public. They have less opportunity to trawl or farm research, to create flak, to repeat favourable evidence or to impose strain on those who produce or disseminate unhelpful research. And they have less of a role in framing policy. Selection in action So far, this evolutionary analogy has not been rigorously tested against actual uses of evidence in practice. It is presented here in order to invite discussion of how it may apply to various areas of social policy. However, it is quite easy to find illustrative examples of the selective use of evidence in policy making; especially, it seems, in crime, immigration and health policies. The British Drug Treatment and Testing Orders (DTTO, a sentence for drug dependent offenders introduced in the Crime and Disorder Act 1998, since replaced by the Drug Rehabilitation Requirement) were inspired by the expansion of drug courts in the USA. A report by one of the instigators of the DTTO policy (Russell, 1994) trawls in references to evaluations of drug courts, all of which are positive, without mentioning any of the negative evaluations, or mentioning that the positive evaluations offer good examples of selection bias; basing their results solely on the proportion of people who completed the programmes, and often comparing them to those who dropped out early, in defiance of accepted methodological standards (Stevens et al., 2005). Before the DTTO was rolled-out across England and Wales, a study of three pilot areas was commissioned which concluded ‘we could hardly portray the pilot programmes as unequivocally successful’ (Turnbull et al., 2000: 87). The response in terms of policy was typical of the ‘farming’ mechanism. The negative findings were not publicised and the roll-out went ahead. A second example of selection is the use of research on the impact of asylum policies in Europe on the number of asylum seekers. This research found that direct pre-entry measures (e.g. visas, sanctions on airlines) have had the greatest impact on the number of asylum claimants. But ‘measures such as reception facilities, detention and the withdrawal of welfare benefits appear to have had much more limited impact’ (Zetter et al., 2003: xiii). Restrictive policies also have counter-effects, including increased illegal immigration and displacement of asylum flows to other countries. The official response provided examples of ‘farming’ and of ‘strain’. Publication of the research was delayed for two years, findings on the lack of effect of indirect controls and on their counter-effects were ignored and such controls continued to be tightened (e.g. in the Nationality, Immigration and Asylum Act 2002 and the Asylum and Immigration Act 2004). One of the authors of this research wrote in a letter to The Guardian that this was ‘part of a general and worrying trend that academic research is being used to buttress government policies in a way that is illegitimate and which depends upon an extremely partial reading of research results’ (Griffiths, 2003). So far, these examples show only that politicians and policy makers are capable of making selective use of the research that they commission. They could fit with the political/tactical view of policy-makers making irrational uses of evidence for their own purposes. However, they should be viewed within the context of argumentation over policy that occurs around as well as within the state. The people whose interests are most directly harmed by these selective uses of evidence, being drug-using offenders and would-be immigrants and asylum seekers, are among the least powerful in these arguments. On the other hand, powerful interest groups have an interest in the use of evidence to bolster such policies. Powerful social groups have, for example, long benefited from the use of migrant workers, both as cheap labour to boost profits and as scapegoats for social problems that result from inequality (Winder, 2005). As the 2005 UK general election showed, the government faces a great deal of external pressure to be seen to be tough on immigration. Opposition parties and right-wing newspapers can target a great deal of flak at politicians and researchers who make the case for immigration. A rational debate over the pros and cons of asylum policy is unlikely to occur in such a context. The reasons for this are not merely tactical, but also structural, as it is social structure which explains the relative power that groups can bring to these arguments and processes of evidence selection. External influences on the use of evidence are clearer in some examples from the field of health and food policy. In 2003, the World Health Organisation sought to create international guidelines that stated that daily intake of sugar should not exceed 10 grammes per person, based on the evidence of the damage done by excessive consumption to human health. This lead to the imposition of heavy ‘strain’ on the WHO, which faced criticism, including calls for the resignation of its Director from US officials, who were themselves pressured by the sugar corporations who are major donors to the political parties of the USA (Boseley, 2003). After these pressures had been imposed, the 10g recommended daily limit on sugar intake was not included in the final document (World Health Organization, 2003). In the UK, there is the example of the government's alcohol harm reduction strategy. The government initially commissioned a group of 17 independent experts to provide the evidence on which to base this strategy. Their considered view was that reducing alcohol-related harm should involve limiting its availability and increasing its price. This conclusion would obviously not be popular, either with many voters, or with the alcohol industry. One of the ways the alcohol industry seeks to maximise its profits is by funding the Portman Group. This was the only ‘alcohol misuse’ organisation mentioned in the government's strategy, which adopted the ideas and language of the alcohol industry. Alcohol Concern, the Medical Council on Alcohol and the National Addiction Centre were not referred to (McNeill, 2004). Eventually, the government published a strategy that bore so little relation to the evidence-based recommendations of the experts that several of them were moved to publish their own report, which contradicted the government's strategy (Academy of Medical Sciences, 2004). It seems that this is a clear example where external pressure on government by a powerful group has influenced the use of evidence in policy. Internationally, the issues of genetically modified (GM) organisms and climate change also provide examples of the use of trawling, farming, flak, strain, repetition and selective framing by actors outside the state. Much of the research on GM food is funded by the corporations who hope to profit from its application. Several researchers have found that raising questions over the safety and efficacy of GM food is not conducive to security of tenure in Universities that are funded by these corporations. For example, Dr Arpad Pusztai's research suggesting that GM potatoes may be poisonous to rats (Ewen and Pusztai, 1999) led to him losing his job, and to threats that the editor of The Lancet, which published some of this research, would also lose his. Dr Ignacia Chapela was also targeted for flak and strain when he published an article in Nature reporting contamination of native corn in Mexico by a GM variety (Quist and Chapela, 2001). He was subsequently refused tenure at the University of California, where a number of colleagues criticised his work and benefited from a multi-million dollar deal with the biotechnology company Novartis.3 Corporations that control the production of raw materials are also extremely powerful in the field of energy policy, which has the greatest effect on climate change. The material interests of these corporations are damaged by international policies such as the Kyoto protocol. Given the potential damage of Kyoto to oil company profits, it is not surprising that the tiny minority of scientists who deny the role of human activity in climate change have found ready supporters in the oil industry. More worrying is that the most powerful government on Earth has pressured its own scientists to misrepresent their own findings in order to support the oil companies’ position (Union of Concerned Scientists, 2004) and continues to dilute international efforts to combat climate change (Townsend, 2005). It should be noted that in none of these cases is the interest of any one group able fully to determine the use of evidence. Nor is it the case that evidence does not influence the terms in which these controversies are played out. Debate over DTTOs, immigration policy, GM food and global warming is alive and well. Research evidence is not absent, but crucial to the development of these debates. However, its use is not often directly linear, ideally enlightened or purely tactical. These are selected examples, but they are by no means isolated. In several fields, it is evident that structural, as well as tactical interests of powerful social groups often shape the use that is made of evidence in ways that pervert the promise of evidence-based policy making. Avoiding bias While scientific evidence may not be accepted unquestioningly as a clear, objective source, there is a body of scientific evidence. The process of scientific production makes this available for discovery and analysis through various forms of synthesis. Through open debate over the results of such reviews, some positions can be found to be false, in that they offer inadequate accounts of the phenomena they attempt to explain (Layder, 1998). Examples of propositions that the balance of scientific evidence has found to be untrue are that Saddam Hussein was storing weapons of mass destruction in Iraq in 2003 (Powell, 2003), that ‘nothing works’ in preventing criminal recidivism (Martinson, 1979), that smoking tobacco does not increase risks of cancer (Tobacco Institute Research Committee, 1954) and that human activity is not contributing to global warming (see van den Hove, le Menestrel, and de Bettignies, 2002). The existence of proponents of alternative views shows that it is possible to question the mainstream and to insert dissident positions into the debate. But acting as if these propositions are true has been and will be disastrous. If we are to have any prospect of improving the human condition, then we need to continue to develop knowledge (of which research evidence is one element) that can inform action; knowledge that we can use until superior explanations and possibilities arise. The idea of evidence-based policy is that this will happen. It often fails in practice, not only because research evidence is contested, but because its use is affected by processes of selection that make it less likely that superior explanations and solutions will be put into practice.

### Off

#### You are lawfare - using the law as a means to legitimize and justify an ever-expanding system of violence.

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Foucault’s envisioning of a more governmentalized and securitized modernity, framed by a ubiquitous architecture of security, speaks on various levels to the contemporary US military’s efforts in the war on terror, but I want to mention three specifically, which I draw upon through the course of the paper. First, in the long war in the Middle East and Central Asia, the US military actively seeks to legally facilitate both the ‘circulation’ and ‘conduct’ of a target population: its own troops. This may not be commonly recognized in biopolitical critiques of the war on terror but, as will be seen later, the Judge Advocate General Corps has long been proactive in a ‘juridical’ form of warfare, or lawfare, that sees US troops as ‘technical-biopolitical’ objects of management whose ‘operational capabilities’ on the ground must be legally enabled. Secondly, as I have explored elsewhere, the US military’s ‘grand strategy of security’ in the war on terror — which includes a broad spectrum of tactics and technologies of security, including juridical techniques — has been relentlessly justified by a power/knowledge assemblage in Washington that has successfully scripted a neoliberal political economy argument for its global forward presence.’9 Securitizing economic volatility and threat and regulating a neoliberal world order for the good of the global economy are powerful discursive touchstones registered perennially on multiple forums in Washington — from the Pentagon to the war colleges, from IR and Strategic Studies policy institutes to the House and Senate Armed Services Committees — and the endgame is the legitimization of the military’s geopolitical and biopolitical technologies of power overseas,20 Finally, Foucault’s conceptualization of a ‘society of security’ is marked by an urge to ‘govern by contingency’, to ‘anticipate the aleatory’, to ‘allow for the evental’.2’ It is a ‘security society’ in which the very language of security is promissory, therapeutic and appealing to liberal improvement. The lawfare of the contemporary US military is precisely orientated to plan for the ‘evental’, to anticipate a 4 series of future events in its various ‘security zones’ — what the Pentagon terms ‘Areas of Responsibility’ or ‘AORs’ (see figure 1)•fl These AORs equate, in effect, to what Foucault calls “spaces of security”, comprising “a series of possible events” that must be securitized by inserting both “the temporal” and “the uncertain”. And it is through preemptive juridical securitization ‘beyond the battlefield’ that the US military anticipates and enables the necessary biopolitical modalities of power and management on the ground for any future interventionary action. AORs and the ‘milieu’ of security For CENTCOM Commander General David Petraeus, and the other five US regional commanders across the globe, the population’ of primary concern in their respective AORs is the US military personnel deployed therein. For Petraeus and his fellow commanders, US ground troops present perhaps less a collection of “juridical-political” subjects and more what Foucault calls “technical- political” objects of “management and government”.25 In effect, they are tasked with governing “spaces of security” in which “a series of uncertain elements” can unfold in what Foucault terms the “milieu”.26 What is at stake in the milieu’ is “the problem of circulation and causality”, which must be anticipated and pLanned for in terms of “a series of possible events” that need to “be regulated within a multivalent and transformable framework”.27 And the “technical problem” posed by the eighteenth-century town planners Foucault has in mind is precisely the same technical problem of 5 space, population and regulation that US military strategists and Judge Advocate General Corps (JAG) personnel have in the twenty-first century. For US military JAGs, their endeavours to legally securitize the AORs of their regional commanders are ultimately orientated to “fabricate, organize, and plan a milieu” even before ground troops are deployed (as in the case of the first action in the war on terror, which I return to later: the negotiation by CENTCOM JAGs of a Status of Forces Agreement with Uzbekistan in early October 2OO1).2 JAGs play a key role in legally conditioning the battlefield, in regulating the circulation of troops, in optimizing their operational capacities, and in sanctioning the privilege to kill. The JAG’s milieu is a “field of intervention”, in other words, in which they are seeking to “affect, precisely, a population”.29 To this end, securing the aleatory or the uncertain is key. As Michael Dillon argues, central to the securing of populations are the “sciences of the aleatory or the contingent” in which the “government of population” is achieved by the regulation of “statistics and probability”.30 As he points out elsewhere, you “cannot secure anything unless you know what it is”, and therefore securitization demands that “people, territory, and things are transformed into epistemic objects”.3’ And in planning the milieu of US ground forces overseas, JAGs translate regional AORs into legally-enabled grids upon which US military operations take place. This is part of the production of what Matt Hannah terms “mappable landscapes of expectation”;32 and to this end, the aleatory is anticipated by planning for the ‘evental’ in the promissory language of securitization.

The ontology of the event’ has recently garnered wide academic engagement. Randy Martin, for example, has underlined the evental discursive underpinnings of US military strategy in the war on terror; highlighting how the risk of future events results in ‘preemption’ being the tactic of their securitization.33 Naomi Klein has laid bare the powerful event-based logic of disaster capitalism’;34 while others have pointed out how an ascendant logic of premediation’. in which the future is already anticipated and mediated”. is a marked feature of the “post-9/1 I cultural landscape”.35 But it was Foucault who first cited the import of the evental’ in the realm of biopolitics. He points to the “anti-scarcity system” of seventeenth-century Europe as an early exemplar of a new ‘evental’ biopolitics in which “an event that could take place” is prevented before it “becomes a reality”.36 To this end, the figure of ‘population’ becomes both an ‘object’, “on which and towards which mechanisms are directed in order to have a particular effect on it”, but also a ‘subject’, “called upon to conduct itself in such and such a fashion”.37 Echoing Foucault, David Nally usefully argues that the emergence of the “era of bio-power” was facilitated by “the ability of ‘government’ to seize, manage and control individual bodies and whole populations”.38 And this is part of Michael Dillon’s argument about the “very operational heart of the security dispositif of the biopolitics of security”, which seeks to ‘strategize’, ‘secure’. ‘regulate’ and ‘manipulate’ the “circulation of species Iife”.3 For the US military, it is exactly the circulation and regulation of life that is central to its tactics of lawfare to juridically secure the necessary legal geographies and biopolitics of its overseas ground presence.

