#### “Statutory restrictions” can mandate judicial review, but are *enacted* by congress

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, Restriction means a limit and includes conditions on action

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

P10 The term "restriction" is not defined by the Legislature for the purposes of the DUI statutes. See generally A.R.S. § 28-1301 (2004) (providing the "[d]efinitions" section of the DUI statutes). In the absence of a statutory definition of a term, we look to ordinary dictionary definitions and do not construe the word as being a term of art. Lee v. State, 215 Ariz. 540, 544, ¶ 15, 161 P.3d 583, 587 (App. 2007) ("When a statutory term is not explicitly defined, we assume, unless otherwise stated, that the Legislature intended to accord the word its natural and obvious meaning, which may be discerned from its dictionary definition.").

P11 The dictionary definition of "restriction" is "[a] limitation or qualification." Black's Law Dictionary 1341 (8th ed. 1999). In fact, "limited" and "restricted" are considered synonyms. See Webster's II New Collegiate Dictionary 946 (2001). Under these commonly accepted definitions, Wagner's driving privileges were "restrict[ed]" when they were "limited" by the ignition interlock requirement. Wagner was not only [\*7] statutorily required to install an ignition interlock device on all of the vehicles he operated, A.R.S. § 28-1461(A)(1)(b), but he was also prohibited from driving any vehicle that was not equipped with such a device, regardless whether he owned the vehicle or was under the influence of intoxicants, A.R.S. § 28-1464(H). These limitations constituted a restriction on Wagner's privilege to drive, for he was unable to drive in circumstances which were otherwise available to the general driving population. Thus, the rules of statutory construction dictate that the term "restriction" includes the ignition interlock device limitation.

#### A restriction on war powers authority limits Presidential discretion

Jules Lobel 8, Professor of Law at the University of Pittsburgh  Law School, President of the Center for Constitutional Rights, represented members of Congress challenging assertions of Executive power to unilaterally initiate warfare, “Conflicts Between the Commander in Chief and Congress: Concurrent Power  over the Conduct of War,” Ohio State Law Journal, Vol 69, p 391, 2008, http://moritzlaw.osu.edu/students/groups/oslj/files/2012/04/69.3.lobel\_.pdf

So too, the congressional power to declare or authorize war has been long held to permit Congress to authorize and wage a limited war—“limited in place, in objects, and in time.” 63 When Congress places such restrictions on the President’s authority to wage war, it limits the President’s discretion to conduct battlefield operations. For example, Congress authorized President George H. W. Bush to attack Iraq in response to Iraq’s 1990 invasion of Kuwait, but it confined the President’s authority to the use of U.S. armed forces pursuant to U.N. Security Council resolutions directed to force Iraqi troops to leave Kuwait. That restriction would not have permitted the President to march into Baghdad after the Iraqi army had been decisively ejected from Kuwait, a limitation recognized by President Bush himself.64

#### In the area of means a ceratin scope

Elizabeth Miura 12, China Presentation, prezi.com/tccgenlw25so/chin165a-final-presentation/

"in the area of" refers to a certain scope

#### . And, their interpretation is terrible and arbitrary Restrictions and regulations can both be prohibitions or limitations—no brightline to their interp

Supreme Court of Delaware 83 (THE MAYOR AND COUNCIL OF NEW CASTLE, a municipal corporation of the State of Delaware, Plaintiff Below, Appellant, v. ROLLINS OUTDOOR ADVERTISING, INC., Defendant Below, Appellee, No. 155, 1983, 475 A.2d 355; 1984 Del. LEXIS 324, November 21, 1983, Submitted, April 2, 1984, Decided)

