# 2AC

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#### Judicial review are “Statutory restrictions”

Mortenson 11 (Julian Davis Assistant Professor, University of Michigan Law School, “Review: Executive Power and the Discipline of History Crisis and Command: The History of Executive Power from George Washington to George W. Bush John Yoo. Kaplan, 2009. Pp vii, 524,” Winter 2011, University of Chicago Law Review 78 U. Chi. L. Rev. 377)

At least two of Yoo's main examples of presidential power are actually instances of presidential deference to statutory restrictions during times of great national peril. The earliest is Washington's military suppression of the Whiskey Rebellion (III, pp 66-72), a domestic disturbance that Americans viewed as implicating adventurism by European powers and threatening to dismember the new nation. n60 The Calling Forth Act of 1792 n61 allowed the President to mobilize state militias under federal control, but included a series of mandatory procedural checks--including judicial [\*399] approval--that restricted his ability to do so. n62 Far from defying these comprehensive restrictions at a moment of grave crisis, Washington satisfied their every requirement in scrupulous detail. He issued a proclamation ordering the Whiskey Rebels to disperse. n63 When they refused to do so, he submitted a statement to Justice James Wilson of the Supreme Court describing the situation in Pennsylvania and requesting statutory certification. n64 Only when Wilson issued a letter precisely reciting the requisite statutory language (after first requiring the President to come back with authentication of underlying reports and verification of their handwriting n65) did Washington muster the troops. n66 Washington's compliance with statutory restrictions on his use of force continued even after his forces were in the field. Because Congress was not in session when he issued the call-up order, Washington was authorized by statute to mobilize militias from other states besides Pennsylvania--but only "until the expiration of thirty days after the commencement of the ensuing [congressional] session." n67 When it became clear that the Pennsylvania campaign would take longer than that, Washington went back to Congress to petition for extension of the statutory time limit that would otherwise have required him to [\*400] disband his troops. n68 Far from serving as an archetypal example of presidential defiance, the Whiskey Rebellion demonstrates exactly the opposite. FDR's efforts to supply the United Kingdom's war effort before Pearl Harbor teach a similar lesson. During the run-up to America's entry into the war, Congress passed a series of Neutrality Acts that supplemented longstanding statutory restrictions on providing assistance to foreign belligerents. Despite these restrictions, FDR sent a range of military assistance to the future Allies. n69 Yoo makes two important claims about the administration's actions during this period. First, he claims the administration asserted that "[a]ny statutory effort by Congress to prevent the President from transferring military equipment to help American national security would be of 'questionable constitutionality'" (III, p 300). Second, he suggests that American military assistance in fact violated the neutrality statutes (III, pp 295-301, 310, 327-28).

#### And, Restrictions are legal limitations on activities

Law.Com 9

(“restriction”, The People's Law Dictionary by Gerald and Kathleen Hill (legal writers), <http://dictionary.law.com/Default.aspx?selected=1835&bold=restrict>, accessed 9-9-9)

restriction

n. any limitation on activity, by statute, regulation or contract provision. In multi-unit real estate developments, condominium and cooperative housing projects managed by homeowners' associations or similar organizations, such organizations are usually required by state law to impose restrictions on use. Thus, the restrictions are part of the "covenants, conditions and restrictions" intended to enhance the use of common facilities and property which are recorded and incorporated into the title of each owner.

#### CI- “One or more” implies affirmative case choice between one area or more than one area.

Cetiner 02 Associate Professor of Computer Science, Istanbul Technical University

Dr. Beytullah Gultekin, “Data Modeling Using Barker Notations.” Course notes. http://www2.itu.edu.tr/~cetinerg/notes/ie424t1.pdf

“One or more” means “one, or any number”. “One or more” usually used in optional relations. “One or more” allows the CUSTOMER to place one ORDER, a hundred or a thousand. The CUSTOMER may also be in database with zero orders. This relation is called “many-valued relationship”. “Each CUSTOMER may be the originator of one or more ORDERs.”

## CASE

### Blowback

#### Fighting terrorism with a policy focus is entirely justified – their claims to the contrary are without merit

Horgan and Boyle ‘8 [John Horgan and Michael J. Boyle\*\*” (1 International Center for the Study of Terrorism, Department of Psychology, Pennsylvania State University, University Park, PA, USA; "School of International Relations, University of St Andrews, S! Andrews, UK), Critical Studies on Terrorism, Vol. 1, No. l, April 2008, “A case against ‘Critical Terrorism Studies’”]