#### The impact is militarism and the precursor to atrocities in the name of national security.

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

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

#### The alternative is to raise the question of jus CONTRA bellum—voting negative injects epistemic doubt about militarism into our decision calculus which is the prerequisite to shifting away from violence as the solution.

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Just war theory is not concerned with millions of starving people who could be saved from death and disease with a fraction of the astronomical amount of money that, every year, goes into the US defence budget alone (a budget that could no longer be justified if the United States ran out of enemies one day). It is not interested in exposing the operating mechanisms of a global economic structure that is suppressive and exploitative and may be conducive to outbreaks of precisely the kind of violence that their theory is concerned with. As intellectually impressive as analytical just war accounts are, they do not convey any critical sense of Western moralism. It is as though just war theory were written for a different world than the one we occupy: a world of morally responsible, structurally unconstrained, roughly equal agents, who have non-complex and non-exploitative relationships, relationships that lend themselves to easy epistemic access and binary moral analysis. Theorists write with a degree of confidence that fails to appreciate the moral and epistemic fragility of justified war, the long-term genesis of violent conflict, structural causes of violence and the moralistic attitudes that politicians and the media are capable of adopting. To insist that, in the final analysis, the injustice of wars is completely absorbed by their being justified reflects a way of doing moral philosophy that is frighteningly mechanical and sterile. It does not do justice to individual persons,59 it is nonchalant about suffering of unimaginable proportions and it suffocates a nuanced moral world in a rigid binary structure designed to deliver unambiguous, action-guiding recommendations. According to the tragic conception defended here, justified warfare constitutes a moral evil, not just a physical one – whatever Coates’ aforementioned distinction is supposed to amount to. If we do not recognise the moral evil of justified warfare, we run the risk of speaking the following kind of language when talking to a tortured mother, who has witnessed her child being bombed into pieces, justifiably let us assume, in the course of a ‘just war’: See, we did not bomb your toddler into pieces intentionally. You should also consider that our war was justified and that, in performing this particular act of war, we pursued a valid moral goal of destroying the enemy’s ammunition factory. And be aware that killing your toddler was not instrumental to that pursuit. As you can see, there was nothing wrong with what we did. (OR: As you can see, we only infringed the right of your non-liable child not to be targeted, but we did not violate it.) Needless to say, we regret your loss. This would be a deeply pathological thing to say, but it is precisely what at least some contemporary just war theorists would seem to advise. The monstrosity of some accounts of contemporary just war theory seems to derive from a combination of the degree of certainty with which moral judgements are offered and the ability to regard the moral case as closed once the judgements have been made. One implication of my argument for just theorists is clear enough: they should critically reflect on the one-dimensionality of their dominant agenda of making binary moral judgements about war. If they did, they would become more sympathetic to the pacifist argument, not to the conclusion drawn by pacifists who are also caught in a binary mode of thinking (i.e. never wage war, regardless of the circumstances!) but to the timeless wisdom that forms the essence of the pacifist argument. It is wrong to knowingly kill and maim people, and it does not matter, at least not as much as the adherents of double effect claim, whether the killing is done intentionally or ‘merely’ with foresight. The difference would be psychological, too. Moral philosophers of war would no longer be forced to concede this moral truth; rather, they would be free to embrace it. There is no reason for them to disrespect the essence of pacifism. The just war theorist Larry May implicitly offers precisely such a tragic vision in his sympathetic discussion of ‘Grotius and Contingent Pacifism’. According to May, ‘war can sometimes be justified on the same grounds on which certain forms of pacifism are themselves grounded’.60 If this is correct, just war theorists have good reason to stop calling themselves by their name. They would no longer be just war theorists, but unjust war theorists, confronting politicians with a jus contra bellum, rather than offering them a jus ad bellum. Beyond being that, they would be much ‘humbler in [their] approach to considering the justness of war’ (or, rather, the justifiability), acknowledging that: notions of legitimate violence which appear so vivid and complete to the thinking individual are only moments and snapshots of a wider history concerning the different ways in which humans have ordered their arguments and practices of legitimate violence. Humility in this context does not mean weakness. It involves a concern with the implicit danger of adopting an arrogant approach to the problem of war.61 Binary thinking in just war theory is indeed arrogant, as is the failure to acknowledge the legitimacy of – and need for – ambiguity, agony and doubt in moral thinking about war. Humble philosophers of war, on the contrary, would acknowledge that any talk of justice is highly misleading in the context of war.62 It does not suffice here, in my view, to point out that ‘we’ have always understood what ‘they’ meant (assuming they meant what we think they meant). Fiction aside, there is no such thing as a just war. There is also no such thing as a morally justified war that comes without ambiguity and moral remainders. Any language of justified warfare must therefore be carefully drafted and constantly questioned. It should demonstrate an inherent, acute awareness of the fragility of moral thinking about war, rather than an eagerness to construct unbreakable chains of reasoning. Being uncertain about, and agonised by, the justifiability of waging war does not put a moral philosopher to shame. The uncertainty is not only moral, it is also epistemic. Contemporary just war theorists proceed as if certainty were the rule, and uncertainty the exception. The world to which just war theory applies is one of radical and unavoidable uncertainty though, where politicians, voters and combatants do not always know who their enemies are; whether or not they really exist (and if so, why they exist and how they have come into existence); what weapons the enemies have (if any); whether or not, when, and how they are willing to employ them; why exactly the enemies are fought and what the consequences of fighting or not fighting them will be. Philosophers of war should also become more sensitive to the problem of political moralism. The just war language is dangerous, particularly when spoken by eager, selfrighteous, over-confident moralists trying to make a case. It would be a pity if philosophers of war, despite having the smartest of brains and the best of intentions, effectively ended up delivering rhetorical ammunition to political moralists. To avoid being inadvertently complicit in that sense, they could give public lectures on the dangers of political moralism, that is, on thinking about war in terms of black and white, good and evil and them and us. They could warn us against Euro-centrism, missionary zeal and the emperors’ moralistic clothes. They could also investigate the historical genesis and structural conditionality of large-scale aggressive behaviour in the global arena, deconstructing how warriors who claim to be justified are potentially tied into histories and structures, asking them: Who are you to make that claim? A philosopher determined to go beyond the narrow discursive parameters provided by the contemporary just war paradigm would surely embrace something like Marcus’ ‘second-order regulative principle’, which could indeed lead to ‘“better” policy’.63 If justified wars are unjust and if it is true that not all tragedies of war are authentic, then political agents ought to prevent such tragedies from occurring. This demanding principle, however, may require a more fundamental reflection on how we ‘conduct our lives and arrange our institutions’ (Marcus) in this world. It is not enough to adopt a ‘wait and see’ policy, simply waiting for potential aggressions to occur and making sure that we do not go to war unless doing so is a ‘last resort’. Large-scale violence between human beings has causes that go beyond the individual moral failure of those who are potentially aggressing, and if it turns out that some of these causes can be removed ‘through more careful decision-making’ (Lebow), then this is what ought to be done by those who otherwise deprive themselves, today, of the possibility of not wronging tomorrow.

### Off

#### The United States Federal Government should require legislative approval through a policy trial prior to initiating offensive use of military force, unless to repel attacks on the United States or Israel.

#### Consistent statements in support of U.S. security assurances that the US will come to the defense of Israel if they are under attack are key to prevent Israeli lashout

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(Clark A.-, Jessica M. Yeats, Linton F. Brooks, M. Elaine Bunn, Franklin C. Miller, James L. Schoff, CSIS Workshop Proceeding and Key Takeaways, “Exploring the Nuclear Posture Implications of Extended Deterrence and Assurance”, http://csis.org/files/publication/091218\_nuclear\_posture.pdf)

U.S. security assurances to Israel probably have their greatest impact on Israel’s calculus on whether it should act preventively (as it did in the past against Iraq and Syria) against Iran. Former Israeli Deputy National Security Adviser Chuck Freilich argues that “Israel’s understanding of American strategy…would affect Israel’s determination to act unilaterally…[and] Israel’s willingness to discuss options for living with a nuclear Iran would be affected by a better appreciation of American strategy and of the deterrent options the United States would be willing to consider.” In whatever form they may take, U.S. statements and actions that strengthen Israel’s confidence in U.S. assurances, both in preventing Iran from acquiring nuclear weapons and coping with a nuclear Iran, will make it less likely that Israel will feel compelled to preemptively attack Iran’s nuclear facilities. Recent developments – particularly in missile defense cooperation – appear to be helping in this regard. In a stark change of tone, Israeli Defense Minister Eduh Barak was recently quoted saying, "Israel is strong and I do not see anyone capable of representing a threat to our existence…right now is the moment for diplomacy.”146 The Washington Post reported that this strength is derived from three parts: “its nuclear capabilities…the assumption that the United States would stand behind Israel if it came under attack…[and] the calculation that enough of the country’s air bases and military facilities would survive a first strike to retaliate effectively.”147

#### An Israeli strike collapses the global economy, and sparks war with China and Russia

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(Rafael, Guest Opinion: Unilateral strike on Iran could trigger world depression, www.indiana.edu/~spea/news/speaking\_out/reuveny\_on\_unilateral\_strike\_Iran.shtml)

A unilateral Israeli strike on Iran’s nuclear facilities would likely have dire consequences, including a regional war, global economic collapse and a major power clash. For an Israeli campaign to succeed, it must be quick and decisive. This requires an attack that would be so overwhelming that Iran would not dare to respond in full force. Such an outcome is extremely unlikely since the locations of some of Iran’s nuclear facilities are not fully known and known facilities are buried deep underground. All of these widely spread facilities are shielded by elaborate air defense systems constructed not only by the Iranians, but also the Chinese and, likely, the Russians as well. By now, Iran has also built redundant command and control systems and nuclear facilities, developed early-warning systems, acquired ballistic and cruise missiles and upgraded and enlarged its armed forces. Because Iran is well-prepared, a single, conventional Israeli strike — or even numerous strikes — could not destroy all of its capabilities, giving Iran time to respond. A regional war Unlike Iraq, whose nuclear program Israel destroyed in 1981, Iran has a second-strike capability comprised of a coalition of Iranian, Syrian, Lebanese, Hezbollah, Hamas, and, perhaps, Turkish forces. Internal pressure might compel Jordan, Egypt, and the Palestinian Authority to join the assault, turning a bad situation into a regional war. During the 1973 Arab-Israeli War, at the apex of its power, Israel was saved from defeat by President Nixon’s shipment of weapons and planes. Today, Israel’s numerical inferiority is greater, and it faces more determined and better-equipped opponents. Despite Israel’s touted defense systems, Iranian coalition missiles, armed forces, and terrorist attacks would likely wreak havoc on its enemy, leading to a prolonged tit-for-tat. In the absence of massive U.S. assistance, Israel’s military resources may quickly dwindle, forcing it to use its alleged nuclear weapons, as it had reportedly almost done in 1973. An Israeli nuclear attack would likely destroy most of Iran’s capabilities, but a crippled Iran and its coalition could still attack neighboring oil facilities, unleash global terrorism, plant mines in the Persian Gulf and impair maritime trade in the Mediterranean, Red Sea and Indian Ocean. Middle Eastern oil shipments would likely slow to a trickle as production declines due to the war and insurance companies decide to drop their risky Middle Eastern clients. Iran and Venezuela would likely stop selling oil to the United States and Europe. The world economy would head into a tailspin; international acrimony would rise; and Iraqi and Afghani citizens might fully turn on the United States, immediately requiring the deployment of more American troops. Russia, China, Venezuela, and maybe Brazil and Turkey — all of which essentially support Iran — could be tempted to form an alliance and openly challenge the U.S. hegemony. Replaying Nixon’s nightmare Russia and China might rearm their injured Iranian protege overnight, just as Nixon rearmed Israel, and threaten to intervene, just as the U.S.S.R. threatened to join Egypt and Syria in 1973. President Obama’s response would likely put U.S. forces on nuclear alert, replaying Nixon’s nightmarish scenario. Iran may well feel duty-bound to respond to a unilateral attack by its Israeli archenemy, but it knows that it could not take on the United States head-to-head. In contrast, if the United States leads the attack, Iran’s response would likely be muted. If Iran chooses to absorb an American-led strike, its allies would likely protest and send weapons, but would probably not risk using force. While no one has a crystal ball, leaders should be risk-averse when choosing war as a foreign policy tool. If attacking Iran is deemed necessary, Israel must wait for an American green light. A unilateral Israeli strike could ultimately spark World War III.

### Solvency

#### Obama will circumvent the plan --- empirics prove

Levine 12 - Law Clerk; J.D., May 2012, University of Michigan Law School (David Levine, 2013 SURVEY OF BOOKS RELATED TO THE LAW: BOOK NOTICE: A TIME FOR PRESIDENTIAL POWER? WAR TIME AND THE CONSTRAINED EXECUTIVE, 111 Mich. L. Rev. 1195)

Both the Declare War Clause n49 and the War Powers Resolution n50 give Congress some control over exactly when "wartime" exists. While the U.S. military was deployed to Libya during the spring and summer of 2011, the Obama Administration advanced the argument that, under the circumstances, it was bound by neither clause. n51 If Dudziak is worried about "war's presence as an ongoing feature of American democracy" (p. 136), Libya is a potent case study with implications for the use of force over the coming decades.