The term "restrict" is defined as: To restrain within bounds; to limit; [\*\*9] to confine. Id. at 1182. The Supreme Court of the United States has recognized that HN5the term "regulate" necessarily entails a possible prohibition of some kind. That Court has stated: "It is an oft-repeated truism that every regulation necessarily speaks as a prohibition." Goldblatt v. Hempstead, 369 U.S. 590, 592, 8 L. Ed. 2d 130, 82 S. Ct. 987 (1962). The Supreme Court of Massachusetts in reviewing a statute containing language similar to that found in 22 Del.C. § 301 (which empowered municipalities to "regulate and restrict" outdoor advertising on public ways, in public places, and on private property within public view) held that the statute in question authorized a town to provide, through amortization, for the elimination of nonconforming off-site signs five years from the time the ordinance was enacted. The court held that the Massachusetts enabling act: Conferred on the Legislature plenary power to regulate and restrict outdoor advertising . . . . Although the word "prohibit" was omitted from [the enabling act], it was recognized that the unlimited and unqualified power to regulate and restrict can be, for practical purposes, the power to prohibit [\*\*10] "because under such power the thing may be so far restricted that there is nothing left of of it." (Citations omitted.) The court continued its discussions of the two terms by stating: The distinction between regulation and outright prohibition is often considered to be a narrow one: "that regulation may take the character of prohibition, in proper cases, is well established by the decisions of this court" . . . quoting from United States v. Hill, 248 U.S. 420, 425, 63 L. Ed. 337, 39 S. Ct. 143 (1919). John Donnelly and Sons, Inc. v. Outdoor Advertising Board, Mass. Supr., 369 Mass. 206, 339 N.E.2d 709 (1975). We hold that, through Article II, Section 25 of the Delaware Constitution and 22 Del.C. § 301, the General Assembly has authorized New Castle to terminate nonconforming off-site signs upon reasonable notice, that is, by what has come to be known as amortization. We hold that the power to "regulate and restrict" as such term applies to zoning matters includes the power, upon reasonable notice, to prohibit some of those uses already in existence.

#### Solving targeting errors solves the impact-

Zimmerman 09

(Peter D., Department of War Studies, King’s College London, “Do We Really Need to Worry? Some Reflections on the Threat of Nuclear Terrorism,” Fall 2009, <http://www.coedat.nato.int/publications/datr4/01PeterZimmerman.pdf>) /wyo-mm

