# ASU CR Cards NDT Round 2

## 1NC

### 1

#### A. Interp: War Powers Authority refers to capacities explicitly granted by Congress – that means the aff must restrict authority under the WPR, AUMF, or NDAA

#### 1. “War Powers” refer to Congressional abilities – Presidential CINC powers are distinct

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First, consider the constitutional issue of power imbalance. Central to the Constitution is the foundational principle of power distribution and provisions to check and balance exercises of that power. This clearly intended separation of powers across the three branches of government ensures that no single federal officeholder can wield an inordinate amount of power or influence. **The founders carefully crafted constitutional war-making authority** **with** the branch most representative of the people—**Congress**.4 The Federalist Papers No. 51, “The Structure of Government Must Furnish the Proper Checks and Balances Between the Different Departments,” serves as the wellspring for this principle. Madison insisted on the necessity to prevent any particular interest or group to trump another interest or group.5 This principle applies in practice to all decisions of considerable national importance. **Specific to** war powers authority**, the Constitution empowers the legislative branch with the authority to declare war but endows the Executive with the authority to act as Commander-in-Chief**.6 This construct designates **Congress, not the president, as the primary decisionmaking body to commit the nation to war**—a decision that ultimately requires the consent and will of the people in order to succeed. By vesting the decision to declare war with Congress, the founders underscored their intention to engage the people—those who would ultimately sacrifice their blood and treasure in the effort.

**The Constitution**, on the other hand, **vaguely delegates authority to execute foreign policy. It contains no instructions regarding the use or custody of that power, except to “preserve, protect, and defend the Constitution of the United States**.”7 Alexander Hamilton, known widely as an advocate of executive power, asserted: "The history of human conduct does not warrant that exalted opinion of human virtue which would make it wise in a nation to commit interests of so delicate and momentous a kind, as those which concern its intercourse with the rest of the world, to the sole disposal of a magistrate created and circumstanced as would be a President of the United States."8 Accordingly, the **founders never intended for the military to serve as the nation’s primary agency to interface with the rest of the world or stand as the dominant instrument of foreign policy. So the presidential authority of** Commander-in-Chief does not permit **a president to use the nation’s military simply to execute a president’s foreign policy.**9 Kenneth B. Moss, Undeclared War and the Future of U.S. Foreign Policy, (Baltimore: The Johns Hopkins University Press, 2008), 217.

#### 2. Authority means expressly granted – assertions by the president don’t count

Words and Phrases 04 (Volume 4a, Cumulative Supplement Pamphlet, p. 275)

U.S.N.Y. 1867. Under the federal judiciary act, giving the Supreme Court jurisdiction to review a final judgement or decree of a state court of last resort in any suit where is drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, it is held that the term “authority exercised under the United States” must be something more than a bare assertion of such authority, and must be an authority having a real existence derived from competent governmental power, and in this respect the word “authority” stands on the same footing with “treaty” or “statute.” Hence, where a party claimed authority under an order of a federal court which, when rightfully viewed, did not purport to confer any authority upon him, a writ of error to the Supreme Court has dismissed.—Milligar v. Hartupee, 73 U.S. 258, 6 Wall. 258, 18 L.Ed. 829

#### B. Violation – the aff seeks to restrict a justification for intervention, which is a power the President has asserted for himself

#### C. Reasons to prefer

#### 1. Predictable ground

Our interpretation limits the aff to 3 definitive congressional acts that authorize presidential action: the NDAA, the AUMF, and the WPR. All negative link arguments stem from congressional retraction of authorization for the President.

#### 2. Explodes the topic – Existing executive assertions of power allow the President to ignore all laws – the aff could pass new restrictions on literally anything

Schwarz, senior counsel, and Huq, associate counsel at the Brennan Center for Justice at NYU School of Law, 2007 [Frederick A.O., Jr., partner at Cravath, Swaine & Moore, chief counsel to the Church Committee, and Aziz Z, former clerk for the U.S. Supreme Court, Unchecked and Unbalanced: Presidential Power in a Time of Terror, p. 153]

Familiar failings from the Cold War era and earlier history returned to haunt the nation in the wake of 9/11. But this time abuses were compounded by a new and dangerous idea. To justify illicit invasions of liberty and privacy, the executive branch's lawyers argued that the president has unlimited power to violate federal statutes. President Bush agreed. Specifically, he asserted under the Constitution a novel authority in the name of "national security" or "military necessity" to disregard permanently any law enacted by Congress. The Administration used this power to justify set-asides of long-standing federal statutes barring torture, indefinite detention, and warrantless spying. In the Cold War, the FBI and the CIA violated the law but hid or denied their actions. After 9/11, government overreaching claimed a legal basis through theories about "executive power." Abuse became official policy and practice of the United States. No sitting president before President Bush asserted or used power under the Constitution to set aside laws wholesale. Such power means a president can ignore statutes passed by Congress whenever he claims that "national security" or "military necessity" is at issue. This claim finds precedent in the seventeenth-century British kings' royal "prerogative" power to "suspend" or "dispense" with laws enacted by Parliament.' But that power, grounded in ideas about the "divine" right of kings, did not survive the English Civil War and the Glorious Revolution of 1688, which ended the Stuart dynasty. Certainly, it did not find its way into our founding documents, the 1776 Declaration of Independence and the Constitution of 1787.

#### 3. Makes the topic bidirectional - The War Powers Resolution proves that “restrictions” on undelegated powers are a massive increase in Presidential authority by licensing unconstitutional behavior.

Woods 06 Senior fellow in American history at the Ludwig von Mises Institute (Thomas E., Jr., "The War Powers Resolution Fraud." February 4, http://www.lewrockwell.com/2006/02/ thomas-woods/the-war-powers-resolution-fraud/

Congress did pass **the War Powers Resolution**, to be sure. But if anything, the Resolution — sympathetic mythology to the contrary notwithstanding — **actually emboldened the president and** codified executive warmaking powers **that would have astonished the framers of the Constitution.** I have explained the intentions of the framers with regard to war powers here. Suffice it to say that **the framers resolutely opposed placing offensive war powers in the hands of the president, and deliberately assigned such authority to the legislative branch.** **The War Powers Resolution does not restore the proper constitutional balance between president and Congress in matters of war**. **Consider first the resolution’s provision that the president may commit troops to offensive operations anywhere in the world he chooses and for any reason without the consent of Congress, for a period of 60 days** (though he must at least inform them of his action within 48 hours). After the initial 60 days he must secure congressional authorization for the action to continue. He then has another 30 days to withdraw the troops if such authorization is not forthcoming. Until the War Powers Resolution, no constitutional or statutory authority could be cited on behalf of such behavior on the part of the president. Now it became fixed law, despite violating the letter and the spirit of the Constitution.

#### D. Topicality is a voting issue for Fairness and Education.

### 2

#### The President of the United States should not introduce the armed forces into hostilities for humanitarian intervention.