Article I, Section 8 of the U.S. Constitution grants to Congress the power to "declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water." n52 Although there is substantial debate on the precise scope of these powers, n53 this clause at least provides some measure of congressional control over significant commitments of U.S. forces to battle. However, it has long been accepted that presidents, acting pursuant to the commander-in-chief power, may "introduce[] armed forces into situations in which they encounter[], or risk[] encountering, hostilities, but which [are] not "wars' in either the common meaning or the [\*1207] constitutional sense." n54 Successive administrations have adopted some variant of that view and have invariably deployed U.S. forces abroad in a limited manner based on this inherent authority. n55

The Obama Administration has adopted this position - that a president has inherent constitutional authority to deploy forces outside of war - and even sought to clarify it. In the Office of Legal Counsel's ("OLC") memo to President Obama on the authority to use military force in Libya, n56 the Administration acknowledged that the Declare War Clause is a "possible constitutionally-based limit on ... presidential authority to employ military force." n57 The memo reasoned that the Constitution speaks only to Congress's ability to shape engagements that are "wars," and that presidents have deployed forces in limited contexts from the earliest days of the Union. n58 Acknowledging those facts, the memo concluded that the constitutional limit on congressional power must be the conceptual line between war and not war. In locating this boundary, the memo looked to the "anticipated nature, scope, and duration" of the conflict to which President Obama was introducing forces. n59 OLC found that the "war" standard "will be satisfied only by prolonged and substantial military engagements, typically involving exposure of U.S. military personnel to significant risk over a substantial period." n60

The Obama Administration's position was not out of sync with previous presidential practice - the Declare War Clause did not require congressional approval prior to executive deployment of troops. In analyzing the "nature, scope, and duration" questions, the memo looked first to the type of missions that U.S. forces would be engaged in. The air missions envisioned for the Libya operation did not pose the threat of withdrawal difficulty or escalation risk that might indicate "a greater need for approval [from Congress] at the outset." n61 The nature of the mission, then, was not similar to full "war." Similarly, the scope of the intended operation was primarily limited, at the time the memo was written, to enforcing a no-fly zone. n62 Consequently, [\*1208] the operation's expected duration was not long. Thus, concluded OLC, "the use of force by the United States in Libya [did not rise] to the level of a "war' in the constitutional sense." n63 While this conclusion may have been uncontroversial, it highlights Dudziak's concerns over the manipulation of the idea of "wartime," concerns that were heightened by the Obama Administration's War Powers Resolution analysis. Congress passed the War Powers Resolution in 1973 in an attempt to rein in executive power in the wake of the Vietnam War. n64 The resolution provides that the president shall "in every possible instance ... consult with Congress before introducing United States Armed Forces into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances." n65 Additionally, when the president sends U.S. forces "into hostilities or into situations where imminent involvement in hostilities is clearly indicated," the resolution requires him to submit a report to Congress describing the circumstances of the deployment and the expected involvement of U.S. troops in the "hostilities." n66 Within sixty days of receiving that report, Congress must either declare war or in some other way extend the deployment; in the absence of some ratifying action, the resolution requires that the president withdraw U.S. forces. n67 Though eschewing the plainly confrontational route of directly challenging Congress's power under the War Powers Resolution, the Obama Administration implicitly challenged Congress's ability to affect future operations. In declining to withdraw forces, despite Congress's lack of approving legislation, President Obama claimed that the conflict in Libya could not be deemed "hostilities" as that term is used in the resolution. This argument was made both in a letter to Congress during the summer of 2011 n68 and in congressional testimony given by Harold Koh, the State Department Legal Advisor under the Obama Administration. n69 [\*1209] Koh's testimony provides the most complete recitation of the Obama Administration's analysis and focuses on four factors that distinguish the fighting in Libya (or at least the United States' participation) from "hostilities": the scope of the mission, the exposure of U.S. forces, the risk of escalation, and the nature of the tactics to be used. First, "the mission is limited." n70 That is, the objectives of the overall campaign led by the North American Treaty Organization ("NATO") were confined to a "civilian protection operation ... implementing a U.N. Security Council resolution." n71 Second, the "exposure" of the U.S. forces involved was narrow - the conflict did not "involve active exchanges of fire with hostile forces" in ways that would endanger U.S. service members' safety. n72 Third, the fact that the "risk of escalation [was] limited" weighed in favor of not categorizing the conflict as "hostilities." n73 Finally, the "military means" the United States used in Libya were limited in nature. n74 The majority of missions were focused on "providing intelligence capabilities and refueling assets." n75 Those American flights that were air-to-ground missions were a mix of suppression-of-enemy-air-defenses operations to enforce a no-fly zone and strikes by armed Predator drones. n76 As a point of comparison, Koh noted that "the total number of U.S. munitions dropped has been a tiny fraction of the number dropped in Kosovo." n77 With the exception of this final factor, these considerations are quite similar to the factors that define whether a conflict is a "war" for constitutional purposes. n78

The result of this reasoning is a substantially relaxed restraint on presidential authority to use force abroad going forward. As armed drones begin [\*1210] to make up a larger portion of the United States' arsenal, n79 and as other protective technologies, such as standoff munitions n80 and electronic warfare techniques, gain traction, it is far more likely that the "exposure" of U.S. forces will decrease substantially. The force used in Yemen and the Horn of Africa is illustrative of this new paradigm where U.S. service members are not "involved [in] active exchanges of fire with hostile forces," n81 but rather machines use force by acting as human proxies. To the same point, if the "military means" used in Libya are markers of something short of "hostilities," the United States is only likely to see the use of those means increase in the coming decades. Pressing the logic of Koh's testimony, leeway for unilateral executive action will increase as the makeup of our arsenal continues to modernize. n82

Dudziak worries about the invocation of "wartime" as an argument for the perpetual exercise of extraordinary powers. The Libya scenario, of course, is somewhat different - the president has argued that the absence of "war" leaves him a residuum of power such that he may use force abroad without congressional input. The two positions are of a piece, though. Dudziak argues that legacy conceptions of "wartime" and "peacetime" have left us vulnerable to the former's use, in and of itself, as a reason for increased executive power. Such literal thinking - that "war" is something specific or that the word "hostilities" has certain limits - also opens the door to the Obama Administration's defense of its position on Libya. And looking at the substance of that position leaves much to be desired.

Both Koh's testimony and the OLC memo pay lip service to the idea that the policy considerations underlying their position are consistent with the policy considerations of the Framers with respect to the Declare War Clause and Congress with respect to the War Powers Resolution. But the primary, if not the only, consideration mentioned is the loss of U.S. forces. That concern is front and center when analyzing the "exposure" of service [\*1211] members, n83 and it is also on display with respect to discussions about the nature and scope of an operation. n84 This is not the only policy consideration that one might intuit from those two provisions, however. Using lethal force abroad is a very serious matter, and the U.S. polity might rationally want input from the more representative branch in deciding when, where, and how that force is used in its name. In that same vein, permitting one individual to embroil the nation in foreign conflicts - limited or otherwise - without the input of another coequal branch of government is potentially dangerous. n85

As Dudziak's framework highlights the limits of the Obama Administration's argument for expansive power, so does the Administration's novel dissection of "hostilities" illustrate the limits of Dudziak's analysis. Dudziak presents a narrative arc bending toward the expansion of wartime and, as a result, increased presidential power. That is not the case with Libya: the president finds power in "not war" rather than in "wartime." If the American public is guilty, as Dudziak asserts, of using the outmoded and misleadingly concrete terminology of "wartime" to describe an increasingly complex phenomenon, Dudziak herself is guilty of operating within a paradigm where wartime necessarily equals more executive power (than does "not war"), a paradigm that has been supplanted by a more nuanced reality. Although [\*1212] Dudziak identifies the dangers of manipulating the boundaries of wartime, her catalog of manipulations remains incomplete because of the inherent limits of her framework.

This realization does not detract from Dudziak's warnings about the perils of endless wartime, however. Indeed, the powers that President Obama has claimed seem, perhaps, more palatable after a decade in which war has been invoked as an argument for many executive powers that would, in other eras, seem extraordinary. Though he has not explicitly invoked war during the Libya crisis, President Obama has certainly shown a willingness to manipulate its definition in the service of expanded executive power in ways that seem sure to increase "war's presence as an ongoing feature of American democracy" (p. 136).

Conclusion Dudziak presents a compelling argument and supports it well. War Time is potent as a rhetorical device and as a way to frame decisionmaking. This is especially so for the executive branch of the U.S. government, for which wartime has generally meant increased, and ever more expansive, power. As the United States continues to transit an era in which the lines between "war" and "peace" become increasingly blurred and violent adversaries are a constant, the temptation to claim wartime powers - to render the extraordinary ordinary - is significant.

This Notice has argued that, contrary to Dudziak's concerns, the temptation is not absolute. Indeed, in some instances - notably, detention operations in Iraq and Afghanistan - we are still able to differentiate between "war" and "peace" in ways that have hard legal meaning for the actors involved. And, importantly, the executive still feels compelled to abide by these distinctions and act in accordance with the law rather than claim wartime exceptionalism.

That the temptation is not absolute, however, does not mean that it is not real or that Dudziak's concerns have not manifested themselves. This detachment of expansive power from temporally bound periods has opened the door for, and in some ways incentivized, limiting wartime rather than expanding it. While President Obama has recognized the legal constraints that "war" imposes, he has also followed in the footsteps of executives who have attempted to manipulate the definition of "war" itself (and now the definition of "hostilities") in order to evade those constraints as much as possible. To the extent he has succeeded in that evasion, he has confirmed what seems to be Dudziak's greatest fear: that "military engagement no longer seems to require the support of the American people, but instead their inattention" (p. 132).

#### Laugh out loud - did you forget we claim self defense?

Anderson 11 - Professor of law at Washington College of Law, (Kenneth, TARGETED KILLING AND DRONE WARFARE: HOW WE CAME TO DEBATE WHETHER THERE IS A ‘LEGAL GEOGRAPHY OF WAR’, Washington College of Law Research Paper No. 2011-16, http://www.utexas.edu/law/journals/tlr/sources/Volume%2091/Issue%204/Anderson/Anderson.fn001.Anderson.Targeted\_Killing\_1.pdf)

The US government addressed the issue of self-defense straightforwardly in the 1980s, notably in an important 1989 speech (later published in the Military Law Review) by then State Department legal adviser Abraham Sofaer at the US Army JAG School. Notwithstanding the importance of sovereignty, he said, in those instances in which a state was unable or unwilling to control terrorist groups in its territory, the United States saw itself as lawfully able to strike at them in their safe havens as a matter of self-defense. It was able to do so with its instruments of national security power, including civilian agents of the CIA. This was a prerogative available to states generally, of course, not just the United States. Koh’s 2010 statement was consistent with Sofaer’s address from decades before. It held out the possibility that there might be instances in which the United States would engage in uses of force under self-defense that would not necessarily be part of an armed conflict in a technical legal sense (we might call it “naked” self-defense). It can be defined as resorting to force in self-defense, but in ways in which the means and levels of force used are not part of an armed conflict, as a matter of the technical law of war. Those circumstances include self-defense uses of force against nonstate actors, such as individual terrorist targets, which do not (yet) rise to the NIAC threshold.

#### Their restrictions are a smoke screen.

Nzelibe 7—Professor of Law @ Northwestern University [Jide Nzelibe, “Are Congressionally Authorized Wars Perverse?” Stanford Law Review, Vol. 59, 2007]

These assumptions are all questionable. As a preliminary matter, there is not much causal evidence that supports the institutional constraints logic. As various commentators have noted, Congress's bark with respect to war powers is often much greater than its bite. Significantly, skeptics like Barbara Hinckley suggest that any notion of an activist Congress in war powers is a myth and members of Congress will often use the smokescreen of "symbolic resolutions, increase in roll calls and lengthy hearings, [and] addition of reporting requirements" to create the illusion of congressional participation in foreign policy.' 0 Indeed, even those commentators who support a more aggressive role for Congress in initiating conflicts acknowledge this problem," but suggest that it could be fixed by having Congress enact more specific legislation about conflict objectives and implement new tools for monitoring executive behavior during wartime. 12 Yet, even if Congress were equipped with better institutional tools to constrain and monitor the President's military initiatives, it is not clear that it would significantly alter the current war powers landscape. As Horn and Shepsle have argued elsewhere: "[N]either specificity in enabling legislation ... nor participation by interested parties is necessarily optimal or self-fulfilling; therefore, they do not ensure agent compliance. Ultimately, there must be some enforcement feature-a credible commitment to punish ....Thus, no matter how much well-intentioned and specific legislation Congress passes to increase congressional oversight of the President's military initiatives, it will come to naught if members of Congress lack institutional incentives to monitor and constrain the President's behavior in an international crisis. Various congressional observers have highlighted electoral disincentives that members of Congress might face in constraining the President's military initiatives. 14 Others have pointed to more institutional obstacles to congressional assertiveness in foreign relations, such as collective action problems. 15 Generally, lawmaking is a demanding and grueling exercise. If one assumes that members of Congress are often obsessed with the prospect of reelection, 16 then such members will tend to focus their scarce resources on district-level concerns and hesitate to second-guess the President's response in an international crisis. 17 Even if members of Congress could marshal the resources to challenge the President's agenda on national issues, the payoff in electoral terms might be trivial or non-existent. Indeed, in the case of the President's military initiatives where the median voter is likely to defer to the executive branch's judgment, the electoral payoff for members of Congress of constraining such initiatives might actually be negative. In other words, regardless of how explicit the grant of a constitutional role to Congress in foreign affairs might be, few members of Congress are willing to make the personal sacrifice for the greater institutional goal. Thus, unless a grand reformer is able to tweak the system and make congressional assertiveness an electorally palatable option in war powers, calls for greater congressional participation in war powers are likely to fall on deaf ears. Pg. 912-913

### China

#### Gridlock dooms solvency over foreign affairs and the aff complicates the process

Hass ’13 (Richard – pres of CFR)“How to Save Congress: Stop Meddling on Foreign Policy” Read more: http://www.politico.com/magazine/story/2013/12/can-congress-be-saved-100974\_Page5.html#ixzz2sjtN089Q