Mueller chooses another set of criteria by which to judge the plausibility of improvised nuclear devices. He writes down twenty “tasks” in what he calls “the most likely scenario”11 However, this is far too simplistic. He then posits that there is a 50-50 chance of success for each of these “tasks” and that taken together, this means that the odds of success are 1 in 1,048,576. This is truly a small number, and if taken seriously would probably mean that no further significant attention need be paid to nuclear terror scenarios. It is true that if one raises 0.5 to the 20th power, the resulting value is quite small, less than one in a million as desired. The question, however, is not if the value for 0.520 is small; of course it is. But does it bear any relationship to the problem at hand? How did Mueller come to the number twenty for his list of tasks? Some of the items are even compound tasks, one following another, so there could be more than twenty, and by Mueller’s reasoning a still smaller chance of success. Some of them are not tasks proper, but conditions to satisfy (“There must be no inadvertent leaks”. “No locals must sense that something out of the ordinary is going on”.) Still others seem like padding to reach the number 20 (“A detonation team must transport the IND to the target place and set it off… and the untested and much-traveled IND must not prove to be a dud”.). Since Mueller asserts that the probability of a nuclear terrorist starting a project and succeeding is less than one in a million, it is worth noting that 220 is almost exactly 1,000,000 and that 0.520 is, therefore, one in a million. That seems to be the totality of the logic behind the “twenty hurdles” of the Mueller papers and book. There seems to be no analysis to show that 50-50 are appropriate odds for the success of each step, and it is manifestly clear that the twenty hurdles are not statistically independent. Nevertheless, it would seem that twenty hurdles is the smallest plausible number that can provide the one chance in a million which allows Mueller to suggest that those who believe in nuclear terrorism might, with equal logic, believe “in the tooth fairy”.12 In any event, the odds of success for some tasks are nearly 100 percent. For example, it is not difficult to put an IND in a white van and drive it from Montana to Minneapolis, or from outside Boise to inside Boston, so long as the drivers break no traffic laws. I give that task a 90-plus percent probability. Assembling a team of scientists and technicians is likely to be far easier than Mueller supposes. The Manhattan Project was the most exciting, and indeed glamorous, scientific project of the first half of the twentieth century, led by a constellation of great scientists. Many physicists, even today, fantasize about following in their footsteps.13 I give this one an 85-95 percent chance, at least. 14 In any event, Mueller makes elementary mistakes in risk analysis at the conceptual level: He decides on a path to the goal of a nuclear device, and then decides that it is either the only, or the easiest, or the most favorable route. Along the way his analysis is flawed. Mueller suggests that smugglers would be more likely than not to turn in the nuclear gang to the authorities. But as Matt Bunn of Harvard has pointed out14, Al Qaeda and Mexican drug lords routinely manage to move sensitive materials and people across borders, even those of highly developed countries such as the United States. Successful smugglers-for-hire generally do not betray their customers; the penalties for betrayal probably range from a severe beating to barbaric torture followed by a gruesome death. In his articles and presentations on the probability of terrorist use of nuclear weapons, Prof. Mueller frequently lashes out at those who refuse to set the likelihood of such acts at 1 in a million, or less. We are “alarmists”. And we are “imaginative”.15 According to Mueller, my colleague, Jeffrey Lewis, and I indulge in “worst case fantasies”.16 Mueller seems never to have talked with anybody who actually built a nuclear weapon, for his understanding of the components of a simple device makes it seem far more complex than it is. Nor can I share the results of my conversations with weaponeers except to say that they do not consider the construction of certain kinds of nuclear weapons to be beyond the skills of the kind of 20-person group Lewis and I envisioned. Lewis and I carefully assessed the budget for a nuclear terrorist, and arrived at a figure of $10 million. Mueller waves our extensive effort away with the comment that $10 million isn’t enough to corrupt three people. He must live in an expensive district for political bribery. Lewis and I estimated a budget more like a couple of million for actually building the device, including salaries and the procurement of all necessary non-nuclear components and equipment. We do not believe that recruiting the technical staff will require any bribery or corruption. Mueller assumed that he has found the shortest critical path to an improvised nuclear device. He also seems to assume that his list of tasks is so general that it includes all possible critical paths. He’s clearly wrong on the first count, but even if he is right on the second – and I think he is wildly wrong – his compilation is so general that it offers no guidance to law enforcement or the terrorists except to hope for or to guard against betrayals.

#### Focus on language-discourse in the war on terror fails to create effective models for combatting violence, understanding war, and is largely useless

Rodwell, 05

(Jonathan, PhD student at Manchester Met. researching the U.S. Foreign Policy, “Trendy But Empty: A Response to Richard Jackson,” 2005, <http://www.49thparallel.bham.ac.uk/back/issue15/rodwell1.htm>) /wyo-mm