One of the tensions within CTS concems the issue of ‘policy relevance’. At the most basic level, there are some sweeping generalizations made by CTS scholars, often with little evidence. For example, Jackson (2007c) describes ‘the core terrorism scholars’ (without explicitly saying who he is referring to) as ‘intimately connected — institutionally, ﬁnancially, politically, and ideologically - with a state hegemonic project’ (p. 245). Without giving any details of who these ‘core’ scholars are, where they are, what they do, and exactly who funds them, his arguments are tantamount to conjecture at best. We do not deny that govemments fund terrorism research and terrorism researchers, and that this can inﬂuence the direction (and even the ﬁndings) of the research. But we are suspicious of over-generalizations of this count on two grounds: (l) accepting govemment funding or infomiation does not necessarily obviate one’s independent scholarly judgment in a particular project; and (2) having policy relevance is **not always a sin**. On the ﬁrst point, we are in agreement with some CTS scholars. Gunning provides a sensitive analysis of this problem, and calls on CTS advocates to come to terms with how they can engage policy-makers without losing their critical distance. He recognizes that CTS can (and should) aim to be policy-relevant, but perhaps to a different audience, including non-govemmental organizations (NGOs), civil society than just governments and security services. ln other words, CTS aims to whisper into the ear of the prince. but it is just a different prince. Gurming (2007a) also argues that research should be assessed on its own merits, for ‘just because a piece of research comes from RAND does not invalidate it; conversely, a “critical” study is not inherently good’ (p. 240). We agree entirely with this. Not all sponsored or contract research is made to ‘toe a party line’, and much of the work coming out of ofﬁcial government agencies or afﬁliated government agencies has little agenda and can be analytically useful. The task of the scholar is to retain one’s sense of critical judgment and integrity, and we believe that there is no prima facie reason to assume that this cannot be done in sponsored research projects. What matters here are the details of the research — what is the purpose of the work, how will it be done, how might the work be used in policy — and for these questions the scholar must be self-critical and insistent on their intellectual autonomy. The scholar must also be mindful of the responsibility they bear for shaping a govemment’s response to the problem of terrorism. Nothing — not the source of the funding, purpose of the research or prior empirical or theoretical commitment — obviates the need of the scholar to consider his or her own conscience carefully when engaging in work with any extemal actor. But simply engaging with governments on discrete projects does not make one an ‘embedded expert’ nor does it imply sanction to their actions. But we also believe that the study of political violence lends itself to policy relevance and that those who seek to produce research that might help policy-makers reduce the rates of terrorist attack are committing no sin, provided that they retain their independent judgment and report their ﬁndings candidly and honestly. In the case of terrorism, we would go further to argue that being policy relevant is in some instances **an entirely justifiable moral choice**. For example, neither of us has any problem producing research with a morally defensible but policy relevant goal (for example, helping the British govemment to prevent suicide bombers from attacking the London Underground) and we do not believe that engaging in such work tarnishes one’s stature as an independent scholar. Implicit in the CTS literature is a deep suspicion about the state and those who engage with it. Such a suspicion may blind some CTS scholars to good work done by those associated with the state. But to assume that being ‘embedded’ in an institution linked to the ‘establishment’ consists of being captured by a state hegemonic project is too simple. We do not believe that scholars studying terrorism must all be policy-relevant. but equally we do not believe that being policy relevant should always be interpreted as writing a blank cheque for govermnents or as necessarily implicating the scholar in the behaviour of that government on issues unrelated to one’s work. Working for the US government, for instance, does not imply that the scholar sanctions or approves of the abuses at Abu Ghraib prison. The assumption that those who do not practice CTS are all ‘embedded’ with the ‘establislunent’ and that this somehow gives the green light for states to engage in illegal activity is in our view unwarranted, to say the very least. The limits of this moral responsibility are overlooked in current CTS work; indeed, if anything there is an attempt to inﬂate the policy relevance that terrorism scholars have. Jackson (20070) alleges that ‘the direction of domestic counter-terrorism policies’ are ‘to a large degree based on orthodox terrorism studies research’ (p. 225). Yet he provides no examples, let alone evidence for this claim. Jackson further alleges ‘terrorism studies actually provides an authoritative judgment about who may legitimately be killed, tortured, rendered or incarcerated by the state in the name of counter-terrorism’ (p. 249). Again, there is a tension here: Jackson conjures an image of terrorism studies which no matter its conceptual and empirical ﬂaws is somehow able to inﬂuence govemments to the point of constructing who is and is not a legitimate target. This implies that not only is there a secret cabal of terrorism researchers quietly pulling the strings of government, but also that those engaged in terrorism research sanction abuse of human rights and statedirected violence. This implies a measure of bad faith on the part of some terrorism researchers, and we believe.

#### Terrorists are trying to get nuclear weapons

Brian Michael Jenkins, 12

senior advisor to the president of the RAND Corporation and director of the National Transportation Security Center at the Mineta Transportation Institute, is a recognized authority on terrorism and security. “Tackling al Qaeda Today” <https://www.defenddemocracy.org/stuff/uploads/documents/Peaceable_Kingdom.pdf#page=167>, accessed 7/9/13,WYO/JF

The 2002 report devoted considerable attention to the prospect of terrorists with weapons of mass destruction. There was great concern at the time that 9/11 was not just the culmination of a long-term trend of escalating terrorism, but that it foreshadowed terrorist use of such weapons. Many in 167 government considered a terrorist attack with biological or nuclear weapons resulting in mass casualties to be only a matter time: some forecast that it was likely not more than a decade away. This has not occurred. Al Qaeda clearly had nuclear ambitions, and reportedly made several unsuccessful attempts to acquire fissile material. But as its organizational capabilities and human resources declined, al Qaeda’s quest for nuclear weapons was reduced to a propaganda campaign calculated to excite its followers and frighten its foes. Al Qaeda’s potential use of weapons of mass destruction, however, has remained a major preoccupation. The consequences of a worst-case scenario make it difficult to ignore the possibility of nuclear or biological terrorism. That possibility should not, however, be allowed to distort the entire counterterrorist effort, or become a national obsession that creates needless terror.

### Drone Prolif

#### China, Russia, and Iran are all proliferating drones now

Zenko, 2013

[Micah, Council of Foreign Relations, Reforming U.S. Drone Strike Policies, January 2013, Council Special Report No. 65, Online] /Wyo-MB

Russian armed forces currently do not have armed drones, although the Ministry of Defense signed contracts with domestic aerospace firms to build a prototype by 2014, with the goal of the drones enter- ing service by 2020.51 Russia claims to have developed the Lutch, an armed drone capable of holding 350 pounds of munitions and remain- ing aloft for eighteen hours, although there are no known sales.52 China is investing in drone programs, with at least twenty-five prototypes in development, including armed variants potentially for export. A Chi- nese aerospace spokesperson remarked, “The United States doesn’t export many attack drones, so we’re taking advantage of that hole in the market.”53 However, Chinese displays at air shows have been limited to models and computer graphics. Little is known about the Chinese pro- gram; according to a recent Pentagon report, “Data on the actual extent of [drone] production is nearly non-existent, and there is little available information on China’s overall procurement objectives.”54 Iran also touts its nascent program, but most of its drones are extremely crude and primarily used for antiaircraft target practice. Several of Iran’s more capable spy drones, like the Ababil III, were easily tracked down over Iraq by U.S. fighter jets.55 Iran also claims to have fielded an armed drone called the Ambassador of Death, which would effectively func- tion as an imprecise one-time-only cruise missile.