The greatest threat to U.S. national security is not China or terrorism or Iran or anything else coming from beyond this country’s shores. Rather, it is America’s own political dysfunction. In that sense, fixing the epicenter of that dysfunction—the U.S. Congress—could not be more urgent.¶ Most often, congressional gridlock is dicussed in domestic terms: bills not passed, deals not cut, critical decisions not made. But the mess on Capitol Hill has enormous implications for America’s foreign policy, too. It makes it difficult and often impossible for the United States to enact policies needed to maintain economic competitiveness and to generate the resources needed to promote and protect its interests around the world. It also dilutes the appeal of the American model (ironic to say the least given how much this country spends in trying to spread democracy) and introduces a degree of uncertainty that is inconsistent with the demands of global leadership in an era when so many countries depend on the United States for everything from the strength of its military to the strength of the dollar.¶ A number of internal reforms would make Washington a more effective place in the national security realm. One would be to rein in the Senate practice of holds, in which individual senators can make it impossible for a presidential nominee to be voted on. The practice often leads to hostage-taking, i.e., it is used to exact leverage over an unrelated person or issue. Holds can make it more difficult to put into place those people needed to design and implement policy. The current practice should be replaced by one that limits the amount of time any nominee can be delayed before a vote.¶ Another would be to grant fast track (formally trade promotion) authority, which limits the ability of Congress to amend pending legislation, something that can be essential if accords involving a large number of parties and filled with necessary compromises are to come to fruition. This is no academic concern, as it is quite possible that one or more major trade pacts will come before Congress in the coming year. But Congress has yet to agree to limit itself to an up or down vote, while changes requiring re-negotiation might seem reasonable but in effect would be tantamount to rejection. The rate of U.S. economic growth, relations with critical friends and allies, the ability to give potential foes a reason to act with restraint—all depend on it. ¶ A third area where Congress could usefully reform involves its own structure. Right now, national security policy is overseen by literally dozens of committees and subcommittees in both the House and the Senate. This consumes inordinate time and effort on the part of already stretched administration officials who must answer multiple calls for appearances and testimony. At least as important, it leads to a divided oversight function at a moment in history when few issues fit neatly under the jurisdiction of single committees. Far better would be a broad-based national security committee that would enable Congress to better see the big picture and understand the implications of tradeoffs.¶ To be fair, many of the challenges to America’s ability to act effectively in the world (the recent handling of policy towards Syria comes to mind) are to be found at the other end of Pennsylvania Avenue. The larger point, though, is that no amount of procedural or institutional reform is a panacea. Far more significant than changing how Congress handles foreign policy would be to change how Congress handles its core business. Sequestration, the government shutdown, the near- and still-possible default on the debt; these may be the new normal when it comes to politics, but none is “just” a domestic issue. To the contrary, they are every bit as much a national security threat as anything faced by the Pentagon.

Read more: http://www.politico.com/magazine/story/2013/12/can-congress-be-saved-100974\_Page5.html#ixzz2sjrvOowD

#### Congress links harder

Posner and Vermeule, 7 – \*Kirkland and Ellis Professor of Law at the University of Chicago Law School AND \*\*professor at Harvard Law School (Eric and Adrian, Terror in the Balance: Security, Liberty, and the Courts p. 46-47)

The idea that Congress will, on net, weed out bad policies rests on an institutional comparison. The president is elected by a national constituency on a winner-take-all basis (barring the remote chance that the Electoral College will matter), whereas Congress is a summation of local constituencies and thus affords more voice to political and racial minorities. At the level of political psychology, decisionmaking within the executive is prone to group polarization and other forms of groupthink or irrational panic,51 whereas the internal diversity of legislative deliberation checks these forces. At the level of political structure, Congress contains internal veto gates and chokepoints—consider the committee system and the fi libuster rule—that provide minorities an opportunity to block harmful policies, whereas executive decisionmaking is relatively centralized and unitary.¶ The contrast is drawn too sharply, because in practice the executive is a they, not an it. Presidential oversight is incapable of fully unifying executive branch policies, which means that disagreement flourishes within the executive as well, dampening panic and groupthink and providing minorities with political redoubts.52 Where a national majority is internally divided, the structure of presidential politics creates chokepoints that can give racial or ideological minorities disproportionate influence, just as the legislative process does. Consider the influence of Arab Americans in Michigan, often a swing state in presidential elections.¶ It is not obvious, then, that statutory authorization makes any difference at all. One possibility is that a large national majority dominates both Congress and the presidency and enacts panicky policies, oppresses minorities, or increases security in ways that have ratchet effects that are costly to reverse. If this is the case, a requirement of statutory authorization does not help. Another possibility is that there are internal institutional checks, within both the executive branch and Congress, on the adoption of panicky or oppressive policies and that democratic minorities have real infl uence in both arenas. If this is the case, then a requirement of authorization is not necessary and does no good. Authorization only makes a difference in the unlikely case where the executive is thoroughly panicky, or oppressively majoritarian, while Congress resists the stampede toward bad policies and safeguards the interests of oppressed minorities.¶ Even if that condition obtains, however, the argument for authorization goes wrong by failing to consider both sides of the normative ledger. As for majoritarian oppression, the multiplicity of veto gates within Congress may allow minorities to block harmful discrimination, but it also allows minorities to block policies and laws which, although targeted, are nonetheless good. As for panic and irrationality, if Congress is more deliberative, one result will be to prevent groupthink and slow down stampedes toward bad policies, but another result will be to delay necessary emergency measures and slow down stampedes toward good policies. Proponents of the authorization requirement sometimes assume that quick action, even panicky action, always produces bad policies. But there is no necessary connection between these two things; expedited action is sometimes good, and panicky crowds can stampede either in the wrong direction or in the right direction. Slowing down the adoption of new policies through congressional oversight retards the adoption not only of bad policies, but also of good policies that need to be adopted quickly if they are to be effective.

Aff doesn't solve - none of their evidence says that the plan WOULD CHANGE the decision calculous of congress to be involved in foreign affairs, it is just arguing that they SHOULD change focus

EX-ANTE tanks their solvency.

Crandall 12 (Carla, Law Clerk – Supreme Court of Missouri, “Ready…Fire…Aim! A Case for Applying American Due Process Principles Before Engaging in Drone Strikes,” Florida Journal of International Law, April, 24 Fla. J. Int'l L. 55, Lexis)

Despite the expanded use of drones, however, the legitimacy of these attacks remains unclear. Most commentators who have addressed the legitimacy of more general targeted killings have examined the issue within the framework of either international humanitarian law (IHL) or international human rights law (IHRL). n6 Those limited few who have [\*57] analyzed the subject through the lens of American due process have limited their scrutiny to the absence of post-deprivation rights. n7 They suggest, for instance, that the United States should implement some sort of Bivens-type action as a remedy for the survivors of erroneous drone strikes. n8¶ As this Article explains, however, none of these approaches yield wholly satisfactory answers as to which framework should govern the use of drones within the context of the war on terror. And though the idea that American due process principles ought to be applied ex post represents a significant contribution to the debate, it too ultimately falls flat. Indeed, such an approach unduly narrows the obligation of U.S. officials to the standard of readying, firing, and then aiming- requiring them to perform a detailed review of the strikes only after the fact. Instead, this Article argues that the United States ought to be held to a higher, ex ante standard-that of "aiming" before firing-and posits that such a standard is practically attainable.¶ In doing so, the Article proceeds as follows. Part II describes the capabilities and current employment of drones and explains why resolving the legitimacy of their use is so critical. Specifically, it highlights that, despite the unsettled nature of the law in this area, targeted killings by drone strikes have increased exponentially in recent years-in some instances against arguably questionable targets. Part III examines current attempts to address the legitimacy of drone assaults and explains why they fail to adequately govern the use of these weapons. While this Part explores the applicability of IHRL and IHL, it does not undertake to resolve the debate as to which regime does or ought to apply to these operations. To the contrary, it argues that limitations within each framework have prevented consensus from forming around the applicability of either. Accordingly, U.S. officials [\*58] must arguably look to other sources to find guiding principles to legitimize targeted killings via drones. Though it is admittedly not entirely clear whether constitutional guarantees apply in the foreign locales where these strikes occur-or to the foreign nationals who are often their target-this Part proposes that American due process principles nevertheless ought to be invoked before such strikes occur, because failing to do so allows the executive to act with impunity in a legal void. Part IV argues that, in Hamdi v. Rumsfeld n9 and Boumediene v. Bush, n10 the Supreme Court signaled the process that may be due before drones are used to eliminate known terrorist targets. In extending the Hamdi and Boumediene analysis to targeted killings by drones, this Part also begins the inquiry into the procedural protections that due process may demand before U.S. officials engage in such actions. Part V concludes.

### Russia

#### US legal modeling fails- can’t shape norms

**Law and Versteeg ’12** [David S. Law, Professor of Law and Professor of Political Science, Washington University in St. Louis. B.A., M.A., Ph.D., Stanford University; J.D., Harvard Law School; B.C.L. in European and Comparative Law, University of Oxford, Mila Versteeg, Associate Professor, University of Virginia School of Law. B.A., LL.M., Tilburg University; LL.M., Harvard Law School; D.Phil., University of Oxford, “The Declining Influence of the United States Constitution,” New York University Law Review, Vol. 87, No. 3, pp. 762-858, June 2012, online]

The appeal of American constitutionalism as a model for other countries appears to be waning in more ways than one. Scholarly¶ attention has thus far focused on global judicial practice: There is a¶ growing sense, backed by more than purely anecdotal observation,¶ that foreign courts cite the constitutional jurisprudence of the U.S.¶ Supreme Court less frequently than before.247 But the behavior of¶ those who draft and revise actual constitutions exhibits a similar pattern.¶ Our empirical analysis shows that the content of the U.S.¶ Constitution is becoming increasingly atypical by global standards.¶ Over the last three decades, other countries have become less likely to¶ model the rights-related provisions of their own constitutions upon¶ those found in the U.S. Constitution. Meanwhile, global adoption of key structural features of the Constitution, such as federalism, presidentialism, and a decentralized model of judicial review, is at best¶ stable and at worst declining. In sum, rather than leading the way for¶ global constitutionalism, the U.S. Constitution appears instead to be losing its appeal as a model for constitutional drafters elsewhere. The¶ idea of adopting a constitution may still trace its inspiration to the¶ United States, but the manner in which constitutions are written¶ increasingly does not.¶ If the U.S. Constitution is indeed losing popularity as a model for¶ other countries, what—or who—is to blame? At this point, one can¶ only speculate as to the actual causes of this decline, but five possible hypotheses suggest themselves: (1) the advent of a superior or more¶ attractive competitor; (2) a general decline in American hegemony;¶ (3) judicial parochialism; (4) constitutional obsolescence; and (5) a creed of American exceptionalism.¶ With respect to the first hypothesis, there is little indication that¶ the U.S. Constitution has been displaced by any specific competitor.¶ Instead, the notion that a particular constitution can serve as a dominant¶ model for other countries may itself be obsolete. There is an¶ increasingly clear and broad consensus on the types of rights that a¶ constitution should include, to the point that one can articulate the¶ content of a generic bill of rights with considerable precision.248 Yet it is difficult to pinpoint a specific constitution—or regional or international¶ human rights instrument—that is clearly the driving force¶ behind this emerging paradigm. We find only limited evidence that global constitutionalism is following the lead of either newer national¶ constitutions that are often cited as influential, such as those of¶ Canada and South Africa, or leading international and regional¶ human rights instruments such as the Universal Declaration of¶ Human Rights and the European Convention on Human Rights.¶ Although Canada in particular does appear to exercise a quantifiable¶ degree of constitutional influence or leadership, that influence is not¶ uniform and global, but more likely reflects the emergence and evolution¶ of a shared practice of constitutionalism among common law¶ countries.249 Our findings suggest, instead, that the development of¶ global constitutionalism is a polycentric and multipolar process that is¶ not dominated by any particular country.250 The result might be likened¶ to a global language of constitutional rights, but one that has¶ been collectively forged rather than modeled upon a specific¶ constitution.¶ Another possibility is that America’s capacity for constitutional¶ leadership is at least partly a function of American “soft power” more¶ generally.251 It is reasonable to suspect that the overall influence and appeal of the United States and its institutions have a powerful spillover¶ effect into the constitutional arena. The popularity of American¶ culture, the prestige of American universities, and the efficacy of¶ American diplomacy can all be expected to affect the appeal of¶ American constitutionalism, and vice versa. All are elements of an¶ overall American brand, and the strength of that brand helps to determine¶ the strength of each of its elements. Thus, any erosion of the¶ American brand may also diminish the appeal of the Constitution for¶ reasons that have little or nothing to do with the Constitution itself.¶ Likewise, a decline in American constitutional influence of the type¶ documented in this Article is potentially indicative of a broader decline in American soft power.¶ There are also factors specific to American constitutionalism that¶ may be reducing its appeal to foreign audiences. Critics suggest that¶ the Supreme Court has undermined the global appeal of its own jurisprudence¶ by failing to acknowledge the relevant intellectual contributions of foreign courts on questions of common concern252 and by¶ pursuing interpretive approaches that lack acceptance elsewhere.253¶ On this view, the Court may bear some responsibility for the declining¶ influence of not only its own jurisprudence, but also the actual U.S.¶ Constitution: One might argue that the Court’s approach to constitutional¶ issues has undermined the appeal of American constitutionalism¶ more generally, to the point that other countries have become¶ unwilling to look either to American constitutional jurisprudence or¶ to the U.S. Constitution itself for inspiration.254¶ It is equally plausible, however, that responsibility for the¶ declining appeal of American constitutionalism lies with the idiosyncrasies¶ of the Constitution itself rather than the proclivities of the¶ Supreme Court. As the oldest formal constitution still in force and one of the most rarely amended constitutions in the world,255 the U.S.¶ Constitution contains relatively few of the rights that have become¶ popular in recent decades.256 At the same time, some of the provisions¶ that it does contain may appear increasingly problematic, unnecessary,¶ or even undesirable with the benefit of two hundred years of¶ hindsight.257 It should therefore come as little surprise if the U.S.¶ Constitution strikes those in other countries—or, indeed, members of¶ the U.S. Supreme Court258—as out of date and out of line with global¶ practice.259 Moreover, even if the Court were committed to interpreting¶ the Constitution in tune with global approaches, it would still¶ lack the power to update the actual text of the document. Indeed,¶ efforts by the Court to update the Constitution via interpretation may¶ actually reduce the likelihood of formal amendment by rendering such¶ amendment unnecessary as a practical matter.260 As a result, there is¶ only so much that the U.S. Supreme Court can do to make the U.S.¶ Constitution an attractive formal template for other countries. The¶ obsolescence of the Constitution, in turn, may undermine the appeal¶ of American constitutional jurisprudence. Foreign courts have little¶ reason to follow the Supreme Court’s lead on constitutional issues if¶ the Supreme Court is saddled with the interpretation of an unusual¶ and obsolete constitution.261 No amount of ingenuity or solicitude for¶ foreign law on the part of the Court can entirely divert attention from¶ the fact that the Constitution itself is an increasingly atypical¶ document. One way to put a more positive spin on the U.S. Constitution’s¶ status as a global outlier is to emphasize its role in articulating and¶ defining what is unique about American national identity. Many¶ scholars have opined that formal constitutions serve an expressive¶ function as statements of national identity.262 This view finds little¶ support in our own empirical findings, which suggest instead that constitutions¶ tend to contain relatively standardized packages of rights.263¶ Nevertheless, to the extent that constitutions do serve such a function,¶ the distinctiveness of the U.S. Constitution may reflect the uniqueness¶ of America’s national identity. In this vein, various scholars have¶ argued that the U.S. Constitution lies at the very heart of an¶ “American creed of exceptionalism,” which combines a belief that the¶ United States occupies a unique position in the world with a commitment¶ to the qualities that set the United States apart from other countries.¶ 264 From this perspective, the Supreme Court’s reluctance to¶ make use of foreign and international law in constitutional cases¶ amounts not to parochialism, but rather to respect for the exceptional¶ character of the nation and its constitution.265¶ Unfortunately, it is clear that the reasons for the declining influence¶ of American constitutionalism cannot be reduced to anything as¶ simple or attractive as a longstanding American creed of exceptionalism.¶ Historically, American exceptionalism has not prevented other¶ countries from following the example set by American constitutionalism.¶ The global turn away from the American model is a relatively recent development that postdates the Cold War. If the U.S.¶ Constitution does in fact capture something profoundly unique about¶ the United States, it has surely been doing so for longer than the last¶ thirty years.¶ A complete explanation of the declining influence of American¶ constitutionalism in other countries must instead be sought in more¶ recent history, such as the wave of constitution making that followed¶ the end of the Cold War.266 During this period, America’s newfound¶ position as lone superpower might have been expected to create¶ opportunities for the spread of American constitutionalism. But this¶ did not come to pass.¶ Once global constitutionalism is understood as the product of a¶ polycentric evolutionary process, it is not difficult to see why the U.S.¶ Constitution is playing an increasingly peripheral role in that process.¶ No evolutionary process favors a species that is frozen in time. At¶ least some of the responsibility for the declining global appeal of¶ American constitutionalism lies not with the Supreme Court, or with a¶ broader penchant for exceptionalism, but rather with the static character¶ of the Constitution itself. If the United States were to revise the¶ Bill of Rights today—with the benefit of over two centuries of experience,¶ and in a manner that addresses contemporary challenges while¶ remaining faithful to the nation’s best traditions—there is no guarantee¶ that other countries would follow its lead. But the world would¶ surely pay close attention.