#### The counterplan maintains the benefits of the unitary executive while deterring excessive presidential adventurism

Neal Katyal 6, prof, Georgetown law, Internal Separation of Powers: Checking Today's Most Dangerous Branch from Within, 115 Yale L.J. 2314

This Essay's proposed reforms reflect a more textured conception of the presidency than either the unitary executivists or their critics espouse. In contrast to the unitary executivists, I believe that the simple fact that the President should be in control of the executive branch does not answer the question of how institutions should be structured to encourage the most robust flow of advice to the President. Nor does that fact weigh against modest internal checks that, while subject to presidential override, could constrain presidential adventurism on a day-to-day basis. And in contrast to the doubters of the unitary executive, I believe a unitary executive serves important values, particularly in times of crisis. Speed and dispatch are often virtues to be celebrated.¶ Instead of doing away with the unitary executive, this Essay proposes designs that force internal checks but permit temporary departures when the need is great. Of course, the risk of incorporating a presidential override is that its great formal power will eclipse everything else, leading agency officials to fear that the President will overrule or fire them. But just as a filibuster does not tremendously constrain presidential action, modest internal checks, buoyed by reporting requirements, can create sufficient deterrent costs.¶ [\*2319] Let me offer a brief word about what this Essay does not attempt. It does not propose a far-reaching internal checking system on all presidential power, domestic and foreign. Instead, this Essay takes a case study, the war on terror, and uses the collapse of external checks and balances to demonstrate the need for internal ones. In this arena, public accountability is low - not only because decisions are made in secret, but also because they routinely impact only people who cannot vote (such as detainees). In addition to these process defects, decisions in this area often have subtle long-term consequences that short-term executivists may not fully appreciate. n9

### 3

#### Executive flexibility is key to fourth generation warfare - that causes nuclear war and bioterror.

Li ‘9

[Zheyao, J.D. candidate, Georgetown University Law Center, 2009; B.A., political science and history, Yale University, 2006. This paper is the culmination of work begun in the "Constitutional Interpretation in the Legislative and Executive Branches" seminar, led by Judge Brett Kavanaugh, “War Powers for the Fourth Generation: Constitutional Interpretation in the Age of Asymmetric Warfare,” 7 Geo. J.L. & Pub. Pol'y 373 2009 WAR POWERS IN THE FOURTH GENERATION OF WARFARE]

A. The Emergence of Non-State Actors

**Even as the quantity of nation-states in the world has increased dramatically** since the end of World War II**, the** institution **of the nation-state has been in decline over the past few decades.** Much of this decline is the direct result of the waning of major interstate war, which primarily resulted from the introduction of nuclear weapons.122 The **proliferation of nuclear weapons, and their** immense **capacity for absolute destruction,** **has ensured** that conventional wars **remain limited in** scope and duration. Hence, "both the size of the armed forces and the quantity of weapons at their disposal has declined quite sharply" since 1945.123 At the same time, **concurrent with the decline of the nation-state in the second half of the twentieth century**, **non-state actors have increasingly been willing and able to use force to advance their causes**. In contrast to nation-states, who adhere to the Clausewitzian distinction between the ends of policy and the means of war to achieve those ends, **non-state actors** do not necessarily fight as a mere means of advancing any coherent policy. Rather, they **see their fight** as a life-and-death struggle**, wherein the ordinary terminology of war as an instrument of policy breaks down because of this blending of means and ends**.124 It is the existential nature of this struggle and the disappearance of the Clausewitzian distinction between war and policy that has given rise to a new generation of warfare. The concept of fourth-generational warfare was first articulated in an influential article in the Marine Corps Gazette in 1989, which has proven highly prescient. In describing what they saw as the modem trend toward a new phase of warfighting, the authors argued that: In broad terms, fourth generation warfare seems likely to be widely dispersed and largely undefined; the distinction between war and peace will be blurred to the vanishing point. It will be nonlinear, possibly to the point of having no definable battlefields or fronts. The distinction between "civilian" and "military" may disappear. Actions will occur concurrently throughout all participants' depth, including their society as a cultural, not just a physical, entity. Major military facilities, such as airfields, fixed communications sites, and large headquarters will become rarities because of their vulnerability; the same may be true of civilian equivalents, such as seats of government, power plants, and industrial sites (including knowledge as well as manufacturing industries). 125 **It is precisely this blurring of peace and war and the demise of traditionally definable battlefields that provides the impetus for the formulation of a new. theory of war powers**. As evidenced by Part M, supra, **the constitutional allocation of war powers**, and the Framers' commitment of the war power to two co-equal branches, was not designed **to cope with the current international system,** one that is **characterized by the persistent machinations of international terrorist organizations**, the rise of **multilateral alliances,** the **emergence of** rogue states**, and the potentially wide proliferation of easily deployable** w**eapons of** m**ass** d**estruction**, nuclear and otherwise. B. The Framers' World vs. Today's World The Framers crafted the Constitution, and the people ratified it, in a time when everyone understood that the state controlled both the raising of armies and their use. Today, however, **the threat of terrorism is bringing an end to the era of the nation-state's legal monopoly on violence**, and the kind of war that existed before-based on a clear division between government, armed forces, and the people-is on the decline. 126 As states are caught between their decreasing ability to fight each other due to the existence of nuclear weapons and the increasing threat from non-state actors, it is clear that the Westphalian system of nation-states that informed the Framers' allocation of war powers is no longer the order of the day. 127 As seen in Part III, supra, **the rise of the modem nation-state occurred as a result of its military effectiveness and ability to defend its citizens. If nation-states** such as the United States are **unable to adapt to the changing circumstances of fourth-generational warfare-**that is, if they are unable to adequately defend against low-intensity conflict conducted by non-state actors-"then clearly [the modem state] does not have a future in front of it.' 128 The challenge in formulating a new theory of war powers for fourthgenerational warfare that remains legally justifiable lies in the difficulty of adapting to changed circumstances while remaining faithful to the constitutional text and the original meaning. 29 To that end**, it is crucial to remember that the Framers crafted the Constitution in the context of the Westphalian system** of nation-states. The three centuries following the Peace of Westphalia of 1648 witnessed an international system characterized by wars, which, "through the efforts of governments, assumed a more regular, interconnected character."' 130 That period saw the rise of an independent military class and the stabilization of military institutions. Consequently, "warfare became more regular, better organized, and more attuned to the purpose of war-that is, to its political objective."' 1 3' That era is now over. Today, **the stability of the long-existing Westphalian international order has been greatly eroded** in recent years **with the advent of international terrorist organizations**, **which care nothing for the traditional norms of the laws of war.** This new global environment exposes the limitations inherent in the interpretational methods of originalism and textualism and necessitates the adoption of a new method of constitutional interpretation. While one must always be aware of the text of the Constitution and the original understanding of that text, that very awareness identifies the extent to which fourth-generational warfare epitomizes a phenomenon unforeseen by the Framers, a problem the constitutional resolution of which must rely on the good judgment of the present generation. 13 Now, to adapt the constitutional warmarking scheme to the new international order characterized by fourth-generational warfare, one must understand the threat it is being adapted to confront. C. The Jihadist Threat **The erosion of the Westphalian and Clausewitzian model of warfare and the blurring of the distinction between the means of warfare and the ends of policy, which is one characteristic of fourth-generational warfare, apply to al-Qaeda and other adherents of jihadist ideolog**y who view the United States as an enemy. An excellent analysis of jihadist ideology and its implications for the rest of the world are presented by Professor Mary Habeck. 133 Professor Habeck identifies the centrality of the Qur'an, specifically a particular reading of the Qur'an and hadith (traditions about the life of Muhammad), to the jihadist terrorists. 134 The jihadis believe that the scope of the Qur'an is universal, and "that their interpretation of Islam is also intended for the entire world, which must be brought to recognize this fact peacefully if possible and through violence if not."' 135 Along these lines, the jihadis view the United States and her allies as among the greatest enemies of Islam: they believe "that every element of modern Western liberalism is flawed, wrong, and evil" because the basis of liberalism is secularism. 136 The jihadis emphasize the superiority of Islam to all other religions, and they believe that "God does not want differing belief systems to coexist."' 37 For this reason, jihadist groups such as al-Qaeda "recognize that the West will not submit without a fight and believe in fact that the Christians, Jews, and liberals have united against Islam in a war that will end in the complete destruction of the unbelievers.' 138 **Thus, the adherents of this jihadist ideology, be it al-Qaeda or other groups,** **will continue to target the United States until she is destroyed. Their ideology demands it.** 139 To effectively combat terrorist groups such as al-Qaeda, it is necessary to understand not only how they think, but also how they operate. **Al-Qaeda is a transnational organization capable of simultaneously managing multiple operations all over the world**."14 It is both centralized and decentralized: al-Qaeda is centralized in the sense that Osama bin Laden is the unquestioned leader, but it is decentralized in that its operations are carried out locally, by distinct cells."4 AI-Qaeda benefits immensely from this arrangement because it can exercise direct control over high-probability operations, while maintaining a distance from low-probability attacks, only taking the credit for those that succeed. The local terrorist cells benefit by gaining access to al-Qaeda's "worldwide network of assets, people, and expertise."' 42 **Post-September 11 events have highlighted al-Qaeda's resilience. Even as the United States and her allies fought back,** inflicting heavy casualties on al-Qaeda in Afghanistan and destroying dozens of cells worldwide, "**al-Qaeda's networked nature allowed it to absorb the damage and remain a threat."** 14 3 This is a far cry from earlier generations of warfare, where the decimation of the enemy's military forces would generally bring an end to the conflict. D. The Need for Rapid Reaction and Expanded Presidential War Power By now it should be clear just how different this conflict against the extremist terrorists is from the type of warfare that occupied the minds of the Framers at the time of the Founding. Rather than maintaining the geographical and political isolation desired by the Framers for the new country, **today's United States is an international power targeted by individuals and groups that will not rest until seeing her demise.** **The** Global **War on Terrorism is not** truly **a war within the Framers' eighteenth-century conception of the term**, and the normal constitutional provisions regulating the division of war powers between Congress and the President do not apply. Instead, **this "war"** is a struggle for survival and dominance against forces that threaten to destroy the United States and her allies, and the fourth-generational nature of the conflict, highlighted by an indiscernible distinction between wartime and peacetime, necessitates an evolution of America's traditional constitutional warmaking scheme. As first illustrated by the military strategist Colonel John Boyd, constitutional decision-making in the realm of war powers in the fourth generation should consider the implications of the OODA Loop: Observe, Orient, Decide, and Act. 44 **In the era of fourth-generational warfare**, quick reactions, proceeding through the OODA Loop rapidly, **and disrupting the enemy**'s OODA loop **are the keys to victory. "In order to win**," Colonel Boyd suggested, **"we should operate at a** faster tempo **or rhythm than our adversaries**." 145 In the words of Professor Creveld, "[b]oth organizationally and in terms of the equipment at their disposal, the armed forces of the world will have to adjust themselves to this situation by changing their doctrine, doing away with much of their heavy equipment and becoming more like police."1 46 Unfortunately, the existing constitutional understanding, which diffuses war power between two branches of government, necessarily (by the Framers' design) slows down decision- making. In circumstances where war is undesirable (which is, admittedly, most of the time, especially against other nation-states), the deliberativeness of the existing decision-making process is a positive attribute. In America's current situation, however, **in the midst of the conflict with** al-Qaeda and other **international terrorist organizations**, **the** existing **process** **of constitutional decision-making in warfare may prove a** fatal hindrance **to achieving the initiative** necessary **for victory**. **As a** slow-acting, deliberative body, **Congress does not have the ability to a**dequately **deal with** fast-emerging situations in fourth-generational warfare. Thus, **in order to combat transnational threats** such as al-Qaeda, **the executive branch** must **have the ability to operate by taking offensive military action** even **without congressional authorization, because** only the executive branch **is capable of the swift decision-making and action necessary to prevail in fourth-generational conflicts against fourthgenerational opponents.**