However, having said that, the problem is Jackson’s own theoretical underpinning, his own justification for the importance of language. If he was merely proposing that the understanding of language as one of many causal factors is important that would be fine. But he is not. The epistemological and theoretical framework of his argument means the ONLY thing we should look at is language and this is the problem.[ii] Rather than being a fairly simple, but nonetheless valid, argument, because of the theoretical justification it actually becomes an almost nonsensical. My response is roughly laid out in four parts. Firstly I will argue that such methodology, in isolation, is fundamentally reductionist with a theoretical underpinning that does not conceal this simplicity. Secondly, that a strict use of post-structural discourse analysis results in an epistemological cul-de-sac in which the writer cannot actually say anything. Moreover the reader has no reason to accept anything that has been written. The result is at best an explanation that remains as equally valid as any other possible interpretation and at worse a work that retains no critical force whatsoever. Thirdly, possible arguments in response to this charge; that such approaches provide a more acceptable explanation than others are, in effect, both a tacit acceptance of the poverty of force within the approach and of the complete lack of understanding of the identifiable effects of the real world around us; thus highlighting the contradictions within post-structural claims to be moving beyond traditional causality, re-affirming that rather than pursuing a post-structural approach we should continue to employ the traditional methodologies within History, Politics and International Relations. Finally as a consequence of these limitations I will argue that the post-structural call for ‘intertextuals’ must be practiced rather than merely preached and that an understanding and utilisation of all possible theoretical approaches must be maintained if academic writing is to remain useful rather than self-contained and narrative. Ultimately I conclude that whilst undeniably of some value post-structural approaches are at best a footnote in our understanding . The first major problem then is that historiographically discourse analysis is so capacious as to be largely of little use. The process of inscription identity, of discourse development is not given any political or historical context, it is argued that it just works, is simply a universal phenomenon. It is history that explains everything and therefore actually explains nothing. To be specific if the U.S. and every other nation is continually reproducing identities through ‘othering’ it is a constant and universal phenomenon that fails to help us understand at all why one result of the othering turned out one way and differently at another time. For example, how could one explain how the process resulted in the 2003 invasion of Iraq but didn’t produce a similar invasion of Afghanistan in 1979 when that country (and by the logic of the Regan administrations discourse) the West was threatened by the ‘Evil Empire’. By the logical of discourse analysis in both cases these policies were the result of politicians being able to discipline and control the political agenda to produce the outcomes. So why were the outcomes not the same? To reiterate the point how do we explain that the language of the War on Terror actually managed to result in the eventual Afghan invasion in 2002? Surely it is impossible to explain how George W. Bush was able to convince his people (and incidentally the U.N and Nato) to support a war in Afghanistan without referring to a simple fact outside of the discourse; the fact that a known terrorist in Afghanistan actually admitted to the murder of thousands of people on the 11h of Sepetember 2001. The point is that if the discursive ‘othering’ of an ‘alien’ people or group is what really gave the U.S. the opportunity to persue the war in Afghanistan one must surly wonder why Afghanistan. Why not North Korea? Or Scotland? If the discourse is so powerfully useful in it’s own right why could it not have happened anywhere at any time and more often? Why could the British government not have been able to justify an armed invasion and regime change in Northern Ireland throughout the terrorist violence of the 1980’s? Surely they could have just employed the same discursive trickery as George W. Bush? Jackson is absolutely right when he points out that the actuall threat posed by Afghanistan or Iraq today may have been thoroughly misguided and conflated and that there must be more to explain why those wars were enacted at that time. Unfortunately that explanation cannot simply come from the result of inscripting identity and discourse. On top of this there is the clear problem that the consequences of the discursive othering are not necessarily what Jackson would seem to identify. This is a problem consistent through David Campbell’s original work on which Jackson’s approach is based[iii]. David Campbell argued for a linguistic process that ‘always results in an other being marginalized’ or has the potential for ‘demonisation’[iv]. At the same time Jackson, building upon this, maintains without qualification that the systematic and institutionalised abuse of Iraqi prisoners first exposed in April 2004 “is a direct consequence of the language used by senior administration officials: conceiving of terrorist suspects as ‘evil’, ‘inhuman’ and ‘faceless enemies of freedom creates an atmosphere where abuses become normalised and tolerated”[v]. The only problem is that the process of differentiation does not actually necessarily produce dislike or antagonism. In the 1940’s and 50’s even subjected to the language of the ‘Red Scare’ it’s obvious not all Americans came to see the Soviets as an ‘other’ of their nightmares. And in Iraq the abuses of Iraqi prisoners are isolated cases, it is not the case that the U.S. militarily summarily abuses prisoners as a result of language. Surely the massive protest against the war, even in the U.S. itself, is also a self evident example that the language of ‘evil’ and ‘inhumanity’ does not necessarily produce an outcome that marginalises or demonises an ‘other’. Indeed one of the points of discourse is that we are continually differentiating ourselves from all others around us without this necessarily leading us to hate fear or abuse anyone.[vi] Consequently, the clear fear of the Soviet Union during the height of the Cold War, and the abuses at Abu Ghirab are unusual cases. To understand what is going on we must ask how far can the process of inscripting identity really go towards explaining them? As a result at best all discourse analysis provides us with is a set of universals and a heuristic model.

#### 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.

#### 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 to maintain morality in war and undermine the video-game like effect of killing targets with drones

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.