Tons of alt causes to SOP Violations - indefinite detention, targeted killing, the BOND case.

#### SOP resilient

Rosman 96 [Michael E. Rosman (General Counsel @ Center for Individual Rights; JD from Yale); Review of “FIGHTING WORDS: INDIVIDUALS, COMMUNITIES AND LIBERTIES OF SPEECH”; Constitutional Commentary 96 (Winter, p. 343-345)]

Of course, the other branches also shove at the boundaries of branch power--FDR's Court-packing plan being one notable example of this practice. Sometimes the law of unintended consequences grabs hold. Perhaps the Court-packing plan concentrated the Justices' minds on finding ways to hold New Deal legislation constitutional, but it also blew up in FDR's face politically. ¶ At least for the last two hundred years, however, no branch has managed to expand its power to the point of delivering an obvious knock-out blow to another branch. Seen from this broader perspective, cases such as Morrison,(33) Bowsher v. Synar,(34) and Mistretta v. United States(35) surely alter the balance of branch power at a given historical moment, but do not change the fundamental and brute fact that the Constitution puts three institutional heavyweights into a ring where they are free to bash each other. ¶ Judicialocentrism tends to obscure this obvious point because it causes people to dwell on the hard cases that reach the Supreme Court. The power of separation of powers, however, largely resides in its ability to keep the easy cases from ever occurring. For instance, Congress, although it tries to weaken the President from time to time, has not tried to reduce the President to a ceremonial figurehead a la the Queen of England. Similarly, Congress does not make a habit of trying cases that have been heard by the courts. This list could be continued indefinitely. ¶ The Supreme Court has had two hundred years to muck about with separation-of-powers doctrine. Over that time, scores of Justices--each with his or her own somewhat idiosyncratic view of the law--have sat on the bench. Scholars have denounced separation-of-powers jurisprudence as a mess. But the Republic endures, at least more or less. These historical facts tend to indicate that the Court need not rush to change its approach to separation of powers to prevent a slide into tyranny.

#### No reverse causal—countries won’t magically clean up their act

**Chodosh 03** (Hiram, Professor of Law, Director of the Frederick K. Cox International Law Center, Case Western Reserve University School of Law, 38 Tex. Int'l L.J. 587, lexis)

Exposure to foreign systems is helpful but seldom sufficient for effective reform design. Reform models are more likely to be successful if they are not merely copied or transplanted into the system. The argument that transplants are easy and common (though based on substantial historical evidence) profoundly undervalues the relationship between law and external social objectives. ¶ 103 Furthermore, reforms conceived as blunt negations of [\*606] the status quo are not likely to be successful. 104 Reform proposals based on foreign systems or in reaction to (or as a negation of) recent domestic experience require careful adaptation to local circumstances and conditions. However, most communities are not familiar with the tools of adaptation and tend to think of foreign models as package deals to accept or reject (but rarely to alter), and alterations tend to graft one institution onto another without comprehensive consideration of the system as a whole. 105

### 2nc

### F/W

As a legal scholar you should reflect on the 1ac as an up-down vote: there is no way voting aff can access their plan, but the university is a crucial place of praxis. If we win that lawmaking in the context of war is about justifying rather than challenging war, and the aff is an instance of that, you should vote neg.

Bond Graham 9. Darwin Bond Graham, PhD Sociology UC Santa Barbara, and Hell, UC Fiat Pax Research Project Group, Higher Education Militarization Resource, 2003, “The Militarization of America’s Universities”, Fiat Pax, UC Santa Cruz Press, pages 3-4, http://www.fiatpax.net/demil.pdf, Accessed 10/15/09

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

We solve predictability

-Resolved means mental decision

AHD 06. American Heritage Dictionary

resolved v. To cause (a person) to reach a decision.

#### Reject their arguements about roleplaying - our knowledge production should be situated against the exceptional violence of state sovreignty.

Shampa Biswas 7 Prof of Politics @ Whitman “Empire and Global Public Intellectfsuals: Reading Edward Said as an International Relations Theorist” Millennium 36 (1) p. 117-125

The recent resuscitation of the project of Empire should give International Relations scholars particular pause.1 For a discipline long premised on a triumphant Westphalian sovereignty, there should be something remarkable about the ease with which the case for brute force, regime change and empire-building is being formulated in widespread commentary spanning the political spectrum. Writing after the 1991 Gulf War, Edward Said notes the US hesitance to use the word ‘empire’ despite its long imperial history.2 This hesitance too is increasingly under attack as even self-designated liberal commentators such as Michael Ignatieff urge the US to overcome its unease with the ‘e-word’ and selfconsciously don the mantle of imperial power, contravening the limits of sovereign authority and remaking the world in its universalist image of ‘democracy’ and ‘freedom’.3 Rashid Khalidi has argued that the US invasion and occupation of Iraq does indeed mark a new stage in American world hegemony, replacing the indirect and proxy forms of Cold War domination with a regime much more reminiscent of European colonial empires in the Middle East.4 The ease with which a defence of empire has been mounted and a colonial project so unabashedly resurrected makes this a particularly opportune, if not necessary, moment, as scholars of ‘the global’, to take stock of our disciplinary complicities with power, to account for colonialist imaginaries that are lodged at the heart of a discipline ostensibly interested in power but perhaps far too deluded by the formal equality of state sovereignty and overly concerned with security and order. Perhaps more than any other scholar, Edward Said’s groundbreaking work in Orientalism has argued and demonstrated the long and deep complicity of academic scholarship with colonial domination.5 In addition to spawning whole new areas of scholarship such as postcolonial studies, Said’s writings have had considerable influence in his own discipline of comparative literature but also in such varied disciplines as anthropology, geography and history, all of which have taken serious and sustained stock of their own participation in imperial projects and in fact regrouped around that consciousness in a way that has simply not happened with International Relations.6 It has been 30 years since Stanley Hoffman accused IR of being an ‘American social science’ and noted its too close connections to US foreign policy elites and US preoccupations of the Cold War to be able to make any universal claims,7 yet there seems to be a curious amnesia and lack of curiosity about the political history of the discipline, and in particular its own complicities in the production of empire.8 Through what discourses the imperial gets reproduced, resurrected and re-energised is a question that should be very much at the heart of a discipline whose task it is to examine the contours of global power. Thinking this failure of IR through some of Edward Said’s critical scholarly work from his long distinguished career as an intellectual and activist, this article is an attempt to politicise and hence render questionable the disciplinary traps that have, ironically, circumscribed the ability of scholars whose very business it is to think about global politics to actually think globally and politically. What Edward Said has to offer IR scholars, I believe, is a certain kind of global sensibility, a critical but sympathetic and felt awareness of an inhabited and cohabited world. Furthermore, it is a profoundly political sensibility whose globalism is predicated on a cognisance of the imperial and a firm non-imperial ethic in its formulation. I make this argument by travelling through a couple of Said’s thematic foci in his enormous corpus of writing. Using a lot of Said’s reflections on the role of public intellectuals, I argue in this article that IR scholars need to develop what I call a ‘global intellectual posture’. In the 1993 Reith Lectures delivered on BBC channels, Said outlines three positions for public intellectuals to assume – as an outsider/exile/marginal, as an ‘amateur’, and as a disturber of the status quo speaking ‘truth to power’ and self-consciously siding with those who are underrepresented and disadvantaged.9 Beginning with a discussion of Said’s critique of ‘professionalism’ and the ‘cult of expertise’ as it applies to International Relations, I first argue the importance, for scholars of global politics, of taking politics seriously. Second, I turn to Said’s comments on the posture of exile and his critique of identity politics, particularly in its nationalist formulations, to ask what it means for students of global politics to take the global seriously. Finally, I attend to some of Said’s comments on humanism and contrapuntality to examine what IR scholars can learn from Said about feeling and thinking globally concretely, thoroughly and carefully. IR Professionals in an Age of Empire: From ‘International Experts’ to ‘Global Public Intellectuals’ One of the profound effects of the war on terror initiated by the Bush administration has been a significant constriction of a democratic public sphere, which has included the active and aggressive curtailment of intellectual and political dissent and a sharp delineation of national boundaries along with concentration of state power. The academy in this context has become a particularly embattled site with some highly disturbing onslaughts on academic freedom. At the most obvious level, this has involved fairly well-calibrated neoconservative attacks on US higher education that have invoked the mantra of ‘liberal bias’ and demanded legislative regulation and reform10, an onslaught supported by a well-funded network of conservative think tanks, centres, institutes and ‘concerned citizen groups’ within and outside the higher education establishment11 and with considerable reach among sitting legislators, jurists and policy-makers as well as the media. But what has in part made possible the encroachment of such nationalist and statist agendas has been a larger history of the corporatisation of the university and the accompanying ‘professionalisation’ that goes with it. Expressing concern with ‘academic acquiescence in the decline of public discourse in the United States’, Herbert Reid has examined the ways in which the university is beginning to operate as another transnational corporation12, and critiqued the consolidation of a ‘culture of professionalism’ where academic bureaucrats engage in bureaucratic role-playing, minor academic turf battles mask the larger managerial power play on campuses and the increasing influence of a relatively autonomous administrative elite and the rise of insular ‘expert cultures’ have led to academics relinquishing their claims to public space and authority.13 While it is no surprise that the US academy should find itself too at that uneasy confluence of neoliberal globalising dynamics and exclusivist nationalist agendas that is the predicament of many contemporary institutions around the world, there is much reason for concern and an urgent need to rethink the role and place of intellectual labour in the democratic process. This is especially true for scholars of the global writing in this age of globalisation and empire. Edward Said has written extensively on the place of the academy as one of the few and increasingly precarious spaces for democratic deliberation and argued the necessity for public intellectuals immured from the seductions of power.14 Defending the US academy as one of the last remaining utopian spaces, ‘the one public space available to real alternative intellectual practices: no other institution like it on such a scale exists anywhere else in the world today’15, and lauding the remarkable critical theoretical and historical work of many academic intellectuals in a lot of his work, Said also complains that ‘the American University, with its munificence, utopian sanctuary, and remarkable diversity, has defanged (intellectuals)’16. The most serious threat to the ‘intellectual vocation’, he argues, is ‘professionalism’ and mounts a pointed attack on the proliferation of ‘specializations’ and the ‘cult of expertise’ with their focus on ‘relatively narrow areas of knowledge’, ‘technical formalism’, ‘impersonal theories and methodologies’, and most worrisome of all, their ability and willingness to be seduced by power.17 Said mentions in this context the funding of academic programmes and research which came out of the exigencies of the Cold War18, an area in which there was considerable traffic of political scientists (largely trained as IR and comparative politics scholars) with institutions of policy-making. Looking at various influential US academics as ‘organic intellectuals’ involved in a dialectical relationship with foreign policy-makers and examining the institutional relationships at and among numerous think tanks and universities that create convergent perspectives and interests, Christopher Clement has studied US intervention in the Third World both during and after the Cold War made possible and justified through various forms of ‘intellectual articulation’.19 This is not simply a matter of scholars working for the state, but indeed a larger question of intellectual orientation. It is not uncommon for IR scholars to feel the need to formulate their scholarly conclusions in terms of its relevance for global politics, where ‘relevance’ is measured entirely in terms of policy wisdom. Edward Said’s searing indictment of US intellectuals – policy-experts and Middle East experts - in the context of the first Gulf War20 is certainly even more resonant in the contemporary context preceding and following the 2003 invasion of Iraq. The space for a critical appraisal of the motivations and conduct of this war has been considerably diminished by the expertise-framed national debate wherein certain kinds of ethical questions irreducible to formulaic ‘for or against’ and ‘costs and benefits’ analysis can simply not be raised. In effect, what Said argues for, and IR scholars need to pay particular heed to, is an understanding of ‘intellectual relevance’ that is larger and more worthwhile, that is about the posing of critical, historical, ethical and perhaps unanswerable questions rather than the offering of recipes and solutions, that is about politics (rather than techno-expertise) in the most fundamental and important senses of the vocation.21