#### Bioterror causes extinction

Mhyrvold ‘13

[Nathan, Began college at age 14, BS and Masters from UCLA, Masters and PhD, Princeton “Strategic Terrorism: A Call to Action,” Working Draft, The Lawfare Research Paper Series

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As horrible as this would be, such a pandemic is by no means the worst attack one can imagine, for several reasons. First, most of the classic bioweapons are based on 1960s and 1970s technology because the 1972 treaty halted bioweapons development efforts in the United States and most other Western countries. Second, the Russians, although solidly committed to biological weapons long after the treaty deadline, were never on the cutting edge of biological research. Third and most important, the science and technology of molecular biology have made enormous advances, utterly transforming the field in the last few decades. High school biology students routinely perform molecular-biology manipulations that would have been impossible even for the best superpower-funded program back in the heyday of biological-weapons research. The biowarfare methods of the 1960s and 1970s are now as antiquated as the lumbering mainframe computers of that era. Tomorrow’s terrorists will have vastly more deadly bugs to choose from. Consider this sobering development: in 2001, Australian researchers working on mousepox, a nonlethal virus that infects mice (as chickenpox does in humans), accidentally discovered that a simple genetic modification transformed the virus.10, 11 Instead of producing mild symptoms, the new virus killed 60% of even those mice already immune to the naturally occurring strains of mousepox. The new virus, moreover, was unaffected by any existing vaccine or antiviral drug. A team of researchers at Saint Louis University led by Mark Buller picked up on that work and, by late 2003, found a way to improve on it: Buller’s variation on mousepox was 100% lethal, although his team of investigators also devised combination vaccine and antiviral therapies that were partially effective in protecting animals from the engineered strain.12, 13 Another saving grace is that the genetically altered virus is no longer contagious. Of course, it is quite possible that future tinkering with the virus will change that property, too. Strong reasons exist to believe that the genetic modifications Buller made to mousepox would work for other poxviruses and possibly for other classes of viruses as well. Might the same techniques allow chickenpox or another poxvirus that infects humans to be turned into a 100% lethal bioweapon, perhaps one that is resistant to any known antiviral therapy? I’ve asked this question of experts many times, and no one has yet replied that such a manipulation couldn’t be done. This case is just one example. Many more are pouring out of scientific journals and conferences every year. Just last year, the journal Nature published a controversial study done at the University of Wisconsin–Madison in which virologists enumerated the changes one would need to make to a highly lethal strain of bird flu to make it easily transmitted from one mammal to another.14 Biotechnology is advancing so rapidly that it is hard to keep track of all the new potential threats. Nor is it clear that anyone is even trying. In addition to lethality and drug resistance, many other parameters can be played with, given that the infectious power of an epidemic depends on many properties, including the length of the latency period during which a person is contagious but asymptomatic. Delaying the onset of serious symptoms allows each new case to spread to more people and thus makes the virus harder to stop. This dynamic is perhaps best illustrated by HIV , which is very difficult to transmit compared with smallpox and many other viruses. Intimate contact is needed, and even then, the infection rate is low. The balancing factor is that HIV can take years to progress to AIDS , which can then take many more years to kill the victim. What makes HIV so dangerous is that infected people have lots of opportunities to infect others. This property has allowed HIV to claim more than 30 million lives so far, and approximately 34 million people are now living with this virus and facing a highly uncertain future.15 A virus genetically engineered to infect its host quickly, to generate symptoms slowly—say, only after weeks or months—and to spread easily through the air or by casual contact would be vastly more devastating than HIV . It could silently penetrate the population to unleash its deadly effects suddenly. This type of epidemic would be almost impossible to combat because most of the infections would occur before the epidemic became obvious. A technologically sophisticated terrorist group could develop such a virus and kill a large part of humanity with it. Indeed, terrorists may not have to develop it themselves: some scientist may do so first and publish the details. Given the rate at which biologists are making discoveries about viruses and the immune system, at some point in the near future, someone may create artificial pathogens that could drive the human race to extinction. Indeed, a detailed species-elimination plan of this nature was openly proposed in a scientific journal. The ostensible purpose of that particular research was to suggest a way to extirpate the malaria mosquito, but similar techniques could be directed toward humans.16 When I’ve talked to molecular biologists about this method, they are quick to point out that it is slow and easily detectable and could be fought with biotech remedies. If you challenge them to come up with improvements to the suggested attack plan, however, they have plenty of ideas. Modern biotechnology will soon be capable, if it is not already, of bringing about the demise of the human race— or at least of killing a sufficient number of people to end high-tech civilization and set humanity back 1,000 years or more. That terrorist groups could achieve this level of technological sophistication may seem far-fetched, but keep in mind that it takes only a handful of individuals to accomplish these tasks. Never has lethal power of this potency been accessible to so few, so easily. Even more dramatically than nuclear proliferation, modern biological science has frighteningly undermined the correlation between the lethality of a weapon and its cost, a fundamentally stabilizing mechanism throughout history. Access to extremely lethal agents—lethal enough to exterminate Homo sapiens—will be available to anybody with a solid background in biology, terrorists included.