**Perm do both- Feminism is compatible with realism, the modern nation-state is less gendered than past feudal regimes, its universal norms have been the basis of women’s liberation**

**Lind 05**

[Michael Lind – editor of the National Interest – 2005 Of Arms and the Woman, review of the Morning After: Sexual Politics at the End of the Cold War by Cynthia Enloe

http://feminism.eserver.org/of-arms-and-the-woman.txt accessed 11-20-07]

Then there is "**the state**." Here, too, **there is nothing in realism that cannot accommodate many feminine observations** about the particular patriarchal features of particular historic states**. The realist definition of "the state" as a sovereign entity with an existence and a strategy distinct from that of individuals is very broad,** **including medieval duchies** and ancient e**mpires-- and, perhaps, female biker gangs. Realist theory holds no preference for the modern nation-state,** though a word might be spoken in its defense. Again and again **in feminist writings one encounters the claim that the modern nation- state is inherently "gendered," as though its predecessors--**feudal dynastic regimes, theocratic empires, city-states, tribal amphictyonies--**were not even more rigidly patriarchal.**

**Completely missing from such an analysis is any acknowledgement that the successes of feminism have been largely based on appeals to the universal norms governing citizens of the impersonal,** bureaucratic **nation-state. Those appeals would have made no sense in any previous political system.** Notwithstanding this, feminist scholars tend to join free marketeers, multiculturalists and Wilsonians in their approval of the (mostly imaginary) dissolution of the nation-state in a new world order. **If the nation-state is "gendered,**" Enloe reasons, **then perhaps the post-national nonstate need not be:** "Perhaps effective u.n. soldiering will call for a new kind of masculinity, one less reliant on misogyny, less insecure about heterosexual credentials." (**If the recent "peacekeeping" of u.n. forces in Bosnia** and Somalia **shows anything**, however, **it is that a little more of the old masculinity may be necessary to prevent mass slaughter--and mass rape, too.**)

**Working from within but against the state is key to success of feminist struggles- the state is multifaceted and we reform aspects of the state to fight against dominant discourses and masculinist policies**

**Rai 02**

[Shirin M. Rai - professor in the department of Politics and International Studies at Warwick – 2002 Gender and the Political Economy of Development p. 204-206]