#### China is rapidly proliferating drones to modernize its military capabilities

Gaub, 2011

[Martin, School of Advanced Military Studies United States Army Command and General Staff College Fort Leavenworth, Kansas, The Children of Aphrodite The Proliferation and Threat of Unmanned Aerial Vehicles in the Twenty-First Century, http://www.dtic.mil/dtic/tr/fulltext/u2/a546414.pdf] /Wyo-MB

China continues to expand its military capabilities with the intention of modernizing its ¶ military, describing the process as a “Revolution in Military Affairs with Chinese ¶ Characteristics.” Part of this modernization is the need for “informationalization,” similar to the ¶ United States’ C4ISR infrastructure whose technologies it seeks to analyze and copy.84 Its first ¶ goal remains one of maintaining deterrence through ballistic missiles, but its second goal is to ¶ counter American dominance wherever possible. Dolman describes this consideration as the ¶ desire to either dominate, or contest the operational space.¶ 85 If China is unable to dominate a ¶ given space, it will contest every space it can. As such, China continues to expand its capabilities ¶ in the air, with UAVs as one component of their greater strategy.86 In fact, five of eight ¶ interviews conducted by the author specifically mention China as the number one threat. ¶ Therefore, China is “by far and away…the country of greatest concern,” when it comes to UAV ¶ capabilities and anticipated intentions for use. 87 In previous years, China focused on UAV acquisition and replication from other states. ¶ In 1994, Israeli Aerospace Industries (IAI) sold China the Harpy UAV, and it has used the ¶ platform in military exercises since. This UAV loiters while searching for targets, and then ¶ crashes into the target exploding 70 pounds of high explosives. In addition, the UAVs China ¶ initially produced mimicked the characteristics and the design of UAVs developed by other ¶ nations. China’s initial desire for acquisition of existing platforms, as well as increased military ¶ funding now fuels its rapid UAV development programs.

# Offcase

## CP

#### Drones key to solve terrorism

Crandall, 2012

[Carla, Law Clerk to the Honorable Laura Denvir Stith, Supreme Court of Missouri and the author was previously employed by the National Geospatial-Intelligence Agency, READY . . . FIRE . . . AIM! A CASE FOR APPLYING AMERICAN DUE PROCESS PRINCIPLES BEFORE ENGAGING IN DRONE STRIKES, April, 2012 Florida Journal of International Law 24 Fla. J. Int'l L. 55, Lexis] /Wyo-MB

As important as these developments were to the burgeoning of drones, it was not until the U.S. government had a sustained requirement for their deployment that their full force became evident. That requirement came after the attacks of September 11th with the commencement of the global war on terror. Since the very first night of the U.S. invasion in Afghanistan, n27 drones have been used for a wide array of terrorism-related missions. For example, though their primary mission has remained reconnaissance, they have also been used for battle-damage assessments, relaying target information to on-ground operators, and spotting hazards to U.S. forces like roadside improvised [\*61] explosive devices. n28 The most contentious aspect of drone operations, however, has been their role in targeted killings.¶ 1. Killing via Drone¶ News articles are littered with reports of drone strikes against alleged terrorists around the globe-from Afghanistan and Iraq, to Yemen and Pakistan. n29 Though the classified nature of the drone program makes precise estimates difficult, one study indicates that in Pakistan alone, drones operated by the United States killed over one-thousand people between 2006 and 2009. n30 Among these were numerous senior al-Qaeda leaders, and other high-value targets. In fact, "[c]ounterterrorism officials credit drones with having killed more than a dozen senior Al Qaeda leaders and their allies in the past year, eliminating more than half of the C.I.A.'s twenty most wanted 'high value' targets." ß Marked 16:07 ß n31¶ Drones have played such a significant part in the war on terror largely because conventional military force has proven ineffective at combating the asymmetrical threats posed by small pockets of al-Qaeda terrorists. n32 Moreover, given that the war's battlefields have often been located in urban environments, using drones has arguably limited collateral damage that might otherwise have occurred with more conventional weapons systems. n33 Further, at least from the U.S. government's perspective, the results have been remarkable. During the early stages of the war, for example, General Tommy Franks, who was then commanding all U.S. troops in the Middle East, stated that drones [\*62] were his "most capable sensor[s] in hunting down and killing Al Qaeda and Taliban leadership and [that they proved] absolutely critical to [the U.S.] fight." n34 Moreover, as the lethality of drones became more evident to insurgents, their utility increased simply because strikes began to "serve as a deterrent to potential combatants and sow paranoia and distrust among terrorists groups." n35 Even those militants who remained true to their cause were forced to "operate far more cautiously, which divert[ed] their energy from planning new attacks." n36¶

#### Third, can’t solve judicial independence advantage- drone prolif inevitable in the status quo- US needs to set precedent on drone appropriateness

Khan 11

(Akbar Nasir, Senior Training Consultant at Strengthening Rule of Law in Malakand Project (SRLMP), KP-UNDP Pakistan Senior Consultant Citizens' Voice & Accountability at The Asia Foundation Pakistan, IPRI Journal, “U.S. Policy of Targeted Killing by Drones in Pakistan,” Winter 2011, <http://www.academia.edu/225132/U.S._Policy_of_Targeted_Killing_by_Drones_in_Pakistan>) /wyo-mm

The use of the drones is gaining currency with each passing day and “the United States is certainly the dominant player in this field at the moment, but this position will change as the technology is patterned and becomes more broadly available. Policy-makers in Washington would be well served, therefore, to do everything they can to retain the technological and legal edge by establishing the norms and standards of drone warfare before it is established by the Ivory Tower – or worse – our adversaries” 108 . “In fact, it would be in the best interests of the US and those of the Pakistani people, to declare a moratorium on drone strikes into Pakistan” 109 . 

#### Boots on the ground cause more blowback

Pape 10

(Robert A., Terrorism Breeds Terrorism, “It’s the Occupation, Stupid,” October 18, 2010, <http://terrorismbreedsterrorism.wordpress.com/foreign-occupation-main-reason-for-blowback-terrorism/>) /wyo-mm

The research suggests that U.S. interests would be better served through a policy of offshore balancing. Some scholars have taken issue with this approach, arguing that keeping boots on the ground in South Asia is essential for U.S. national security. Proponents of this strategy fail to realize how U.S. ground forces often inadvertently produce more anti-American terrorists than they kill. In 2000, before the occupations of Iraq and Afghanistan, there were 20 suicide attacks around the world, and only one (against the USS Cole) was directed against Americans. In the last 12 months, by comparison, 300 suicide attacks have occurred, and over 270 were anti-American. We simply must face the reality that, no matter how well-intentioned, the current war on terror is not serving U.S. interests.