### 4

#### The aff’s commitment to attaching ourselves to political institutions replicates the same affect of belonging that maintains liberalism. Their belief that merely changing the way that society is structured can lead to some change promotes the same obstacle to one’s desires. We should not try to confirm the system by trying to change the system but rather turn inwards to confirm of the centrality of our own desires.

Berlant, George M. Pullman Professor, Department of English, University of Chicago, ‘11

[Lauren, *Cruel Optimism*, Duke University Press, pg. 223-228, 2011, RSR]

Intensely political seasons spawn reveries of a different immediacy. People imagine alternative environments where authenticity trumps ideology, truths cannot be concealed, and communication feels intimate, face-to face. In these times, even politicians imagine occupying a post–public sphere public where they might just somehow make an unmediated transmission to the body politic. “Somehow you just got to go over the heads of the filter and speak directly to the people,” then- President George W. Bush commented in October 2003, echoing a long tradition of sentimental political fantasies and soon followed by condemnations of the “filter” by the Republican National Committee and the presidential campaign of John McCain and Sarah Palin.1 What is “the filter” that demands circumnavigation? Bush seems to be inverting the meaning of his own, mixed, metaphor. A filter, after all, separates out noise from communication and, in so doing, makes communication possible. Jacques Attali and Michel Serres have both argued that there is no communication without noise, as noise interferes from within any utterance, threatening its tractability.2 The performance of distortion that constitutes communication therefore demands discernment, or filtering. However steadfast one’s commitment to truth, there is no avoiding the noise. Yet Bush’s wish to skirt the filter points to something profound in the desire for the political. He wants to transmit not the message but the noise. He wants the public to feel the funk, the live intensities and desires that make messages affectively immediate, seductive, and binding.3 In his head a public’s binding to the political is best achieved neither by policy nor ideology but the affect of feeling political together, an effect of having communicated true feeling without the distancing mediation of speech.4 The transmission of noise performs political attachment as a sustaining intimate relation, without which great dramas of betrayal are felt and staged. In The Ethical Soundscape, Charles Hirschkind talks about the role of “maieutic listening” in constructing the intimate political publics of Egypt.5 There, the feeling tones of the affective soundscape produce attachments to and investments in a sense of political and social mutuality that is performed in moments of collective audition. This process involves taking on listening together as itself an object/scene of desire. The attainment of that attunement produces a sense of shared worldness, apart from whatever aim or claim the listening public might later bring to a particular political world because of what they have heard. From Hirschkind’s perspective the social circulation of noise, of affective binding, converts the world to a space of moral action that seems juxtapolitical— proximate to, without being compromised by, the instrumentalities of power that govern social life.6 Speaking above the filter would confirm to Bush’s whole listening audience that they already share an affective environment; mobilizing “the ethical and therapeutic virtues of the ear”7 would accomplish the visceral transmission of his assurance not only that he has made a better good life possible for Americans and humans around the globe, but that, affectively speaking, there is already a better sensorial world right here, right now, more intimate and secure and just as real as the world made by the media’s anxiogenic sensationalist analysis. This vision locates the desire for the political in an alternative commons in the present that the senses confirm and circulate as though without mediation. What exactly is the problem with “the filter”? The contemporary filtered or mediated political sphere in the United States transmits news 24/7 from a new ordinary created by crisis, in which life seems reduced to discussions about tactics for survival and who is to blame. The filter tells you that the public has entered a historical situation whose contours it does not know. It impresses itself upon mass consciousness as an epochal crisis, unfolding like a disaster film made up of human- interest stories and stories about institutions that have lost their way.8 It is a moment on the verge of a postnormative phase, in which fantasmatic clarities about the conditions for enduring collectivity, historical continuity, and infrastructural stability have melted away, along with predictable relations between event and effect. Living amidst war and environmental disaster, people are shown constantly being surprised at what does and does not seem to have a transformative impact. Living amid economic crisis, people are shown constantly being surprised at the amount, location, and enormity of moral and affective irregulation that come from fading rules of accountability and recognition. What will govern the terms and relations of reliable reciprocity among governments, intimates, workers, owners, churches, citizens, political parties, or strangers? What forms of life will secure the sense of affective democracy that people have been educated to expect from their publics? Nobody knows. The news about the recent past and the pressures of the near future demand constant emergency cleanup and hyperspeculation about what it means to live in the ongoing present among piles of cases where things didn’t work out or seem to make sense, at least not yet. There are vigils; there is witnessing, testimony, and yelling. But there is not yet a consensual rubric that would shape these matters into an event. The affective structure of the situation is therefore anxious and the political emotions attached to it veer wildly from recognition of the enigma that is clearly there to explanations that make sense, the kind of satisfying sense that enables enduring. Uncertainty is the material that Bush wished to bracket. His desire for a politics of ambient noise, prepropositional transmission, and intuitive reciprocity sought to displace the filtered story of instability and contradiction from the center of sociality. He also wishfully banished self- reflexive, cultivated opinion and judgment from their central public- sphere function. In short, as Jacques Rancière would put it, Bush’s wishful feeling was to separate the political from politics as such.9 In so doing he would cast the ongoing activity of social antagonism to the realm of the epiphenomenal, in contrast to which the affective feedback loop of the political would make stronger the true soul- to- soul continuity between politicians and their public. Foucault used to call “sexuality” that noisy affectivity that Bush wanted to transmit from mouth to ear, heart to heart, gut to gut.10 From his perspective, at least, the political is best lodged in the appetites. These are not politically tendentious observations. Perhaps when Bush uttered his desire for affective communication to be the medium of the political, he was trying cynically to distract the public gaze from some of his particular actions. But the wish to inhabit a vaguely warm sense of alreadyestablished, autonomic, and atmospheric solidarity with the body politic is hardly his special desire. Indeed, in his preference for the noise of immediacy, he has many bedfellows in the body politic with whom he shares little else politically, namely, the ones who prefer political meetings in town halls, caucuses, demonstrations, and other intimate assemblies to the pleasure of disembodied migratory identification that constitutes mass publics. He also joins his antagonists in the nondominant classes who have long produced intimate publics to provide the feeling of immediacy and solidarity by establishing in the public sphere an affective register of belonging to inhabit when there are few adequate normative institutions to fall back on, rest in, or return to. Public spheres are always affect worlds, worlds to which people are bound, when they are, by affective projections of a constantly negotiated common interestedness. But an intimate public is more specific. In an intimate public one senses that matters of survival are at stake and that collective mediation through narration and audition might provide some routes out of the impasse and the struggle of the present, or at least some sense that there would be recognition were the participants in the room together.11 An intimate public promises the sense of being held in its penumbra. You do not need to audition for membership in it. Minimally, you need just to perform audition, to listen and to be interested in the scene’s visceral impact.12 