As we saw in chapter 5, **for feminists**, the nation-state has always j presented serious intellectual and strategic challenges. For some, **any engagement with the state has been questionable on the grounds that 'the state ... produces** state **subjects** inter alia, bureaucratized, dependent, disciplined and gendered...' (Brown, 1992: 9; also see Allen, 1990). There has been an ongoing debate within the feminist movement about the expropriatory power of institutions (see Ehrenreich and Piven, 1983; Brown, 1992; Pringle and Watson, 1992;' Rai, 1995). The various positions have covered the entire spectrum from rejecting 'dealing' with state institutions entirely, to suggest­ing an 'in and against' the state approach, to examining the benefits of working with/through state institutions. I have argued elsewhere that **for women,** as for other marginalized groups, **the state and civil society are both complex terrains - f**ractured, oppressive, **threatening and also providing spaces for struggles** and negotiations. **These struggles and negotiations are grounded in the positionings of various groups of women articulating their short- and long-term interests in the context of the multiplicity of power relations that form the state in any country**. In its turn, t**he state and its institutions are also 'shaped' by the forms and outcomes of these struggles.** While deny­ing any intentionality to the state, or a necessary coherence to the alliances formed and engaged in struggles against states, there are, however, particular characteristics of Third World states that need to be examined to form a judgement about the various possible spaces for mobilization by women in their interests**. My study of women's struggles against and engagement with the state in India, for example, showed that while state institutions and dominant political parties have taken up the cause of women's representation as part of the generalized discourse of modernity to which they subscribe, this discourse is not unified.** As such**, it allows sections of the state to take initiatives to respond to the struggles of women for equality as well as empowerment. This results in contradiction between different fractions of the state, which allows further possibilities for negotiation and struggle by and in the interests of women.** Further, **the capacity of the state to implement its policies and enforce its laws is undermined by the weakness of the economy and of the political infrastructure, and by widespread corruption which leads to the delegitimization of government and the political system. This lack of capacity further enhances intra-state conflict** (Rai, 1995). **The state thus cannot be regarded as and engaged with As a unified entity. It remains a fractured terra in that women's groups and struggles need to respond to in complex way**s. Thus, in my earlier work (1995, 1996b, 1999) 1 have suggested that **women's movements need to work 'in and against' the state.** An engagement with the state should not be considered simply as one option to be weighed against others; **it is a necessity.** I have argued **that a recognition of the particular splintered complexity of the state and of the multiplicity of the strategies of struggle is needed by women to confront and/or use state fractions in their own interests. An understanding of a relative autonomy of state fractions from the existing social relations and infrastructural capacity, on the one hand, and of state embeddedness in social relations and the consequences of such embeddedness for women, on the other, is necessary for engaging with institutions of power** in a critical and thoughtful way**. Such an approach**, derived from analysis of particular struggles, also **points to the potential for a strategy that holds in tension the engagement with, and the mobilization against, structures of power**, be they at the local, national or global level. In the context of 'the neoliberal frame' under globalization (Runyan, 1999), I would suggest that strategizing for change in this way has become far more critical. As the global reach of social and political movements increases through technological and information networks, and as the pressures of international trade and markets begin to impinge significantly on national economies, leading to a fragmentation and repositioning of nation-states, the relationship between IocaI struggles, social movements and the national state is being constantly reshaped (Cohen and Rai, 2000a; Stienstra, 2000). I would suggest further that **for a critical engagement with structures of power, the terms of engagement need to be clearly thought out.** As we saw in chapter 5, not all, or even most, of these terms be determined by the women's movements, but a sensitivity to the issues at stake is still important if we are realistically to assess the extent to which agendas of institutions and structures of power be shifted. Finally, I would argue that **an engagement with power structures need** not rule out - indeed, **needs to build upon a strong movement of opposition to these structures. Without such double move, early feminist concerns about co-optation within dominant discourses and by structural regimes of power become real. Such an analysis of 'in and against' organized power structures needs to reflect upon 'the shifting distinctions between representation within the state and political economy,** on the one hand, **and within the theory of the Subjec**t, on the other...' (Spivak, 1988) In doing so, we can begin to address the tension between feasible and transformative politics.

**Life should be valued as apriori – it precedes the ability to value anything else**

**Kacou ‘08**

[Amien Kacou. 2008. WHY EVEN MIND? On The A Priori Value Of “Life”, Cosmos and History: The Journal of Natural and Social Philosophy, Vol 4, No 1-2 (2008) cosmosandhistory.org/index.php/journal/article/view/92/184]

Furthermore, that manner of finding things good that is in **pleasure can certainly not exist in any world without consciousness (i.e., without “life,”** as we now understand the word)—slight analogies put aside. In fact, **we can begin to develop a more sophisticated definition of the concept of “pleasure**,” in the broadest possible sense of the word, as follows: it is **the common psychological element in all psychological experience of goodness (be it in joy, admiration, or whatever else). In this sense, pleasure can always be pictured to “mediate” all awareness or perception or judgment of goodness: there is pleasure in all consciousness of things good; pleasure is the common element of all conscious satisfaction.** **In short, it is simply the very experience of liking things, or the liking of experienc**e, in general. In this sense**, pleasure is, not only uniquely characteristic of life but also, the core expression of goodness in life—the most general sign or phenomenon for favorable conscious valuatio**n, in other words. **This does not mean that “good” is absolutely synonymous with “pleasant”—what we value may well go beyond pleasure.** (The fact that we value things needs not be reduced to the experience of liking things.) However, what we value beyond pleasure remains a matter of speculation or theory. Moreover, **we note that a variety of things that may seem otherwise unrelated are correlated with pleasure**—some more strongly than others. In other words, there are many things the experience of which we like. For example: the admiration of others; sex; or rock-paper-scissors. But, again, **what they are is irrelevant in an inquiry on a priori value—what gives us pleasure is a matter for empirical investigation. Thus, we can see now that, in general, something primitively valuable is attainable in living—that is, pleasure itself**. And it seems equally clear that we have a priori logical reason to pay attention to the world in any world where pleasure exists. Moreover, we can now also articulate a foundation for a security interest in our life: since the good of pleasure can be found in living (to the extent pleasure remains attainable),[17] and only in living, therefore, a priori, life ought to be continuously (and indefinitely) pursued at least for the sake of preserving the possibility of finding that good. However, this platitude about the value that can be found in life turns out to be, at this point, insufficient for our purposes. It seems to amount to very little more than recognizing that our subjective desire for life in and of itself shows that life has some objective value. For what difference is there between saying, “living is unique in benefiting something I value (namely, my pleasure); therefore, I should desire to go on living,” and saying, “I have a unique desire to go on living; therefore I should have a desire to go on living,” whereas the latter proposition immediately seems senseless? In other words, “life gives me pleasure,” says little more than, “I like life.” Thus, we seem to have arrived at the conclusion that the fact that we already have some (subjective) desire for life shows life to have some (objective) value. But, if that is the most we can say, then it seems our enterprise of justification was quite superficial, and the subjective/objective distinction was useless—for all we have really done is highlight the correspondence between value and desire. Perhaps, our inquiry should be a bit more complex.