#### Drones comparatively better for solving the war on terror and alternative war strats increase civilian casualties- makes blowback inevitable-

Clanton 13

(R. Alan, Thursday Review, “What is Gained or Lost With Drones?,” July 20, 2013, <http://www.thursdayreview.com/Drones.html>) /wyo-mm

Military commanders in the field admit that although civilians are sometimes killed by drone strikes in places like Afghanistan and Pakistan, those occasions are rare, and the percentage of collateral death is actually lower than what is wrought by more indiscriminate forms of combat, such as bombing, targeted missile-strikes and even boots-on-the-ground operations. More importantly, say intelligence and terror experts, drones have created fragmentation among Taliban and Qaeda leadership by making it virtually impossible for more than two or three operatives to gather in one spot for any length of time. Marked individuals, those with connections to terrorists, can be tracked—often easily—and the result has been a dramatic increase the number of Qaeda assets killed. Those among the civilian population know this, and keep their distance from any Taliban gathering or any known terror cells. This creates isolation, and weakens command-and-control. Coupled with data-mining and other high-tech tracking tools, terrorists must refrain from nearly all forms of electronic activity—no laptops, no wireless internet, no use of cell phones or handheld devices. And since gathering in one spot for more than a few minutes is now dangerous, no newly produced recruitment videos have emerged—those infamous short films of dozens of young recruits in ski masks tumbling, crawling and leaping with rifles. And if there are no videos, there are surely no secret training camps. Supporters say that drone search-and-kill operations work with frequent success. Just a week ago the U.S. military announced the death of Shaeed al-Shihri, a radical, violent militant with direct ties to several terrorist plots and activities in recent years, including foiled "underwear" bombs in England and the U.S. Al-Shihri had at one time been detained by the American military and held in Guantanamo. After his release, he returned to his homeland of Saudi Arabia, and shortly afterwards he went back into the terror business in Yemen, quickly emerging as the de facto leader of al Qaeda on the Arabian Peninsula. His death would seem to confirm what drone advocates have said: drones work effectively, and undercut Qaeda efforts to groom and sustain leadership. For most supporters of drone deployment, the bottom line is sound and compelling: fewer U.S. boots on the ground mean fewer deaths of American combat personnel; drones allow the U.S. to avoid being drawn into the complex, often intractable issues of local disputes; and drones are highly precise tools, ideal for the decapitation of terrorist leadership and with a relatively low chance of tragic spillover into civilian life.

## Orientalism Kritik

#### Engaging the state is critical to the ability of citizens to break into the project of solving global challenges: Engagement relies on an existing internationalist state and refocuses its energies through citizen participation in national institutions that solve for war as well as environmental and social challenges

Sassen 2009

[ColumbiaUniversity, istheauthorof TheGlobalCity (2ndedn, Princeton, 2001), Territory, Authority, Rights: From Medieval to Global Assemblages (Princeton, 2008) and A Sociology of Globalisation (Norton,2007), among others, 2009, The Potential for a Progressive State?, uwyo//amp]

Using state power for a new global politics These post-1980s trends towards a greater interaction of national andglobal dynamics are not part of some unidirectional historical progres-sion. There have been times in the past when they may have been as strong in certain aspects as they are today (Sassen, 2008a: chapter 3). But the current positioning of national states is distinctive precisely because 270 Saskia Sassen the national state has become the most powerful complex organizational entity in the world, and because it is a resource that citizens, confined largely to the national, can aim at governing and using to develop novel political agendas. It is this mix of the national and the global that is so full of potential. The national state is one particular form of state: at the other end of this variable the state can be conceived of as a technical administrative capability that could escape the historic bounds of narrow nationalisms that have marked the state historically, or colonialism as the only form of internationalism that states have enacted. Stripping the state of the particularity of this historical legacy gives me more analytic freedom in conceptualising these processes and opens up the possibility of the denationalised state.As particular components of national states become the institutional home for the operation of some of the dynamics that are central to glob-alisation they undergo change that is difficult to register or name. In my own work I have found useful the notion of an incipient denation-alising of specific components of national states, i.e. components that function as such institutional homes. The question for research then becomes what is actually ‘national’ in some of the institutional compo-nents of states linked to the implementation and regulation of economic globalisation. The hypothesis here would be that some components of national institutions, even though formally national, are not national in the sense in which we have constructed the meaning of that term overthe last hundred years.This partial, often highly specialised or at least particularised, dena-tionalisation can also take place in domains other than that of economic globalisation, notably the more recent developments in the humanrights regime which allow national courts to sue foreign firms and dictators, or which grant undocumented immigrants certain rights. Denationalisation is, thus, multivalent: it endogenises global agendas of many different types of actors, not only corporate firms and financial markets, but also human rights and environmental objectives. Those confined to the national can use national state institutions as a bridge into global politics. This is one kind of radical politics, and only one kind, that would use the capacities of hopefully increasingly denationalized states. The existence and the strengthening of global civil society organ-isations becomes strategic in this context. In all of this lie the possibilities of moving towards new types of joint global action by denationalized states–coalitions of the willing focused not on war but on environmental and social justice projects.

#### Perm do both—the aff is key to solve arbitrary use of state power—solves their K impacts

Alford, 2011

[Ryan Patrick, Assistant Professor, Ave Maria School of Law, THE RULE OF LAW AT THE CROSSROADS: CONSEQUENCES OF TARGETED KILLING OF CITIZENS, UTAH LAW REVIEW, NO. 4, Online] /Wyo-MB

The Al-Aulaqi lawsuit makes it clear that the same arguments that the Plantagenet and Stuart kings used in attempts to weaken the Magna Carta and subsequent constitutional protections have been revived in a modern form. The complaint correctly asserts that “[t]he right to life is the most fundamental of all¶ rights.”25 However, the response to the Defendants’ motion to dismiss notes that “the upshot of its arguments is that the executive, [who] must obtain judicial approval to monitor a U.S. citizen’s communications or search his briefcase, may execute that citizen without any obligation to justify its actions to a court or to the public.”26 These arguments were of no avail in the District Court, which held that these allegations were indeed unreviewable in any court, because the executive had asserted, purportedly correctly, that addressing a violation of the right of life involves a nonjusticiable political question. Al-Awlaki was thus told that he was to have no day in court before being killed.27¶ Accordingly, seven hundred years after the executive death warrants issued by King Edward I (and four hundred years after a decisive rejection of King James I’s tentative attempts to revive the practice), we appear to be at a similar crossroads of history. However, it remains to be seen whether carrying out an executive order to kill an American citizen will lead to a backlash that reaffirms the importance of the bulwarks against this exercise of arbitrary power over life and death, or whether it leads to an implicit decision to abandon the rule of law and the constraints on executive power that have defined our constitutional tradition for centuries.¶ The early history of the resistance to arbitrary executive authority is important to the worldview and legal theory of the Framers of the Constitution. This Article argues that this history provides the best lens through which we might scrutinize the constitutionality of the targeted killing of American citizens. In doing so, this Article attempts to bring back to the forefront what is at stake in the Al-Aulaqi lawsuit: not merely the potential harm to the targeted individual, but the damage this might inflict on our constitutional tradition. Specifically, this Article will argue that if the courts uphold a decision declaring that the president’s powers are so broad as to preclude any judicial determination of whether the targeted killing program is prohibited by the Due Process Clause, we stand to lose the benefits of a seven-hundred year old tradition of resistance to arbitrary power.¶