### Perm

Privlege these impacts bc underrepresented

Nixon 11

(Rob, Rachel Carson Professor of English, University of Wisconsin-Madison, Slow Violence and the Environmentalism of the Poor, pgs. 2-3)

Three primary concerns animate this book, chief among them my conviction that we urgently need to rethink-politically, imaginatively, and theoretically-what I call "slow violence." By slow violence I mean a violence that occurs gradually and out of sight, a violence of delayed destruction that is dispersed across time and space, an attritional violence that is typically not viewed as violence at all. Violence is customarily conceived as an event or action that is immediate in time, explosive and spectacular in space, and as erupting into instant sensational visibility. We need, I believe, to engage a different kind of violence, a violence that is neither spectacular nor instantaneous, but rather incremental and accretive, its calamitous repercussions playing out across a range of temporal scales. In so doing, we also need to engage the representational, narrative, and strategic challenges posed by the relative invisibility of slow violence. Climate change, the thawing cryosphere, toxic drift, biomagnification, deforestation, the radioactive aftermaths of wars, acidifying oceans, and a host of other slowly unfolding environmental catastrophes present formidable representational obstacles that can hinder our efforts to mobilize and act decisively. The long dyings-the staggered and staggeringly discounted casualties, both human and ecological that result from war's toxic aftermaths or climate change-are underrepresented in strategic planning as well as in human memory. Had Summers advocated invading Africa with weapons of mass destruction, his proposal would have fallen under conventional definitions of violence and been perceived as a military or even an imperial invasion. Advocating invading countries with mass forms of slow-motion toxicity, however, requires rethinking our accepted assumptions of violence to include slow violence. Such a rethinking requires that we complicate conventional assumptions about violence as a highly visible act that is newsworthy because it is event focused, time bound, and body bound. We need to account for how the temporal dispersion of slow violence affects the way we perceive and respond to a variety of social afflictions-from domestic abuse to posttraumatic stress and, in particular, environmental calamities. A major challenge is representational: how to devise arresting stories, images, and symbols adequate to the pervasive but elusive violence of delayed effects. Crucially, slow violence is often not just attritional but also exponential, operating as a major threat multiplier; it can fuel long-term, proliferating conflicts in situations where the conditions for sustaining life become increasingly but gradually degraded.

Tag to the Carpenter evidence that congressional involvement 'TORPEDOES' diplomacy is one of our links - the aff is engaged in war rhetoric which turns the case.

Sanchez 13 – jd candidate @ Yale Law

(Andrea Nill, Mexico’s Drug “War”: Drawing a Line Between Rhetoric and Reality, THE YALE JOURNAL OF INTERNATIONAL LAW, Vol. 38: 467)

Outside of legal academia, the late Wayne C. Booth—who dedicated his life to analyzing rhetoric—similarly pointed out that war rhetoric is essentially the most influential form of political rhetoric that “makes (and destroys) our realities.”64 This is because political rhetoric is inherently aimed at changing present circumstances.65 Linguist George Lakoff and philosopher Mark Johnson have maintained that our conceptual system itself is metaphorical and that metaphors thus “structure how we perceive, how we think, and what we do.”66 Citing the rhetorical use of the term “war,” they note that the very acceptance of the war metaphor leads to certain inferences and also clears the way for political action.67 Thus, the examples that follow in this section should not be merely dismissed as insignificant rhetorical flourishes. As Lackoff and Johnson warn,¶ Metaphors may create realities for us, especially social realities. A metaphor may thus be a guide for future action. Such actions, will of course, fit the metaphor. This will, in turn, reinforce the power of the metaphor to make experience coherent. In this sense metaphors can be self-fulfilling prophecies.68

#### Notions of US legal prestige and modeling solidify global inequality by replacing political violence with legal violence---turns the case because it subordinates effective domestic systems to predatory rule of law models

Ugo Mattei 3, Alfred and Hanna Fromm Professor of International and Comparative Law, ¶ U.C. Hastings; Professore Ordinario di Diritto Civile, Università di Torino A Theory of Imperial Law: A Study on U.S. Hegemony and the Latin Resistance, ic.ucsc.edu/~rlipsch/pol160A/Mattei.pdf

This essay attempts to develop a theory of imperial law that is able to explain postCold War changes in the general process of Americanization in legal thinking. My claim is that “imperial law” is now a dominant layer of world-wide legal systems.1 Imperial law is produced, in the interest of international capital, by a variety of both public and private institutions, all sharing a gap in legitimacy, sometimes called the “democratic deficit.” Imperial law is shaped by a spectacular process of exaggeration, aimed at building consent for the purpose of hegemonic domination. Imperial law subordinates local legal arrangements world-wide, reproducing on the global scale the same phenomenon of legal dualism that thus far has characterized the law of developing countries. Predatory economic globalization is the vehicle, the all-mighty ally, and the beneficiary of imperial law. Ironically, despite its absolute lack of democratic legitimacy, imperial law imposes as a natural necessity, by means of discursive practices branded “democracy and the rule of law,” a reactive legal philosophy that outlaws redistribution of wealth based on social solidarity.2 At the core of imperial law there is U.S. law, as transformed and adapted after the Reagan-Thatcher revolution, in the process of infiltrating the huge periphery left open after the end of the Cold War. A study of imperial law requires a careful discussion of the factors of penetration of U.S. legal consciousness world-wide, as well as a careful distinction between the context of production and the context of reception3 of the variety of institutional arrangements that make imperial law. Factors of resistance need to be fully appreciated as well.

I. AMERICAN LAW: FROM LEADERSHIP TO DOMINANCE The years following the Second World War have shown a dramatic change in the pattern of world hegemony in the law. Leading legal ideas, once produced in Continental Civilian Europe and exported through the periphery of the world, are now for the first time produced in a common law jurisdiction: the United States.4 There is little question that the present world dominance of the United States has been economic, military, and political first, and legal only in a more recent moment, so that a ready explanation of legal hegemony can be found with a simple Marxist explanation of law as a superstructure of the economy.5 Nevertheless, the question of the relationship between legal, political, and economic hegemony is not likely to be correctly addressed within a cause-and-effect paradigm.6 Ultimately, addressing this question is a very important area of basic jurisprudential research because it reveals some general aspects about the nature of law as a device of global governance.

Observing historical patterns of legal hegemony allows us to critique the distinction between two main patterns of governance through the law (and of legal transplants).7 Scholars of legal transplants have traditionally distinguished two patterns. The first is law as dominance without hegemony, in which the legal system is ultimately a coercive apparatus asserting political and economic power without consent. This area of inquiry and this model have been used to explain the relationship between the legal system of the motherland and that of the colonies within imperialistic colonial enterprises. The opposing pattern, telling a story of consensual voluntary reception by an admiring periphery of legal models developed and provided for at the center, is usually considered the most important pattern of legal transplants. It is described by stressing on the idea of consent within a notion of “prestige.”8

Little effort is necessary to challenge the sufficiency of this basic taxonomy in introducing legal transplants. Law is a detailed and complex machinery of social control that cannot function with any degree of effectiveness without some cooperation from a variety of individuals staffing legal institutions. These individuals usually consist of a professional elite which either already exists or is created by the hegemonic power. Such an elite provides the degree of consent to the reception of foreign legal ideas that is necessary for any legal transplant to occur. Hence, the distinction between imperialistic and non-imperialistic transplants is a matter only of degree and not of structure. In order to understand the nature of present legal hegemony, it is necessary to capture the way in which the law functions to build a degree of consent to the present pattern of international economic and political dominance.9

In this essay I suggest that a fundamental cultural construct of presumed consent is the rhetoric of democracy and the rule of law utilized by the imperial model of governance, 10 triumphant worldwide together with the neo-American model of capitalism developed by the Reagan and Thatcher revolution early in the 1980s. I argue that the last twenty years have produced the triumph in global governance of reactive, politically irresponsible institutions, such as the courts of law, over proactive politically accountable institutions such as direct administrative apparatuses of the State.11

This essay attempts to open a radical revision of some accepted modes of thought about the law as they appear today, at what has been called “the end of history.”12 Its aim is to discuss some ways in which global legality has been created in the present stage of world-wide legal development. It will show how democracy and the rule of law, in the present legal landscape, are just another rhetoric of legitimization of a given international dynamic of power. It will also denounce the present unconscious state in which the law is produced and developed by professional “consent building” elites. The consequences of such unconsciousness are creating a legal landscape in which the law is “naturally” giving up its role of constraining opportunistic behavior of market actors. This process results in the development of faked rules and institutions that are functional to the interests of the great capital and that dramatically enlarge inequality within society. I predict that such a legal environment is unable to avoid tragic results on a global scale such as those outlined in the well-known parable of the tragedy of the commons.13

My object of observation is a legal landscape in transition. I wish to analyze this path of transition from one political setting (the local state) to another political setting (world governance) in which American-framed reactive institutions are asserting themselves as legitimate and legitimating governing bodies, which I call imperial law. Imperial law is the product of a renowned alliance between state and economic institutions, a cooperative game in which a very limited number of powerful players are at play.14 While in the ages of colonialism such political battles for international hegemony were mostly carried on with an open use of force and political violence (in such a way that final extensive conflict between superpowers was unavoidable), in the age of globalization and of economic Empire political violence has been transformed into legal violence.

### Alt

The aff asks the wrong question - instead of asking 'what should law do' we must ask 'what must be done with law'.

**Glennon 14**—Professor of International Law, Fletcher School of Law and Diplomacy, Tufts University [Trumanites=“the network of several hundred high-level military, intelligence, diplomatic, and law enforcement officials within the Executive Branch who are responsible for national security policymaking”]

(Michael, “National Security and Double Government”, Harvard National Security Journal / Vol. 5, pg 1-114, dml)

The first set of potential remedies aspires to tone up Madisonian muscles one by one with ad hoc legislative and judicial reforms, by, say, narrowing the scope of the state secrets privilege; permitting the recipients of national security letters at least to make their receipt public; broadening standing requirements; improving congressional oversight of covert operations, including drone killings and cyber operations; or strengthening statutory constraints like FISA545 and the War Powers Resolution.546 Law reviews brim with such proposals. But their stopgap approach has been tried repeatedly since the Trumanite network’s emergence. Its futility is now glaring. Why such efforts would be any more fruitful in the future is hard to understand. The Trumanites are committed to the rule of law and their sincerity is not in doubt, but the rule of law to which they are committed is largely devoid of meaningful constraints.547 Continued focus on legalist band-aids merely buttresses the illusion that the Madisonian institutions are alive and well—and with that illusion, an entire narrative premised on the assumption that it is merely a matter of identifying a solution and looking to the Madisonian institutions to effect it. That frame deflects attention from the underlying malady. What is needed, if Bagehot’s theory is correct, is a fundamental change in the very discourse within which U.S. national security policy is made. For the question is no longer: What should the government do? The questions now are: What should be done about the government? What can be done about the government? What are the responsibilities not of the government but of the people?

#### War is a social condition that can be untaught through counter-hegemonic praxis.

Cady 10 (Duane L., prof of phil @ hamline university, From Warism to Pacifism: A Moral Continuum, pp. 23-24)

The slow but persistent rise in awareness of racial, ethnic, gender, sexual- orientation, and class oppression in our time and the beginning efforts of liberation from within oppressed groups offer hope that even the most deeply held and least explicitly challenged predispositions of culture might be examined. Such examinations can lead to changes in the lives of the oppressed. Perhaps even those oppressed by warism will one day free themselves from accepting war as an inevitable condition of nature. Two hundred years ago slavery was a common and well- established social institution in the United States. It had been an ordinary feature of many societies dating to ancient and perhaps prehistoric times. Slavery was taken for granted as a natural condition for beings thought to be inferior to members of the dominant group. And slavery was considered an essential feature of our nation’s economy. Within the past two centuries, attitudes toward slavery have changed dramatically. With these fundamental shifts in normative lenses came fundamental shifts in the practice and legality of slavery. These changes have been as difficult as they have been dramatic, for former slaves, for former slave- holders, and for culture at large. While deep racial prejudices persist to this day, slavery is no longer tolerated in modern societies. Slavery- like conditions of severe economic exploitation of labor have become embarrassments to dominant groups in part because slavery is universally condemned. The point is that the most central values of cultures— thought to be essential to the very survival of the society and allegedly grounded in the natural conditions of creation—can change in fundamental ways in relatively short periods of time with profound implications for individuals and societies. John Dewey beautifully links this point to the consideration of warism: “War is as much a social pattern [for us] as was the domestic slavery which the ancients thought to be immutable fact.”9 The civil rights movement has helped us see that human worth is not determined by a racial hierarchy. Feminism has helped us realize again that dominant attitudes about people are more likely values we choose rather than innate and determined features of human nature. It is historically true that men have been more actively violent and have received more training and encouragement in violence than have women.10 Dominant attitudes of culture have explained this by reference to what is “natural” for males and “natural” for females. By questioning the traditional role models for men and women, all of us be- come more free to choose and create the selves we are to be; we need not be defined by hidden presumptions of gender roles. Parallel to racial and gender liberation movements, pacifism questions taking warism for granted. Pacifists seek an examination of our unquestioned assumption of warism to expose it as racism and sexism have been examined and exposed. Just as opponents of racism and sex- ism consider the oppression of nonwhites and women, respectively, to be wrong, and thus to require fundamental changes in society, so opponents of warism— pacifists of various sorts— consider war to be wrong, and thus to require fundamental changes in society.