You might have been drawn to it because of a curiosity about something minor, unassociated with catastrophe, like knitting or collecting something, or having a certain kind of sexuality, only after which it became a community of support, offering tones of suffering, humor, and cheerleading. Perhaps an illness led to seeking out a community of survival tacticians. In either case, any person can contribute to an intimate public a personal story about not being defeated by what is overwhelming. More likely, though, participants take things in and sometimes circulate what they hear, captioning them with opinion or wonder. But they do not have to do anything to belong. They can be passive and lurk, deciding when to appear and disappear, and consider the freedom to come and go the exercise of sovereign freedom. Indeed, in liberal societies, freedom includes freedom from the obligation to pay attention to much, whether personal or political—no- one is obliged to be conscious or socially active in their modes and scenes of belonging. For many this means that political attention is usually something delegated and politics is something overheard, encountered indirectly and unsystematically, through a kind of communication more akin to gossip than to cultivated rationality.13 But there is nothing fundamentally passive or superficial in overhearing the political. What hits a person encountering the dissemination of news about power has nothing to do with how thorough or cultivated their knowledge is or how they integrate the impact into living. Amidst all of the chaos, crisis, and injustice in front of us, the desire for alternative filters that produce the sense—if not the scene—of a more livable and intimate sociality is another name for the desire for the political. This is why an intimate attachment to the political can amount to a relation of cruel optimism. I have argued throughout this book that an optimistic attachment is cruel when the object/scene of desire is itself an obstacle to fulfilling the very wants that bring people to it: but its life- organizing status can trump interfering with the damage it provokes. It may be a relation of cruel optimism, when, despite an awareness that the normative political sphere appears as a shrunken, broken, or distant place of activity among elites, members of the body politic return periodically to its recommitment ceremonies and scenes. Voting is one thing; collective caring, listening, and scanning the airwaves, are others. All of these modes of orientation and having a feeling about it confirm our attachment to the system and thereby confirm the system and the legitimacy of the affects that make one feel bound to it, even if the manifest content of the binding has the negative force of cynicism or the dark attenuation of political depression. How and why does this attachment persist? Is it out of habit? Is it in hopes of the potentiality embedded in the political as such? Or, from a stance of critical engagement, an investment in the possibility of its repair? The exhausting repetition of the politically depressed position that seeks repair of what may be constitutively broken can eventually split the activity of optimism from expectation and demand.14 Maintaining this split enables one to sustain one’s attachment to the political as such and to one’s sense of membership in the idea of the polity, which is a virtual—but sensual, not abstract—space of the commons. And so, detaching from it could induce many potential losses along with new freedoms. Grant Farred calls fidelity to the political without expectation of recognition, representation, or return a profoundly ethical act.15 His exemplary case derives from voting patterns of African Americans in the 2004 presidential election, but the anxiety about the costs of this ethical commitment has only increased with the election of Barack Obama as the President of the emotional infrastructure of the United States as well as of its governing and administrative ones.16 What is the relation between the “Yes We Can!” optimism for the political and how politics actually works? What is the effect of Obama’s optimization of political optimism against the political depression of the historically disappointed, especially given any President’s limited sovereignty as a transformative agent in ordinary life? How can we track the divergences between politically orchestrated emotions and their affective environments? Traditionally, political solidarity is a more of a structure than a feeling—an identification with other people who are similarly committed to a project that does not require affective continuity or warm personal feeling to sustain itself. But maintaining solidarity requires skills for adjudicating incommensurate visions of the better good life. The atrophy of these skills is at risk when politics is reduced to the demand for affective attunement, insofar as the sense of belonging is threatened by the inconvenience of antagonistic aims. Add to this the possibility that “the political” as we know it in mass democracy requires such a splitting of attachment and expectation. Splitting off political optimism from the way things are can sustain many kinds of the cruelest optimism.

#### We must move to a politics of post sentimentality. The impossibility to move beyond history does not mean that history has to define us. Instead, we should move to a politics of the self that transcends attachments to structures beyond us.

Berlant, ‘98

[Lauren, George M. Pullman Professor, Department of English, University of Chicago, “Poor Eliza,” American Literature, Vol. 70, No. 3, No More Separate Spheres! (Sep., 1998), Duke University Press, pg. 635-668, RSR]

Written in 1949, Baldwin's exhortation to refuse to pass on the contradictions of sentimental liberalism might be taken up by Toni Morrison, say. For if The Bluest Eye casts Shirley Temple and her ilk among the most vicious lying weapons of whiteness, Beloved under- stands that there is no transcendence anywhere-not through a thrilling or a comforting image. Surely Beloved quotes "poor Eliza" in its constant return to Sethe's river crossing. But Morrison's novel shows that when you cross the Ohio you do not transcend it but take it with you. At any moment a woman who has crossed or who descends from one who has risked the water might be walking through the grass thinking sentimental thoughts about the love and family and peace she might experience when she has the time and money and freedom, when suddenly "she had to lift her skirts, and the water she voided was endless," so that a viewer might "be obliged to see her squatting in front of her own privy making a mudhole too deep to be witnessed without shame";34 or perhaps she would be overcome by singing, "where the voices of women searched for the right combination, the key, the code, the sound that broke the back of words. Building voice upon voice until they found it, and when they did it was a wave of sound wide enough to sound deep water ... and she trembled like the baptized in its wash";35 or perhaps, breaking the water of pregnancy lying flat in a boat, she would remember the middle passage or just think about rain and other kinds of beloved weather. Whatever the case, the desire to disinherit a community from the stories that bind it to weepy repetitions of sublime death and dry, safe local entertainments motivates the novel Beloved to show that rather than seeking transcendence of the self who exemplifies the impossibility of exis- tence outside history, and rather than merely repeating the tragedies that seemed long ago to constitute whatever horizon of possibility your identity might aspire to, the postsentimental project would have you refuse to take on the history of the Other as your future, or as the solution to the problem of passing (over) water in the present tense. Sethe's flood poses a challenge to the tears of sentimental culture: to refuse the too-quick gratification after the none-too-brief knowledge of pain. Above all it understands that whatever transformation we might imagine being wrought from the world-making effects of identification must start right here, in the place of corporeal self-knowledge that can neither be alienated into the commodity form nor provide instruction and entertainment to audiences committed to experiencing the same changes over and over again. It asks us to demand of the sentimental project that its protests and complaints be taken seriously in themselves, which involves occupying the present tense with no more time for the big deferrals or fantasies of the always imminent time when the nation and heterosexuality finally pay out fully their parts of the bargain through which they have secured social dominance and ideological hegemony. The old motto of sentimentality might be taken from Fannie Hurst: "Every normal female yearns to be a lumi- nous person."36 But in the meantime, as we wait for the rapture to take place sometime in the always receding future, we might think about living by an interim slogan-perhaps, as Sethe says, "No more running-from nothing.