#### And, Drones are inevitable

Henning, 2-20-12

[Job, NYT, Embracing the Drone, http://www.nytimes.com/2012/02/21/opinion/embracing-the-drone.html?pagewanted=all&\_r=0] /Wyo-MB

Drones — more formally armed Unmanned Aerial Vehicles, or UAVs — are “in.” Since a Predator strike in Yemen against Al Qaeda in November 2002 — the first known use of a drone attack outside a theater of war — the United States has made extensive use of drones. There were nearly four times as many drone strikes in Pakistan during the first two years of the Obama administration as there were during the entire Bush administration.¶ The United States is now conducting drone strikes in Somalia as well, and their use is expected to dramatically increase in Afghanistan over the next five years as NATO troops withdraw from there.¶ Armed drones are both inevitable, since they allow the fusing of a reconnaissance platform with a weapons system, and, in many respects, highly desirable. They can loiter, observe and strike, with a far more precise application of force. They eliminate risk to pilots and sharply reduce the financial costs of projecting power. Moreover, polls show that a vast majority of Americans support the use of drones.¶

#### And, Strict review of targeted killing operations is key to maintain morality in war

Guiora, 2012

[Amos, Professor of Law, S.J. Quinney College of Law, University of Utah, Targeted killing: when proportionality gets all out of proportion, Case Western Reserve Journal of International Law. 45.1-2 (Fall 2012): p235., Academic onefile] /Wyo-MB

One of the dominant, and admittedly controversial, arguments this essay advances is that states have an obligation to conduct themselves morally, including during armed conflict. Although some may find this notion inherently contradictory, "morality in armed conflict" is a term of art (and not an oxymoron) that lies at the core of the instant discussion. This concept imposes an absolute requirement that soldiers treat the civilian population of areas in which they are engaged in conflict with the utmost dignity and respect. This obligation holds true whether combat takes place "house-to-house" or using remotely piloted aircraft tens of thousands of feet up in the sky. This concept may be simple to articulate, yet it is difficult to implement; the operational reality of armed conflict short of war requires a soldier to make multiple decisions involving various factors, all of which have never-ending spin-off potential. After all, every decision is not only complicated in and of itself, but each operational situation has a number of "forks." The implication is that no decision is linear, and every decision leads to additional dilemmas and spurs further decision making.¶ Operational decision-making is thus predicated on a complicated triangle that must incorporate the rule of law, morality, and effectiveness. I have been asked repeatedly whether that triangle endangers soldiers while giving the "other side" an undue advantage. The concern is understandable; however, the essence of armed conflict is that innocent civilians are in the immediate vicinity of combatants, and there is a duty to protect them even at the risk of harm to soldiers. (12) The burden to distinguish between combatant and civilian is extraordinarily complicated and poses significant operational dilemmas for and burdens on soldiers.¶ For armed conflict conducted in accordance with the rule of law and morality, this burden of distinction can never be viewed as mere mantra. Distinction, (13) then, is integral to the discussion. It is as relevant and important to the soldier standing at a check-point, uncertain whether the person standing opposite him is a combatant or civilian, as it must be in any targeted killing dilemma. The decision whether to operationally engage must reflect a variety of criteria and guidelines. (14) Otherwise, the nation state conducts itself in the spirit of a video game where victims are not real and represent mere numbers, regardless of the degree of threat they pose.¶ At the most fundamental level, operational decision making in the context of counterterrorism involves the decision whether to kill an individual defined as a legitimate target. (15) Although some argue killing is inherently immoral, I argue that killing in the context of narrowly defined self-defense is both legal and moral provided that the decision to "pull the trigger" is made in the context of a highly circumscribed and criteria-based framework. If limits are not imposed in defining a legitimate target, then decisions take on the hue of both illegality and immorality.

#### Their epistemology K is flawed – social constructions are knowable – they pre-exist individuals and constrain action in predictable ways – prefer the specificity of the aff to broad philosophical indictments

Fluck, 10

PhD in International Politics from Aberystwyth, ’10 (Matthew, November, "Truth, Values and the Value of Truth in Critical International Relations Theory" Millennium Journal of International Studies, Vol 39 No 2, SagePub), accessed 10/20/12,WYO/JF

Critical Realists arrive at their understanding of truth by inverting the post-positivist attitude; rather than asking what knowledge is like and structuring their account of the world accordingly, they assume that knowledge is possible and ask what the world must be like for that to be the case.36 This position has its roots in the realist philosophy of science, where it is argued that scientists must assume that the theoretical entities they describe – atoms, gravity, bacteria and so on – are real, that they exist independently of thoughts or discourse.37 Whereas positivists identify causal laws with recurrent phenom­ena, realists believe they are real tendencies and mechanisms. They argue that the only plausible explanation for the remarkable success of science is that theories refer to these real entities and mechanisms which exist independently of human experience.38 Against this background, the Critical Realist philosopher Roy Bhaskar has argued that truth must have a dual aspect. On the one hand, it must refer to epistemic conditions and activities such as ‘reporting judgements’ and ‘assigning values’. On the other hand, it has an inescapably ontic aspect which involves ‘designating the states of affairs expressed and in virtue of which judgements are assigned the value “true’’’. In many respects the epistemic aspect must dominate; we can only identify truth through certain epistemic procedures and from within certain social contexts. Nevertheless, these procedures are oriented towards independent reality. The status of the conclusions they lead us to is not dependent on epistemic factors alone, but also on independently existing states of affairs. For this reason, Bhaskar argues that truth has a ‘genuinely ontological’ use.39 Post-positivists would, of course, reply that whilst such an understanding of truth might be unproblematic in the natural sciences, in the social sciences the knower is part of the object known. This being the case, there cannot be an ontic aspect to the truths identified. Critical Realists accept that in social science there is interaction between sub­ject and object; social structures involve the actions and ideas of social actors.40 They add, however, that it does not follow that the structures in question are the creations of social scientists or that they are simply constituted through the ideas shared within society at a given moment.41 According to Bhaskar, since we are born into a world of structures which precede us, we can ascribe independent existence to social structures on the basis of their pre-existence. We can recognise that they are real on the basis of their causal power – they have a constraining effect on our activity.42 Critical Realists are happy to agree to an ‘epistemological relativism’ according to which knowledge is a social product created from a pre-existing set of beliefs,43 but they maintain that the reality of social structures means that our beliefs about them can be more or less accurate – we must distinguish between the way things appear to us and the way they really are. There are procedures which enable us to rationally choose between accounts of reality and thereby arrive at more accurate understandings; epistemological relativism does not preclude judgemental rationalism.44 It therefore remains possible to pursue the truth about social reality.