This arg is intellectual blackmail - take a leap of faith.

Lichterman 3 (Andrew M., Program Director @ Western States Legal Foundation, Mr. Lichterman serves on the Global Council of Abolition 2000, and is a member of the editorial board of the International Network of Engineers and Scientists Against Proliferation Information Bulletin, Mr. Lichterman also taught law for many years, including courses on environmental law, legal history, and the rights of demonstrators, he holds a J.D. from Boalt Hall, U.C. Berkeley, and a B.A. from Yale, *Western States Legal Foundation Information Bulletin*, Fall 2003, “Missiles of Empire: America’s 21st Century Global Legions”)

**The U.S. military-industrial complex today is so immense as to defy comprehension.** Even those few paying attention tend to focus on one small piece at a time. One month it may be proposals for nuclear weapons with certain new capabilities. Then the attention may shift to missile defense– but there too, only a small part of the program attracts public debate, with immense programs like the airborne laser proceeding almost invisibly. Proposals for the intensive militarization of space like the Space Plane come to light for a day or two, attracting a brief flurry of interest; the continuing, broad development of military space technologies, from GPS-aided guidance to radiation hardened microchips to space power generation, draw even less scrutiny. **There is so broad a consensus among political elites supporting the constant refinement of conventional armaments that new generations** of strike aircraft, Navy ships, and armored vehicles **attract little notice outside industry and professional circles, with only spectacular cost overruns or technical failures likely to draw the occasional headline. A few Congresspeople will challenge one or another particularly extreme new weapon** (e.g. the “Robust Nuclear Earth Penetrator”), **but usually on narrow pragmatic grounds: we can accomplish the same “mission” with less risky or cheaper weapons. But the question of “why,” seldom is asked, only “how,” or “how much does it cost?” Most of the programs that constitute the military machine glide silently onward undisturbed, like the body of a missile submarine invisible below the deceptively small surfaces that rise above the sea. The United States emerged after both World War II and the Cold War as the most powerful state on earth-- the one with the most choices. The first time, all of this was still new. We could perhaps understand our ever deeper engagement with the machinery of death as a series of tragic events, of the inevitable outcome of fallible humans grappling with the titanic forces they had only recently unleashed, in the context of a global confrontation layered in secrecy, ideology, and fear. But this time around, since the end of the Cold War, we must see the United States as truly choosing, with every new weapon and every new war, to lead the world into a renewed spiral towards catastrophe. The past is written, but our understanding of it changes from moment to moment. The United States began the nuclear age as the most powerful nation on earth, and proclaimed the character of the “American Century” with the bombings of Hiroshima and Nagasaki, a cryptic message written in the blood of innocents. Its meaning has come clear over fifty years of technocratic militarism, punctuated by the deaths of millions in neo-colonial warfare and underscored always by the willingness to end the world rather than share power with anyone. The path ahead still can be changed, but we must begin with an understanding of where we are, and how we got here. In the United States, there is a very long way to go before we have a debate about the uses of military force that addresses honestly the weapons we have and seek to develop, much less about the complex social forces which impel the United States to maintain its extraordinary levels of forces and armaments.** Most Americans don’t know what their government is doing in their name, or why. Their government, regardless of the party in power, lies about both its means and its ends on a routine basis. And **there is nothing the government lies about more than nuclear weapons, proclaiming to the world for the last decade that the United States was disassembling its nuclear facilities and leading the way to disarmament, while rebuilding its nuclear weapons plants and planning for another half century and more of nuclear dominance.**74 **It is clear by now that fighting violence with yet more violence, claiming to stop the spread of nuclear weapons by threatening the use of nuclear weapons, is a dead end. The very notion of “enforcement,” that some countries have the right to judge and punish others for seeking “weapons of mass destruction,” has become an excuse for war making, a cover and justification for the power and profit agenda of secretive and undemocratic elites. The only solution that will increase the security of ordinary people anywhere is for all of us, in our respective societies, to do everything we can to get the most violent elements in our cultures**– whether in or out of uniform– **under control. In the United States, this will require far more than changing a few faces in Washington. We will need a genuine peace movement, ready to make connections to movements for ecological balance, and for social and economic justice, and by doing so to address the causes of war. Before we can expect others to join us, it must be clear that we are leaving the path of violence.**

### A2: Partuclar

#### Their demands for a particularized strategy IS the link - voting negative is sufficient to crowd out epistemic blinders and realize alternatives to liberal peace.

Oliver P. Richmond 10, professor at the School of International Relations and Director of the Centre for Peace and Conflict Studies, University of St Andrews, October 29, 2010, “What Is Your Alternative?,” online: http://www.opendemocracy.net/oliver-p-richmond/what-is-your-alternative

The phrase ‘what is your alternative?’ is often heard in response to criticisms of the liberal peace. This is like saying, ‘resistance is futile’. The liberal peacebuilding and statebuilding framework is regarded as the highest achievement of modern society – a way of taming the violence of state formation. Compliance with this hierarchical schema is demanded like a proof of identity (the author was once told off at a major international conference for appearing ‘anti-liberal’!). In a post-colonial era of pluralism, diversity, and the promotion of development, there is a somewhat contradictory desire for a centralised model of peace, to be led by key international actors and donors, who together will maintain the dominant liberal and neoliberal version of the state, together with its associated knowledge systems. Its proponents appear to be in constant fear of a sudden leadership challenge from inferior or alien forms of peace. It might be better to recognise the changes that have already occurred to the liberal peace model - from Timor where the rational state is being mediated by a customary and traditional order, to Guatemala where the indigenous population is increasingly holding the neoliberal state accountable to an alternative life-world, and Afghanistan, where a range of actors (some quite unsavoury) have begun to demand and receive accommodation in the political process. To begin to understand such processes, and how they may contribute to a peaceful order in a positive sense, which is locally relevant, is far more important than maintaining the liberal state or even the global economy in its current form. Ultimately, this request for an alternative fails to recognise the implications of such processes and maintains the exclusiveness and exclusionary dynamics of the liberal peace. It is a form of censorship that negates any kind of peace not organised in a similar fashion to that of a liberal peace. It is a power claim, couched in terms of an elite knowledge, designed either to preserve northern hegemony, or simply resulting from a methodological bias towards security, rights, and institutions, as seen via northern, rational problem-solving approaches. These biases write out the voices, needs, rights, and socio-historical milieu of many of the world’s citizens in post-conflict and development settings beyond the global north. They evacuate the local and replace it with western modes of politics and economy - with western hegemony- however well-meaning- expressed through peacebuilding, statebuilding, aid and development. Such statements also mistake the target of our critique. Critics like myself are not ‘in it’ for ideological reasons, or even to produce a new narrative for peacebuilding, also controlled by those who have created it. It is not to be troublesome, or to present new idealistic visions of an alternative for the many post-conflict citizens of the world. Instead we are trying to restore to the centre of debate, and to the centre of the very processes of peacebuilding or statebuilding, the political subjects who are the reason for their existence. Ironically, liberal peacebuilding and statebuilding have forgotten the situation of their subjects - the needs, rights, and historical, contextual milieu of the post-conflict citizen. The critique’s central engagement with peace confuses many commentators who are used to thinking about exporting ‘flat-pack’ assemblages for state reform: programming that mirrors some idealised western experience. It also confuses those who think liberalism represents the ‘end of history’ and so the ultimate form of peace. It also confuses those who are concerned with states, institutions, and power, and believe that organised and large scale mobilisation is the only form of progressive politics. They are often more used to thinking in terms of - and defending - power, sovereignty, institutions, territory and markets (with ‘rights’ as a rhetorical flourish). Of course liberalism is flexible about the right of critique, which after all is the engine of progress in Enlightenment terms. So it is peculiar that, for many, it is almost taboo to critique the liberal peace. There is an unwillingness to recognise that exported grand political projects may not succeed, or that power disappears or is wasted on white elephant projects. Meanwhile, local political subjects, aware of their own context, can make peace for themselves and also crave autonomy. Even in post-conflict settings, it is the citizens who either give legitimacy to peacebuilding, statebuilding, and development projects run by externals, or withdraw it. Yet rampant interventionism together with a civilising mission have replaced processes of local and national enablement and support. Nevertheless, it is an inconvenient fact that local subjects in all sorts of post-conflict settings around the world, have found ways of transforming the liberal peace project, despite its apparent hegemony. Sometimes this appears commensurate with international norms, human rights, and democracy, and sometimes not. But local contexts and the associated norms of a liberal peace are modifying each other. So the answer to the question, what is the alternative? - is to look around the world and see how many modifications and alternatives are actually out there, coming into being in post-conflict settings and driven by local capacity. Some appear more conducive to forms of peace than others - but this calculation should rest on the level of local legitimacy, representation, and engagement with needs, assessments which should then be incorporated into international understandings of legitimacy rather than the other way around. There are many different types of state, some nuanced versions of liberal states, others neoliberal, others centralised, some decentralised, others authoritarian, some social democracies, some ethnically majoritarian, some power sharing, federal, confederal, some representative democracies, some participatory, some representing a national myth, some based on religion or socialism, some balancing many identities, many adopting and developing particular strategies in the global economy, and so on. This diversity is reflected in both regional arrangements and in local and contextual forms of politics, too. This is far more the reality than the current banality of liberal peace/neoliberal state vs local anarchy/ failed states that mark much of the west’s rather colonial view of the world. It is no wonder that there has been a post-colonial reaction against this from many states and emerging donors, the BRICs, and of course, civil society and customary actors, and individual citizens concerned with their identity, global inequality, and the local resonance of the peace, the state, regional and global order they desire. So, a far more plausible research strategy for peacebuilding and statebuilding would look at the impact such local agencies, norms, institutions, and capacity have on the liberal peace and states-system, processes of state formation, and vice-versa. This would develop and protect local, state, and regional dynamics of peace,

[marked]

pluralism and diversity, institutions, law, and rights as well as dealing with needs (which has been one of the most problematic omissions of the liberal peace system). It would prevent the hijack of peacebuilding and statebuilding for ideological ends, and would mitigate the unintended consequences of the dominant northern methodological bias towards security, power, state and institutions - especially on human life. I would argue that such research reflects what is already occurring rather than a policy driven attempt to create external compliance. We are already beyond the liberal peace. Luddites might defend it, and want to be taken to the hypothetical leader of the daring challenge against the liberal peace and neoliberal state (if only to attempt a citizen’s arrest), but the more significant research project is about how the dominant models are being modified and reformed by their supposedly weak subjects, who are utilising their own institutions, context, and rights of representation - as democracy intends - though against the odds. This form of critical and local agency is not just modifying the liberal peace but it is a challenge to the centralised and state-centric notions of power and norms that this peace is organised around. They are leading and producing hybrid, post-liberal forms of peace. To resist this would be futile: to enable, assist, and mediate it would be a better strategy.

### 1nr

#### Authoritarian states don’t follow norms — their “US justifies others” arg is naive

John O. **McGinnis 7**, Professor of Law, Northwestern University School of Law. \*\* Ilya Somin \*\* Assistant Professor of Law, George Mason University School of Law. GLOBAL CONSTITUTIONALISM: GLOBAL INFLUENCE ON U.S. JURISPRUDENCE: Should International Law Be Part of Our Law? 59 Stan. L. Rev. 1175

The second benefit to foreigners of distinctive U.S. legal norms is information. The costs and benefits of our norms will be visible for all to see. n268 Particularly in an era of increased empirical social science testing, over time we will be able to analyze and identify the effects of differences in norms between the United States and other nations. n269 Such diversity benefits foreigners as foreign nations can decide to adopt our good norms and avoid our bad ones.¶ The only noteworthy counterargument is the claim that U.S. norms will have more harmful effects than those of raw international law, yet other nations will still copy them. But both parts of this proposition seem doubtful. First, U.S. law emerges from a democratic process that creates a likelihood that it will cause less harm than rules that emerge from the nondemocratic processes [\*1235] that create international law. Second, other democratic nations can use their own political processes to screen out American norms that might cause harm if copied.¶ Of course, many nations remain authoritarian. n270 But our norms are not likely to have much influence on their choice of norms. Authoritarian states are likely to select norms that serve the interests of those in power, regardless of the norms we adopt. It is true that sometimes they might cite our norms as cover for their decisions. But the crucial word here is "cover." They would have adopted the same rules, anyway. The cover may bamboozle some and thus be counted a cost. But this would seem marginal compared to the harm of allowing raw international law to trump domestic law.

#### No reverse causal—countries won’t magically clean up their act

**Chodosh 03** (Hiram, Professor of Law, Director of the Frederick K. Cox International Law Center, Case Western Reserve University School of Law, 38 Tex. Int'l L.J. 587, lexis)

Exposure to foreign systems is helpful but seldom sufficient for effective reform design. Reform models are more likely to be successful if they are not merely copied or transplanted into the system. The argument that transplants are easy and common (though based on substantial historical evidence) profoundly undervalues the relationship between law and external social objectives. ¶ 103 Furthermore, reforms conceived as blunt negations of [\*606] the status quo are not likely to be successful. 104 Reform proposals based on foreign systems or in reaction to (or as a negation of) recent domestic experience require careful adaptation to local circumstances and conditions. However, most communities are not familiar with the tools of adaptation and tend to think of foreign models as package deals to accept or reject (but rarely to alter), and alterations tend to graft one institution onto another without comprehensive consideration of the system as a whole. 105

#### Checks and Balances = Exception

Didier Bigo 2006 [Professor at King's College London Department of War studies & MCU Research Professor at Sciences-Po Paris (*Translation, Biopolitics, Colonial Difference,* ed. Naoki Sakai and Jon Solomon, p. 135)

**Liberalism has tried to legitimate its own domination through the idea of the separation of powers by which power is supposed to limit itself, particularly in the dimension of** checks and balances**, with the effect that the population actively consents finally to be accomplices of its own domination** and rely on "justice" and lawyers for its "freedom." Framed in that way, Liberalism is the contrary of Exceptionalism. Liberalism is seen as the opposite of a "sovereign" or "reason of the state" thinking. But between the definition of Exceptionalism as suspension of law or break in normality, there is room for **other visions of Exceptionalism** **that combine exception both with liberalism and with the *dispositif* of technologies of control and surveillance which is** routinized. Exception works hand in hand with Liberalism and gives the key to understanding its normal functioning, as soon as we avoid seeing exception as a matter of special laws only.