### Solvency

#### Lack of intelligence prevents effective checks – plan can’t overcome institutional barriers

Kennedy, 10– Robert, Professor at the Sam Nunn School of International Affairs, Georgia Institute of Technology(*The Road to War*, Praeger Security International, 127-129)

First, **the information needed for effective decision making is often difficult to acquire.** President George W. **Bush** was even more aggressive than Clinton in keeping information out of legislative hands.6a While his administration formally claimed executive privilege only six times,5s it **employed many of the techniques to keep information from Congress that his father had employed so successfully.** **Aware that members of Congress could challenge his preferred policies**, **limiting information often permitted the president** and senior members of his administration **to define the issues and limit congressional scrutiny and debate.** **When members of Congress requested information** in the form of documents or testimony, frequently **administration officials declared their willingness to comply and subsequently frustrated congressional efforts by either delaying delivery, excising content**, or both, **or refusing to testify.** **Such tactics often are highly successful** when a Congress is in the hands of the president's party, as was the case as the decision to attack Iraq was looming. Second, **when information is denied** **congress**ional committees, if they deem the information critical to their decision-making processes, they **can issue a subpoena to acquire the information. However, in the highly politicized and partisan environment** that characterized much of Bush's tenure, it is not surprising that **congressional subpoenas** of administration officials **or threats or citations for contempt were unlikely.** **Only the chairman, vice chairman, or member designated by the chairman of the Senate intelligence committee can issues subpoenas.**6s House intelligence committee subpoenas can be issued by the chairman of the full committee in consultation, but consultation only with the ranking minority member, or by vote of the committee.6T **To** take the further step and **declare a person in contempt**, **both committees require a majority decision** of committee members **to forward the request to their respective houses, which in turn requires a majority decision in those chambers.** **Such procedures make the use of Congress's subpoena or contempt powers difficult.** This is particularly true when the chamber concerned is in the hands of the party that occupies the White House, which was the case as war approached. Of course **the problem is not peculiar to one party**. However, as former Congressman Mickey Edwards argued, demanding that the executive branch comply with legitimate congressional requests for information is not just "the obligation only of the party that opposes the policies of the President in power." It is the obligation of every congressman. Members are not sitting in Congress as a representative of their party or as a representative of the President of the United States. They are in Congress with "certain constitutional obligations." "It is not supposed to be the opposition party that holds a President accountable, it is supposed to be the opposition institution of government."6s Edwards went on to note: I think what's happened is that **too many members of Congress have allowed their party interests**.. . [**to dominate**], **believing that if the president were to have political difficulties it would hurt the party and hurt them and so forth.** **They have allowed their political and party interests and**, quote, "**loyalty to the president**". .. **to trump their institutional obligations**. . . .6e Finally, as we have seen over time, **Congress has grown accustomed to deferring to the president** on foreign policy and national security. As a consequence, congressional intelligence committees spend much of their time diligently working on intelligence community authorizations, examining their budgets, investigating accusations of intelligence community wrongdoing, and challenging the executive on intelligence efforts that might be contrary to the law. Though the Senate Select **Committee on Intelligence** is principally tasked to "make every effort to assure that the appropriate departments and agencies of the United States provide informed and timely intelligence necessary for the executive and legislative branches to make sound decisions affecting the security and vital interests of the Nation"7o and its House counterpart is tasked to receive all intelligence from U.S. intelligence agencies, **evidence suggests these committees spend relatively little time ensuring that the quality of the intelligence product meets the demands of effective decision making.** **This is apparently largely left to the executive branch.** Had the congressional intelligence committees been dutifully fulfilling their statutory mandate, carefully probing the intelligence community on the evidence they possessed that might substantiate the Bush administration contentions, they would have been aware of such deficiencies even before the National Intelligence Estimate was made available to Congress in October 20A2, more than a week before both houses of Congress voted in favor of the Iraq War Resolution. Moreover, once the estimate was made available to members of Congress, few members ever read it. **According to one report, no more than six Senators and a handful of representatives read beyond the five-page executive summary.**Tl Had they done so they would have found ample evidence that the facile conclusions were supported at best by extremely weak intelligence. They also would have better understood exceptions taken to the overall conclusions by many, including intelligence officials from the departments of State and Energy, and perhaps come to realize that the entire executive branch **case for going to war** based **on Iraq**'s possession of weapons of mass destruction was built on a house of cards. As a result, they would have been in a better position to inform their colleagues in both houses before the decision was made on whether to authorize the president to go to war. However as one senior intelligence committee member put it to me during an interview, "I don't think most members [of Congress], including myself, doubted the conclusions [of the Intelligence Estimate] that Saddam Hussein had weapons of mass destruction....I believed he had weapons of mass destruction. I didn't feel the need to challenge that conclusion."T2 **The failure of Congress to probe the quality of the intelligence**/ in many cases to take time to read the National Intelligence Estimate **or even, in some cases**, to **read the executive summary, may have been driven by a variety of factors-workload, politics, or deference to the executive branch in the area of foreign policy and security.** Whatever the excuse in any individual case may have been, it has led to an appalling loss of lives, heavily taxed the American economy, polarized the nation, caused severe damage to America's reputation abroad, and perhaps even undermined rather than strengthened American security. It is clear that **for Congress as a whole and for the congressional committees charged with intelligence oversight, there has been an abdication of responsibility.**

#### Obama will signing statement the aff—hollows the restriction out

Jeffrey Crouch, assistant professor of American politics at American University, Mark J. Rozell, acting dean and a professor of public policy at George Mason University, and Mitchel A. Sollenberger, associate professor of political science at the University of Michigan-Dearborn, December 2013, The Law: President Obama's Signing Statements and the Expansion of Executive Power, Presidential Studies Quarterly 43.4