#### Preventing extinction is the highest ethical priority – we should take action to prevent the Other from dying FIRST, only THEN can we consider questions of value to life

Paul Wapner, associate professor and director of the Global Environmental Policy Program at American University, Winter 2003, Dissent, online: http://www.dissentmagazine.org/menutest/archives/2003/wi03/wapner.htm

All attempts to listen to nature are social constructions-except one. Even the most radical postmodernist must acknowledge the distinction between physical existence and non-existence. As I have said, postmodernists accept that there is a physical substratum to the phenomenal world even if they argue about the different meanings we ascribe to it. This acknowledgment of physical existence is crucial. We can't ascribe meaning to that which doesn't appear. What doesn't exist can manifest no character. Put differently, yes, the postmodernist should rightly worry about interpreting nature's expressions. And all of us should be wary of those who claim to speak on nature's behalf (including environmentalists who do that). But we need not doubt the simple idea that a prerequisite of expression is existence. This in turn suggests that preserving the nonhuman world-in all its diverse embodiments-must be seen by eco-critics as a fundamental good. Eco-critics must be supporters, in some fashion, of environmental preservation. Postmodernists reject the idea of a universal good. They rightly acknowledge the difficulty of identifying a common value given the multiple contexts of our value-producing activity. In fact, if there is one thing they vehemently scorn, it is the idea that there can be a value that stands above the individual contexts of human experience. Such a value would present itself as a metanarrative and, as Jean-François Lyotard has explained, postmodernism is characterized fundamentally by its "incredulity toward meta-narratives." Nonetheless, I can't see how postmodern critics can do otherwise than accept the value of preserving the nonhuman world. The nonhuman is the extreme "other"; it stands in contradistinction to humans as a species. In understanding the constructed quality of human experience and the dangers of reification, postmodernism inherently advances an ethic of respecting the "other." At the very least, respect must involve ensuring that the "other" actually continues to exist. In our day and age, this requires us to take responsibility for protecting the actuality of the nonhuman. Instead, however, we are running roughshod over the earth's diversity of plants, animals, and ecosystems. Postmodern critics should find this particularly disturbing. If they don't, they deny their own intellectual insights and compromise their fundamental moral commitment.

#### The K essentializes East/West dichotomy – makes it impossible for either to fully understand one another – replicating the same violence

Freund 1

(Charles Paul Freund, Senior Editor – Reason Magazine, December, “The end of the Orientalist critique” <http://www.travelbrochuregraphics.com/extra/2001_nights_the_end_of_the_orientalist_critique.htm>, accessed 10-9-2011,WYO/JF

For example, the curator for a recent traveling exhibit of American Orientalist antiques ("Noble Dreams, Wicked Pleasures") has closely examined the ways in which early ads for Camel cigarettes, the brief hoochy-coochy fad, and a single souvenir of the 1923 Shriners convention in Washington all express a "cavalier appropriation" of culture (in part because Shriners wear fezzes) and even signal a transfer of world power to the United States. Her argument assigns tendentious meanings to complex activities and signs, then locks them together as if cultural artifacts were so many jigsaw pieces. Another prominent critic claims that she is "othered" by the way Americans categorize what they eat. That is, dishes associated with India are exoticized as "Indian food," whereas American dishes claim the gustatory mainstream by being just "food." Her argument is a pointless misreading of conversational convenience, and ignores the fact that the American diet is the world’s most inclusive. Other critics, at the project’s extreme, deny that anyone from the West (the "so-called West") has any right at all to address any subject having to do with the ("so-called") East. This Kafkaesque view condemns whole hemispheres of people to guilt, and is no better than the views of Europe’s imperial Orientalists at their worst.

#### Western understandings of the Middle East are accurate – their evidence suffers from selection bias

Teitelbaum and Litvak 6

(Joshua, Senior Fellow – Center for Middle East and African Studies, Tel Aviv U. and Dr. Meir, Senior Lecturer – Tel Aviv U., “Students, Teachers, and Edward Said: Taking Stock of Orientalism”, Middle East Review of International Affairs, Vol. 10, No. 1, March, <http://meria.idc.ac.il/journal/2006/issue1/Teitelbaum_Litvak.pdf> , accessed 10-9-2011,WYO/JF

The critics did not deny that Western culture and scholarship in the past has included ethnocentric, racist, or anti-Islamic components, but argued that these had been greatly exaggerated, to the point of being made universal. Out of more than 60,000 works on the Middle East published in Europe and the United States, he chose only those needed in order to prove his case that there was a discourse which he termed Orientalism. In order to arrive at this conclusion he ignored much evidence critical to the historical documentation of research and literature, material which would have supported the opposite position. 1 9 His choices, as Kramer writes, rejected "all discrimination between genres and disregarded all extant hierarchies of knowledge." This was particularly true regarding Said's deliberate conflation of Middle Eastern studies as a research discipline and the popular, artistic, or literary perspective of the Orient. It also disregarded the key question of which were the field 's main texts and which were those purely on the margins. 2 0 This approach led Said to ignore several leading researchers who had a decisive influence on Middle Eastern studies. For example, there is his almost complete ignoring of Ignaz Gold ziher's work- -which made an undeniable contribution to the study of Islam- -since his persona contradicts Said's claims. Said chose to attack Goldziher's criticism of anthropomorphism in the Koran as supposed proof of his negative attitude toward Islam, while Goldziher himself felt great respect for Islam and had even attacked Ernest Renan for his racist conceptions. 2 1 Malcolm Kerr, for example, criticized Said's ignorance of the role and importance of Arab-American Middle East researchers, who played an important role in the field and could not easily be labeled anti-Arab or anti-Islamic. Reina Lewis and Joan Miller argued that Said ignored women's voices which, they maintained, contradicted the monolithically masculine representation which Said wished to present. 2 2 Said's selectivity enabled him to paint scholarship of the Middle East as an essentialist, racist, and unchangeable phenomenon, whereas the evidence he ignored would have proven that the Western understanding and representation of the Middle East--especially of the Arabs and Islam- -had become quite rich and multi- faceted over the years.