**Lack of foundational knowledge in Fem IR makes feminism complicit with dangerous representations of what it means to be a woman, reproducing the conditions necessary for binary thinking and exclusion**

**Stern and Zalewski 09**

[MARIA STERN, lecturer and researcher at the Department of Peace and Development research at Gotberg University, AND MARYSIA ZALEWSKI, Director of Centre for Gender Studies at University of Aberdeen. “Feminist fatigue(s): reflections on feminism and familiar fables of militarization” Review of International Studies (2009), 35, 611–630, Cambridge journals//uwyokb]

In this section we clarify what we mean by the problem of sexgender and how it transpires in the context of feminist narratives within IR – which we will exemplify below with a recounting of a familiar feminist reading of militarisation. To re-iterate, **the primary reason for investigating** this **is that we suspect** **part of the reason for the aura of disillusionment around feminism** – especially as a critical theoretical resource – **is connected to the sense that feminist stories repeat the very grammars that initially incited them as narratives in resistance**. To explain; one might argue that **there has been a normative feminist failure to adequately construct secure foundations for legitimate and authoritative knowledge claims upon which to garner effective and permanent gender change**, particularly in regard to women. But for poststructural scholars **this failure is not surprising as the emancipatory visions of feminism inevitably emerged as illusory given the attachments to foundationalist** and positivistic **understandings of subjects, power and agency**. **If**, as poststructuralism has shown us, **we cannot – through language – decide the meaning of woman**, or of femininity, or of feminism, **or produce foundational information about it** or her;42 that subjects are ‘effects’ rather than ‘origins of institutional practices and discourses’;43 **that power ‘produces subjects** in effects’;44 or that authentic and authoritative agency are illusory **– then the sure foundations for the knowledge that feminist scholars are conventionally required to produce** – even hope to produce – **are unattainable**. Moreover, post-colonial feminisms have vividly shown how representations of ‘woman’ or ‘women’ which masquerade as ‘universal’ are, instead, universalising and inevitably produced through hierarchical and intersecting power relations.45 In sum; the poststructural suggestion is that **feminist representations of women do not correspond to some underlying truth of what woman is or can be; rather feminism produces the subject of woman which it then subsequently comes to represent**.46 The implications of this familiar conundrum are far-reaching as the demands of feminism in the context of the knowledge/political project of the gender industry are exposed as implicated in the re-production of the very power from which escape is sought. In short, **feminism emerges as complicit in violent reproductions of subjects and knowledges/ practices**. How does this recognisable puzzle (recognisable within feminist theory) play out in relation to the issues we are investigating in this article? As noted above, the broad example we choose to focus on to explain our claims is militarisation; partly chosen as both authors have participated in pedagogic, policy and published work in this generic area, and partly because this is an area in which the demand for operationalisable gender knowledge is ever-increasing. Our suggestion is that the increasing requirement47 for knowledge for the gender industry about gender and militarisation re-animates the sexgender paradox which persistently haunts attempts to translate what we know into useful knowledge for redressing (and preventing) conflict, or simply into hopeful scenarios for our students.