In a January 2013 signing statement, President Barack Obama stated that his constitutional powers as president limited him to signing or vetoing a law outright and that he lacked the authority to reject legislative provisions “one by one.” Yet he then proceeded in a nearly 1,200 word statement to pick the law apart, section by section, and to effectively challenge many provisions by declaring that they violated his constitutional powers as commander in chief. According to his signing statement, a provision restricting the president's authority to transfer detainees to foreign countries “hinders the Executive's ability to carry out its military, national security, and foreign relations activities and would, under certain circumstances, violate constitutional separation of powers principles” (Obama 2013). Obama did not mention, however, that Congress specifically authorized transfers to foreign countries as long as the secretary of defense, with the concurrence of the secretary of state and in consultation with the director of national intelligence, certified that the foreign government receiving the detainees was not a designated state sponsor of terrorism and possessed control over the facility the individual would be housed (P.L. 112-239; see Fisher 2013). Obama also objected to a number of provisions that he claimed would violate his “constitutional duty to supervise the executive branch” and several others that he said could encroach upon his “constitutional authority to recommend such measures to the Congress as I ‘judge necessary and expedient.’ My Administration will interpret and implement these provisions in a manner that does not interfere with my constitutional authority” (Obama 2013). What the president could not block or modify through concessions or veto threats during budget negotiations with members of Congress, he decided he could unilaterally strip from a signed bill. Similar to his predecessor, George W. Bush, Obama suggested that he was the ultimate “decider” on what is constitutional and proper. Few acts by occupants of the White House so completely embody the unchecked presidency. Candidate Obama on Signing Statements President Obama's actions have been surprising given that he proclaimed while first running for his office that he would not issue signing statements that modify or nullify acts of Congress (YouTube 2013 2013). In a December 2007 response to the Boston Globe, presidential candidate Obama provided a detailed explanation for his thinking: “I will not use signing statements to nullify or undermine congressional instructions as enacted into law. The problem with [the George W. Bush] administration is that it has attached signing statements to legislation in an effort to change the meaning of the legislation, to avoid enforcing certain provisions of the legislation that the President does not like, and to raise implausible or dubious constitutional objections to the legislation” (Savage 2007a). Candidate Obama's objection to President Bush's actions centered on one of the three varieties of signing statement, in this case, a “constitutional” signing statement. In a “constitutional” signing statement, a president not only points out flaws in a bill, but also declares—in often vague language—his intent not to enforce certain provisions. Such statements may be different than ones that are “political” in nature. In “political” signing statements, a president gives executive branch agencies guidance on how to apply the law.1 Finally, the most common type of signing statements are “rhetorical,” whereby the intent of the president is to focus attention on one or more provisions for political gain (Kelley 2003, 45-50). President Obama's Policy on Signing Statements At the start of his term, it seemed that President Obama would honor his campaign commitments and break with his predecessor when he issued a memorandum to heads of executive branch departments and agencies regarding his policy on signing statements. In this memorandum, he wrote, “there is no doubt that the practice of issuing [signing] statements can be abused.” He objected to the use of signing statements where a president disregards “statutory requirements on the basis of policy disagreements.” Only when signing statements are “based on well-founded constitutional objections” do they become legitimate. Therefore, “in appropriately limited circumstances, they represent an exercise of the President's constitutional obligation to take care that the laws be faithfully executed, and they promote a healthy dialogue between the executive branch and the Congress.” President Obama proceeded to list four key principles he would follow when issuing signing statements: (1) Congress shall be informed, “whenever practicable,” of the president's constitutional objections; (2) the president “will act with caution and restraint” when issuing statements that are based on “well-founded” constitutional interpretations; (3) there will be “sufficient specificity” in each statement “to make clear the nature and basis of the constitutional objection”; and finally, (4) the president would “construe a statutory provision in a manner that avoids a constitutional problem only if that construction is a legitimate one” (Obama 2009a). Media coverage praised President Obama's action. The Boston Globe declared, “Obama reins in signing statements” (Editorial 2009). David Jackson of USA Today reported, “Obama tried to overturn his predecessor again on Monday, saying he will not use bill signing statements to tell his aides to ignore provisions of laws passed by Congress that he doesn't like” (Jackson 2009). Another reporter noted, President Obama “signaled that, unlike Bush, he would not use signing statements to do end runs around Congress” (James 2009). Any expectations for a shift in the exercise of signing statements ultimately were misplaced, as President Obama, like his predecessor, has used signing statements in ways that attempt to increase presidential power. In this article, we first describe and analyze the continuity of policy and action between Barack Obama and George W. Bush. Second, we address why signing statements—at least one type of them—can not only be unconstitutional abuses of presidential power, but may also be unproductive tools for promoting interbranch dialogue and cooperation. Third, we show that signing statements are a natural result of expanding power in the modern presidency and that they have come to be used as a means of unilateral executive action. Finally, we provide a possible corrective to some of the more aggressive forms of constitutional signing statements that impact appropriations.

#### Arbitrary executive circumvention takes out the aff.

Pollack, 13 -- MSU Guggenheim Fellow and professor of history emeritus [Norman, "Drones, Israel, and the Eclipse of Democracy," Counterpunch, 2-5-13, www.counterpunch.org/2013/02/05/drones-israel-and-the-eclipse-of-democracy/, accessed 9-1-13]

Bisharat first addresses the transmogrification of international law by Israel’s military lawyers. We might call this damage control, were it not more serious. When the Palestinians first sought to join the I.C.C., and then, to receive the UN’s conferral of nonmember status on them, Israel raised fierce opposition. Why? He writes: “Israel’s frantic opposition to the elevation of Palestine’s status at the United Nations was motivated precisely by the fear that it would soon lead to I.C.C. jurisdiction over Palestinian claims of war crimes. Israeli leaders are unnerved for good reason. The I.C.C. could prosecute major international crimes committed on Palestinian soil anytime after the court’s founding on July 1, 2002.” **In response to the threat, we see the deliberate reshaping of the law:** Since 2000, “the Israel Defense Forces, guided by its **military lawyers, have attempted to remake the laws of war by** consciously violating them **and then creating new legal concepts to provide juridical cover** for their misdeeds.” (Italics, mine) In other words, habituate the law to the existence of atrocities; **in the US‘s case, targeted assassination, repeated often enough, seems permissible**, indeed clever and wise, **as pressure is steadily applied to the laws of war.** Even then, “collateral damage” is seen as unintentional, regrettable, but hardly prosecutable, and in the current atmosphere of complicity and desensitization, never a war crime. (**Obama is hardly a novice at this game of stretching the law to suit the convenience of**, shall we say, the **national interest**? **In order to ensure the distortion in counting civilian casualties, which would bring the number down, as Brennan with a straight face claimed, was “zero,” the Big Lie** if ever there was one, placing him in distinguished European company, **Obama redefined the meaning of “combatant” status to be any male of military age throughout the area** (which we) declared a combat zone, which noticeably led to a higher incidence of sadism, because it allowed for “second strikes” on funerals—the assumption that anyone attending must be a terrorist—and first responders, those who went to the aid of the wounded and dying, themselves also certainly terrorists because of their rescue attempts.) These guys play hardball, perhaps no more than in using—by report—the proverbial baseball cards to designate who would be next on the kill list. But funerals and first responders—verified by accredited witnesses–seems overly much, and not a murmur from an adoring public.