#### Said’s critique is totalizing and prevents successful politics in the Middle East

Teitelbaum and Litvak 6

(Joshua and Meir, Senior Fellow at the Moshe Dayan Center for Middle East and African Studies at Tel Aviv University, "Students, Teachers and Edward Said: Taking Stock of Orientalism," Middle East Review of International Affairs, March,www.campus-watch.org/article/id/2493, accessed 10-9-2011,WYO/JF

Since the publication of Orientalism in 1978, Edward Said's critique has become the hegemonic discourse of Middle Eastern studies in the academy. While Middle Eastern studies can improve, and some part of Said's criticism is valid, it is apparent that the Orientalism critique has done more harm than good. Although Said accuses the West and Western researchers of "essentializing" Islam, he himself commits a similar sin when he writes that Western researchers and the West are monolithic and unchanging. Such a view delegitimizes any search for knowledge--the very foundation of the academy. One of Said 's greatest Arab critics, Syrian philosopher Sadiq Jalal al-Azm, attacked Said for the anti-intellectualism of this view. Since German and Hungarian researchers are not connected to imperialism, Said conveniently leaves them out of his critique. Said also ignores the positive contribution that researchers associated with power made to the understanding of the Middle East. Said makes an egregious error by negating any Islamic influence on the history of the region. His discursive blinders-- for he has created his own discourse--led him before September 11, 2001 to denigrate the idea that Islamist terrorists could blow up buildings and sabotage airplanes. Finally, Said's influence has been destructive: it has contributed greatly to the excessively politicized atmosphere in Middle Eastern studies that rejects a critical self-examination of the field, as well as of Middle Eastern society and politics.

#### Orientalism good—doesn’t require adherence to western values and is critical to solve state violence

**Sayyid, 2011**

[S, Professor and Director of the International Centre for Muslim and non-Muslim Understanding at the University of South Australia, “Dis-Orienting Clusters of Civility.” Third World Quarterly, Vol. 32, No. 5, 2011, pg. 981-987, Accessed Online] /Wyo-MB

The ‘third democratic wave’,10 which saw the replacement of Eastern Europe’s Soviet style ‘people’s democracies’ and Latin America’s authoritarian regimes with US-style apparently liberal democracies, seemed to demonstrate the ability of civil society to subvert totalitarian regimes. The failure of the ‘Arab street’ to rise and overthrow its dictators in the wake of the end of the Cold War confirmed the absence of a civil society and drew attention to its radical alterity. **The discourse of orientalism in the form of political theory seeks to side-step the contention that the elimination of violence and violations has been object of most major historical traditions and that various norms of what constitutes good government have been centred on the elimination of violence, at least from spaces in which the government in question has jurisdiction.11 In other words, good government does not necessarily require an emulation of the steps that guided Western societies from Plato-to-NATO via the Enlightenment. It is perfectly possible to mobilise different sets of cultural and symbolic resources to generate both normatively and practically a vision of good governance in which violence is domesticated. A good government is one in which violence is controlled, and in the modern era the responsibility for exercising this control is considered to be the hallmark of the state, so much so that one of the indicators of a failed state is its inability to regulate violence**. An inability marked by the existence of private armies, militias and other actors which de facto or de jure contest the state’s monopoly of legitimate violence. The control of violence requires a distinction between legitimate violence (exercised by the state) and illegitimate violence (exercised by other actors, eg ‘terrorists’). The problem that confronts many contemporary societies in Muslimistan is precisely the ability to mark out and maintain a meaningful distinction between legitimate and illegitimate violence, but this inability is not inherent to Islam or the Islamicate, rather it is a consequences of particular polices being chosen in a specific international context.

# 1AR

**Attempting to solve the root cause of terror is impossible, encourages more terrorism and casualties, only way to defeat is to incapacitate terrorism completely**

**Dershowitz 02**

(Alan M., Why Terrorism Works: Understanding the Threat, Responding to the Challenge, Pgs. 24-26//wyo-mm)

**The reason terrorism works—and will persist unless there are significant changes in the response to it—is precisely because its perpetrators believe that by murdering innocent civilians they will succeed in attracting the attention of the world to their perceived grievances and their demand that the world “understand them” and “eliminate their root causes.” To submit to this demand is to send the following counterproductive message to those with perceived grievances: if you resort to terrorism, we will try harder to understand your grievances and respond to them than we would have if you employed less violent methods. This is** precisely **the criterion for success established by the terrorist** themselves. Listen to the words of Zehdi Labib Terzi, the Palestine Liberation Organization’s chief observer at the United Nations: “**The first several hijackings aroused the consciousness of the world and awakened the media and the world opinion** much more—and more effectively—than twenty years of pleading at the United Nations.” **If this is true—and the Palestinians surely believe it is—then it should come as no surprise that hijackings and other forms of terrorism increased dramatically after the Palestinians were rewarded for their initial terrorism by increased world attention to its “root causes**”—attention that quickly resulted in their leader being welcomed by the U.N. General Assembly, their organization being granted observer status at the United Nations, and their “government” being recognized by dozens of nations.9 **We must take precisely the opposite approach to terrorism. We must commit ourselves never to try to understand or eliminate its alleged root causes, but rather to place it beyond the pale of dialogue and negotiation. Our message must be this: even if you have legitimate grievances, if you resort to terrorism as a means toward eliminating them we will simply not listen to you, we will not try to understand you, and we will certainly never change any of our policies toward you. Instead, we will hunt you down and destroy your capacity to engage in terror. Any other approach will encourage the use of terrorism as a means toward achieving ends—whether those ends are legitimate, illegitimate, or anything in between**. **Nor is there any single substantive root cause of all**, or even most, **terrorism. If there were—if poverty,** for example, were the root cause of all terrorism—**then by fixing that problem we could address the root cause of specific terrorist groups without encouraging others. But the reality is that the “root causes” of terrorism are as varied as human nature. Every single “root cause” associated with terrorism has existed for centuries, and the vast majority of groups with equivalent or more compelling causes—and with far greater poverty and disadvantage—have never resorted to terrorism.** The search for “root causes” smacks more of after-the-fact political justification than inductive scientific inquiry. The variables that distinguish aggrieved groups willing to target innocent civilians from equally situated groups unwilling to murder children have far less to do with the legitimacy of their causes or the suffering of their people than with religious, cultural, political, and ethical differences.10 They also relate to universalism versus parochialism and especially to the value placed on human life. **To focus on** such favors as **poverty, illiteracy, disenfranchisement, and others all too common around our imperfect world is to fail to explain why so many groups with far greater grievances and disabilities have never resorted to terrorism**.11 Instead**, the focus must be on the reality that using an act of terrorism as the occasion for addressing the root causes of that act only encourages other groups to resort to terrorism in order to have their root causes advanced on the international agenda. Put another way, the “root cause” of terrorism that must be eliminated is its success.**