#### The plan creates space for militarized bureaucratic practices. Inevitably, the government will circumvent your good intentions

Tate ‘11, PHD in international studies from Brown university and professor of anthropology at Colby College, Human Rights Law and Military Aid Delivery: A Case Study¶ of the Leahy Law, http://onlinelibrary.wiley.com/doi/10.1111/j.1555-2934.2011.01169.x/pdf

Conclusion: Implementation of the Leahy Law and the Silencing of Policy Debates¶ In assessing the consequences for US military aid delivery, the views of the activists focused on the issue are divided. Congressional aides who supported the law claim it sent the message that “human rights [are] important to the US Congress” (Senate aide interview, Washington, October 14, 2008). They used other political mecha- nisms, such as the confirmation process for ambassadors, to bring pressure to ensure compliance. One supporter explained:¶ [The law is a tool for] allies in the State Department . . . . It gets the lawyers in the room for the discussions of US policy, because a bureaucracy wants to argue to provide aid as a matter of policy. In Leahy, there is no waiver, no balancing test. So in this kind of bureaucratic context, you can’t do any better to empower a weak bureaucrat than to say, to deliver aid in this condition is illegal. [Interview with Stephen Rickard, Washington, DC, January 23, 2006] However, other human rights advocates point out the degree to which the focus on the Leahy Law has shifted the terms of the debate and political action to efforts to support and assess its implementation rather than to articulate and organize against inhumane or unjust policies. Vetting practices reflect the legal focus on individual responsibility, but silence larger debates over the causes and consequences of political violence. According to Lisa Haugaard, of the Latin America Working Group (a coalition of human rights NGOs and humanitarian agencies that focus in part on Colombia), “You can get lost in the technicalities of the Leahy Law” (interview with Haugaard, Washington, DC, July 3, 2008). She argued, “The less technical something is, the more useful it can be in terms of policy” (interview with Haugaard). The human rights debate over the Leahy Law has become focused on providing documentation for implementation, rather than pushing for more systemic reforms, or developing an activist strategy based on the critiques of military assistance or broader capitalist and imperial systems. Some groups, particularly those located outside of Washington that function as grassroots membership organizations, focused on opposing all military aid to Colombia, finding the focus on implementing conditions such as the Leahy Law a divisive distraction.¶ The creation of human rights law does not simply involve translation, in which the aspirations of activists are translated into the idiom of legislation. Law opens up space for new bureaucratic practices as institutional players promote distinct political projects while employing the same rhetoric of rights. An ethnographic approach illuminates such efforts by tracking human rights rhetoric and practices across contested political fields and legislative forums and highlights implementation. In this case, bu- reaucratic practices of implementation opened space for powerful institutions, such as the US military and State Department, to impose their interpretation of specific elements of the legislation, including what constitutes a unit, a credible allegation, or an effective measure to address an allegation of abuse. These debates over vetting practices demonstrate the distinct political projects in play as some institutions focused on avenues to maximize military aid in the face of activists’ insistence that human rights safeguards should prevail.¶ This analysis of the Leahy Law reveals the multiple ways in which the implementation, as well as the creation, of the law is embedded in particular historical and political processes. Shaped by the transnational diplomatic context of a growing US military presence in Colombia, the law shifted US policy, but not in the ways that the activists and policymakers who designed the law originally intended. Rather than suspend aid when no “clean” units could be found, US officials convinced their Colombian allies to create new units consisting of vetted soldiers and did not implement a wider push for the investigation and trial of accused officers as part of the law’s mandate despite clear language in the law requiring “effective measures” following abuses. Debates over how to construct the vetting process itself exposed the knowledge practices inherent in law enforcement, the social production of credi- bility, and ways in which some forms of political violence were made visible while others were erased. As government action increasingly intersects with and employs the rhetoric of human rights, tracking the multiple state effects of such practices is critical for understanding the political terrain of human rights

#### The US will act on this ambiguity

Neack 7 (Laura, Professor of Political Science – Miami University (Ohio), *Security: States First, People Last*, p. 106)

Although our discussion has been about the use of military force, we still are on the topic of defense and deterrence rather than on the offensive use of force. It is, though, in some sense hard to dispute the old axiom that what appear as defensive measures to some appear as offensive and therefore threatening measures to others. This is part of the dilemma in the security dilemma. Sometimes countries embrace this ambiguity to enhance the danger of underestimating them, and sometimes countries attempt to dispel this ambiguity by adopting policies that are overtly transparent and nonthreatening.

### 2nr

#### Their stats are bogus—this crushes their numerical whitewashing—

**Gregory 10** (Derek Gregory , Prof. of Geography @ U. of British Columbia, “War and peace,” Transactions of the Institute of British Geographers, Vol. 35.2)

Ferguson is not alone in his silence. Many of those who regarded those continuing conflicts as ‘remote’– which excludes the millions to whom those ‘theatres’ were their homes – elected to repress or to re-script the role of the global North in provoking violence in the global South. Hence Mueller’s (2009) claim that, asymptotically, ‘war has almost ceased to exist’, at least between ‘advanced states’ or ‘civilised nations’. Within those states, amnesia has now become so common that Judt (2008) describes the 20th century as the forgotten century. ‘We have become stridently insistent that the past has little of interest to teach us’, he writes: ‘Ours, we assert, is a new world; its risks and opportunities are without precedent.’ He suggests that ‘in our haste to put the twentieth century behind us’, to lock horror and misery in the attic-rooms of our memories and museums, we – particularly the ‘we’ that is US, so to speak –‘have forgotten the meaning of war’. The parenthetical qualification is necessary because in Europe the remains of two world wars are etched deep into the cultural landscape. There, some have seen salvation in Europe’s construction of ‘civilian states’ out of the wreckage –‘the obsolescence of war is not a global phenomenon’, Sheehan (2007, xvii) argues, ‘but a European one, the product of Europe’s distinctive history in the twentieth century’– while others have sought redemption in the constitutively (‘core’) European pursuit of Kant’s perpetual peace (Habermas 2006). But the meaning of modern war is not confined to those terrible global conflicts, and their exorbitation of war as ‘total war’ was not a bolt from the blue. Its arc can be traced back to the Napoleonic wars. Bell locates the origins of a recognisably modern culture of war in those ferocious campaigns and their ‘extraordinary transformation in the scope and intensity of warfare’ (2007, 7). It was then, too, that the ill-fated French occupation of Egypt in 1798 and the savage expeditions through the Levant inaugurated what Said (1978, 87) saw as a modern, profoundly martial Orientalism that was to be reactivated time and time again throughout the 20th and on in to our own century. We should remember, too, that Napoleon also had to contend with insurgencies in Egypt and in Europe; 19th-century war cannot be reduced to a succession of battles between the armies of contending states, any more than it can in subsequent centuries when, as Judt (2008, 6) reminds, war has ‘frequently meant civil war, often under the cover of occupation or “liberation”‘. If these observations qualify the usual European genealogy of modern war, then its supersession cannot be a European conceit either. Across the Atlantic a number of critics worry that, in the wake of 9/11, the United States continues to prepare its ‘serial warriors’ for perpetual war (Young 2005; Bromwich 2009). The Pentagon has divided the globe into six Areas of Responsibility assigned to unified combatant commands – like US Central Command, or CENTCOM (Morrissey 2009) – and relies on a veritable ‘empire of bases’ to project its global military power (Figure 1).2 And yet Englehardt reckons that it’s hard for Americans to grasp that Washington is a war capital, that the United States is a war state, that it garrisons much of the planet, and that the norm for us is to be at war somewhere at any moment. (2009) Writing barely a year after the presidential election, he ruefully observed that the Bush administration, ‘the most militarily obsessed administration in our history, which year after year submitted ever more bloated Pentagon budgets to Congress’, was succeeded by the Obama administration that had already submitted an even larger one. There are of course differences in foreign and military policy between the two, but re-scripting the war in Afghanistan as ‘the good war’, a war of necessity, even a Just War – the comparison is with Bush’s Iraq war – continues to license the re-scripting of a succession of other wars from Korea or even the Philippines to Afghanistan (and beyond) as the imaginative scene for a heroic interventionism by the United States and its allies – Kipling’s ‘savage wars of peace’ now waged by a stern but kindly Uncle Sam (Boot 2003a) – that endorses a hyper-masculinised military humanism (Barkawi 2004; Douzinas 2003). The shifting fortunes of inter-state wars and ‘small wars’ since the Second World War have been charted by two major projects: the Correlates of War project (COW) at the University of Michigan, devoted to ‘the systematic accumulation of scientific knowledge about war’, and the joint attempt to establish an Armed Conflict Dataset by the Uppsala Conflict Data Program in Sweden (UCDP), the International Peace Research Institute in Norway (PRIO) and the Human Security Report Project in Canada (HSRP). Any quantitative assessment is a battlefield of its own, involving disputes over definitions and data and, for that matter, over the reduction of military violence to abstract metrics and body counts. This holds for individual wars – think, for example, of the debates that have raged over estimates of casualties in Iraq – but it applies a fortiori to any global audit. The sources for such studies are inevitably uneven and, as Østerud (2008a 2008b) reminds us, ‘deaths from decentralized and fragmented violence are probably underreported relative to deaths from more centralized and concentrated violence’ (2008a, 226). The screening and sorting devices that have to be used in these approaches only compound the difficulty. Most quantitative studies count as a ‘war’ only armed conflicts that produce at least 1000 deaths each year, which is a necessarily arbitrary threshold, and the common restriction to ‘battle-field’ or ‘battle-related deaths’ excludes many other deaths attributable to military or paramilitary violence. Although these tallies include civilians caught in the crossfire, they exclude deaths from war-induced disease or starvation and, crucially, ‘the deliberate killing of unarmed civilians’. These are serious limitations. To erase the deliberate killing of civilians makes a mockery not only of the ‘new wars’ I describe below, which are widely supposed to focus on civilians as targets, but also of old ones. What are we then to make of the bombing offensives of the Second World War? For these reasons, I also rely on a third, more recent project, the Consolidated List of Wars developed by the Event Data Project on Conflict and Security (EDACS) at the Free University of Berlin. This provides a database that reworks the thresholds used in other projects and, in distinguishing inter-state wars from other kinds of war, operates with a threshold of 1000 military or civilian deaths (Chojnacki and Reisch 2008). These body counts (and the temporal limits their exclusions assign to war) are defective in another sense, however, because casualties do not end with the end of war. Nixon (2007, 163) writes about the ‘slow violence’ of landmines, cluster bombs and other unexploded ordnance. It costs roughly 100 more to remove a landmine than to lay it, and in consequence: One hundred million unexploded mines lie inches beneath our planet’s skin. Each year they kill 24,000 civilians and maim many times that number. They kill and maim on behalf of wars that ended long ago… In neither space nor time can mine-terrorized communities draw a clear line separating war from peace. (Nixon 2007, 163) But, as Nixon emphasises, other lines can be drawn. Unexploded ordnance is heavily concentrated in some of the most impoverished places on the planet, often on the front lines of the Cold War in the South, including Afghanistan (the most intensively mined state in the world), Cambodia, Laos, Vietnam, Somalia, Angola, Mozambique, Nicaragua and El Salvador. Landmines not only kill directly; they also have a dramatic effect on local political ecologies, since they are typically used to interdict land-based resources and hence food supplies. In Mozambique, for example, large areas of prime agricultural land were sown with mines and have remained unworkable for years, which has forced farmers to bring marginal lands into cultivation with serious consequences for land degradation and food security (Unruh et al. 2003). Other slow killers that disproportionately ravage populations in the South also reach back to attack those in the North. Thus Blackmore (2005, 164–99) writes of ‘war after war’– the long-term effects of exposure to agents like dioxins or depleted uranium3– and there are countless killings ‘out of place’ by veterans returning to the North from war-zones in the South suffering from post-traumatic stress disorder. These remarks are not intended to disparage the importance of quantitative studies. While I despair of those who reduce war to a mortuary balance-sheet – what Arundhati Roy (2002, 111) called the algebra of infinite justice: ‘How many dead Afghans for every dead American?’– the raw numbers do mean something. But there is a world of meaning hidden behind the tallies and tabulations, which can never summon up the terror, grief and suffering that constitute the common currency of war (cf. Hyndman 2007). With these qualifications in place, the most relevant findings from these projects for my purposes are these. First, casting a long shadow over everything that follows, more than two million battle deaths have occurred worldwide in nearly every decade since the end of the Second World War. It bears repeating that this figure underestimates the carnage because the toll is limited to ‘battle deaths’.4 Second, the number of inter-state wars has remained low since the end of the Second World War; they declined and even briefly disappeared in the last decade of the 20th century, but reappeared at the start of the present century. Third, while intra-state wars were more frequent than inter-state wars throughout the 19th and 20th centuries (with the exception of the 1930s), by the end of the 20th century their numbers were increasing dramatically, with a corresponding increase in intra-state wars that drew in other states. The considerable rise in the number of armed conflicts between the end of the Second World War and the end of the Cold War was almost entirely accounted for by the increase in conflicts within states in the global South (Sarkees et al. 2003, 61–4). The number of intra-state wars declined steeply after 1992, though they continued to account for the vast majority of armed conflicts around the world; some have seen this trend continuing into the 21st century – in 2005 the Human Security Report trumpeted ‘a less violent world’– but others have detected a marked increase since the last fin de siècle (Chojnacki and Reisch 2008; Harbom and Wallensteen 2009).