Alt fails – can’t translate theory into practice

Chandler 10

(David, Professor of International Relations – University of Westminster, “What Do We Do When We Critique Liberalism?: The Uncritical Critique of ‘Liberal Peace’,” Millennium Conference, 10-17, <http://www.davidchandler.org/pdf/papers/Millennium%20Liberal%20Peace.pdf>, accessed 10-9-2011,WYO/JF

It would seem that at the core of the policy and radical critiques of the liberal peace is a critique of liberal aspirations rather than a critique of international interventionist policies and practices. The critique reﬂects the ease with which liberalism has become a ‘ﬁeld of adversity’, through which both policy reform and critical claims for theoretical advance can both be made. The construction of a liberal ‘ﬁeld of adversity’ seems to have little relation to policy realities. This is reﬂected in the fact that, while there is a consensus on the view that Western policies are problematic in that they are too liberal, there is much less attention to how the problems of the post-colonial world might be alternatively addressed. Here, as discussed below, the discursive critique of the liberal peace unfortunately has very little to offer in ways that go beyond present policy perspectives. It would appear that the ostensibly more radical critics, those who draw out the problematic nature of power relations – the ‘power-based’ critiques above – in fact, have very little to offer as a critical alternative to the current policies of intervention and statebuilding, other than a scaling back of the possibilities of social change. The leading critics of the liberal peace, like Mark Du"eld, Michael Pugh and Oliver Richmond – working through critical theoretical frameworks which problematise power relations and highlight the importance of di!erence – suggest that the di!erence between the liberal West and the non-liberal Other cannot be bridged through Western policymaking. For Pugh, as we have seen above, taking critical theory to its logical conclusion, capitalist rationality is itself to be condemned for its universalising and destabilising impulses. Similarly, for Du"eld, it seems that the problem of hegemonic relations of power and knowledge cannot be overcome, making any projection of the ideals of development or democracy potentially oppressive. 63 Oliver Richmond, has systematised this perspective, highlighting the problems of the disciplinary forms of knowledge of ‘liberal peace’ approaches and suggesting that while it may be possible to go beyond them through the use of post-positivist and ethnographic approaches – enabling external interveners to have a greater access to the knowledge of ‘everyday life’ in non-liberal societies being intervened in – any attempt to know, rather than merely to express ‘empathy’, is open to hegemonic abuse. 64 It would appear that, without a political agent of emancipatory social change, the radical ‘power-based’ critics of liberal peace who draw upon the perspectives of critical theory, cannot go beyond the bind which they have set themselves, of overcoming hegemonic frameworks of knowledge and power. In fact, it could be argued that these critical approaches, lacking the basis of a political subject to give content to critical theorising, ultimately take an uncritical approach to power. Power is assumed rather than theorised, making the limits to power appear merely as external to it. It is assumed that there is an attempt to transform the world in liberal terms and that the failure to do so can therefore be used to argue that liberal forms of knowledge are inadequate ones. The critique is not essentially of power or of intervention but of the limited knowledge of liberal interveners. The alternative is not that of emancipatory social transformation but of the speculative and passive search for different, non-liberal, forms of knowledge or of knowing. This comes across clearly in the conclusions reached by Du"eld, Richmond and others, and highlights the lack of a critical alternative embedded in these approaches

**Orientalism is inevitable, we always examine other cultures through the concepts and frameworks it already holds**

**Teitelbaum and Litvak 6**

(Joshua and Meir, Senior Fellow at the Moshe Dayan Center for Middle East and African Studies at Tel Aviv University, "Students, Teachers and Edward Said: Taking Stock of Orientalism," Middle East Review of International Affairs, March,www.campus-watch.org/article/id/2493, accessed 10-9-2011,WYO/JF

**Said also raises a doubt as to whether anyone can study** (in his words, "represent ") **any subject in any manner other than in an entirely subjective way, which is determined by the culture of the scholar-observer.** He believes that the unknown, the exotic, and the foreign have always been perceived, assimilated, and represented in these terms. **This leads him to doubt that any scholarship can even come close to the truth**, or in his words, "whether indeed there can be a true representation of anything, or whether any or all representations, because they are representations," are so intertwined with the institutions, language, and culture of the representer to render the truth impossible. 3 7 **The obvious conclusion from this argument**, as Winder and al-Azm show, **is that according to Said, "Orientalism" is inevitable since such distortions are inevitable.** If one accepts this argument, however, as al-Azm suggests, **this only means the West was merely doing what all cultures must do: examine other cultures through the concepts and frameworks it already holds. 3**8 If this is true, Winder explains, that everyone who sees the "other" distorts it, then the West is no different from other cultures, including Islamic culture, which also has a distorted perspective of the "other." If indeed, Winder wonders, Said demands that Westerners should be better, does he not accept that they have a certain supremacy, a certain mission that makes them superior? Or should different criteria apply to the West simply because it was more "s uccessful" than other societies? **Thus, Said himself is promoting a clearly "Orientalist" perspective, accepting and forgiving the "weakness" of Middle Eastern society**. "Westerners," claims Winder, "are not better, but Western science, including 'Orientalism,' is self-bettering in that it is self-corrective." 39 By determining that all "representations " of the other are by definition distortions, Said is saying that people can only study themselves, that only Muslims can properly "represent" Islam.