### Militarized Masculinities

#### The aff’s use of legal methods to restrain the president legitimates violence, resulting in unending militarism.

Smith, Professor of Philosophy at the University of South Florida, ‘2

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

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

## 2NC

### Affect K

#### This commitment to relationality is the biggest affective force that defines us.

Watkins, Associate Professor in the School of Education at the University of Western Sydney, ‘10

[Megan, “Desiring Recognition, Accumulating Affect”, The Affect Theory Reader, Duke University Press, 2010, RSR]

Winnicott's intention is to explain the process of differentiation. His focus is the move from what he views as complete union with the mother hence his famous declaration that there is no such thing as an infant-to a position of independence as a separate self with his notion of transitional object mediating the process (Winnicott 1965> 39). In doing this, however, Winnicott gives emphasis to the interaction between mother and child with the development of self premised on intersubjective engagement.• Recognition is central to this process. As Kojeve points out, "The establishment of one's self-understanding is inextricably dependent on recognition or affirmation on the part of others" (1969, n).ln explaining the development of a sense of self, the issue for Winnicott is not simply how we become independent of the other but, as Jessica Benjamin explains, "how we actively engage and make ourselves known in relationship to the other" (1988, 18). Winnicott stresses that independence is premised on initial periods of dependence and that this dependence has actually grown out of what he terms "double dependence" (2oo6, 5). His reasoning here has much to offer pedagogic theory as it typifies the mutual recognition underpinning a productive conceptualization of the pedagogic relation of teacher and student. Another dinJension to how such a connection with the other frames our notion of self is discussed by Honneth (1995, 99). Drawing on Winnicott, he refers to the ways in which infants gain a sense of bodily schema through the process of being held. Intercorporeality, skin acting on skin, the sense of touch, and the affective realm allows one to know one's body. A similar perspective is evident in Merleau-Ponty's phenomenology of the body: understanding our somatic selves through engagement with the world (1999). In more recent work in the area of child development from the 1l)Sos, Stern gives a similar emphasis to the role of intersubjectivity in the formation of the self. Yet his starting point and the way in which he maps development are quite different to those of Winnicott. To Stern there is no point at which the infant is confused in relation to a sense of self and other where development entails a process of differentiation. To Stern infants are "predesigned to be aware of self-organising processes" ( 1985, 10 ) . He is interested in how different senses of the self manifest -an emergent self, a core self, a subjective self, and a verbal self-which, to Stern, are not successive phases of development. He explains that once acquired each of these aspects of self continues to function and remain active throughout one's life. These different senses of self are each a product of increasingly complex forms of relatedness beginning with the mother/child dyad as the primary relation of intersubjective engagement. This is an accumulation of self that seems dependent upon an accumulation of affect, which Stern alludes to in his account of mother I child interaction. In discussion of this dyadic interaction and the ways in which infants engage with the world psychologists make reference to what is termed "contingent responsiveness," that is, the sense of pleasure an infant feels in response to a reaction of which he or she is the cause (Benjamin 1!)88, 21). This could involve pushing a ball or other toy and the joy that ensues in making it move. While the infant expresses joy in the response of the inartirnate object, it proves to be more pleasurable if this is accompanied by a reaction from the mother or significant other. What becomes important in the repeated performance of this activity is not so much the action itself but the reaction of another subject and the sense of recognition it generates. This acknowledgment acts as a spur for further action; the desire for recognition on the part of the infant instills a form of agency in the successful completion of the process involved in making an object move. In this instance the desire for recognition is not one-sided; it is mutual The mother likewise desires the recognition of her child and gains fulfillment in his or her responsive play. So, despite the differential power relationship between mother and child, there is both a need to recognize the other and in tum to be recognized. In discussing this dialogic play between mother and child Jessica Benjamin refers to studies that provide a frame by frame analysis of the facial, gestural, and vocal actions and reactions of both parties that reveal a kind of"dance of interaction" (1988, 27). Benjantin explains that "the partners are so attuned that they move together in unison" with this play of mutual recognition seemingly fueled by affect ( 27 ). This interaffectivity is a key concern of Stem. He points out that "the sharing of affective states is the most pervasive and clinically germane feature of intersubjective relatedness" (Stern 1985, 138). Elsewhere he stresses that it is only througlt the intensity of this form of interaction that infants are able to attain high levels offeeling (Stem 1993, 207). What the infant experiences, however, is not simply joy-this amplification of feeling has direct links with cognition. Prior to the work of Tomkins it was thought that affect and cognition were separate and unrelated functions, yet while affect can operate independently, Tomkins was able to demonstrate its impact on both thought and behavior, in a sense confirming the psychophysical parallelism expounded by Spinoza and also the relationality of affect (Angel and Gibbs wo6).• The interrelationship between affect and cognition and the difficulty in identifying the former's effect on the latter is perhaps best demonstrated by an examination of the affect of interest Tomkins explains how in his work on the emotions Darwin overlooked interest altogether, confusing it with the function of thinking (1962, 338). To Tomkins, however, "the absence of the affective support of interest would jeopardize intellectual development no less than destruction of brain tissue" (343). The relationship between affect and cognition and the heightening of affect that recognition can evoke are of particular importance to pedagogic theory in terms of what they suggest about the significance of the pedagogic relation of teacher and student the ways in which a teacher's support influences a student's learning. While the focus of Stern's work is the interpersonal world of the infant, and so his argument about the relationship between affect amplification and interpersonal engagement relates to the early years of life, he is also of the view that while adults can reach higlt levels of joy when alone, this is largely dependent on an imagined other. Intensification of positive affects-as in interest-seems a function of engagement with others and, pedagogically, a significant other. The techniques teachers utilize in classrooms can act as a force promoting interest, which over time may accumulate as cognitive capacity providing its own stimulus for learning, a point I will return to below.

#### Third, the democracy link – faith in democratic structures perpetuate the same problems of liberalism – citizenship and inclusion within democratic structures are not the problem. Having those voices being treated as legitimate is problem that the aff doesn’t solve because it replaces our faith in the institutions that subalternizes other epistemology not theirs – that leads to violence on those non-western bodies.

Volpp 2 (Leti Volpp, Associate Professor, American University, Washington College of Law, The Citizen and the Terrorist, 2002, 49 UCLA L. Rev. 1575) PC

In the American imagination, those who appear "Middle Eastern, Arab, or Muslim" may be theoretically entitled to formal rights, but they do not stand in for or represent the nation. Instead, they are interpellated as antithetical to the citizen's sense of identity. Citizenship in the form of legal status does not guarantee that they will be constitutive of the American body politic. In fact, quite the opposite: The consolidation of American identity takes place against them.¶ While many scholars approach citizenship as identity as if it were derivative of citizenship's other dimensions, it seems as if the guarantees of citizenship as status, rights, and politics are insufficient to produce citizenship as identity. n78 Thus, one may formally be a U.S. citizen and formally entitled to various legal guarantees, but one will stand outside of the membership of kinship/solidarity that structures the U.S. nation. And clearly, falling outside of the identity of the "citizen" can reduce the ability to exercise citizenship as a political or legal matter. Thus, the general failure to identify people who appear "Middle Eastern, Arab, or Muslim" as constituting American [\*1595] national identity reappears to haunt their ability to enjoy citizenship as a matter of rights, in the form of being free from violent attack.¶ Thus, the boundaries of the nation continue to be constructed through excluding certain groups. The "imagined community" n79 of the American nation, constituted by loyal citizens, is relying on difference from the "Middle Eastern terrorist" to fuse its identity at a moment of crisis. Discourses of democracy used to support the U.S. war effort rest on an image of anti-democracy, in the form of those who seek to destroy the "American way of life." n80 The idea that there are norms that are antithetical to "Western values" of liberty and equality helps solidify this conclusion.¶ We can consider whether the way in which identity disrupts citizenship is inevitable. Race has fundamentally contradicted the promise of liberal democracy, including citizenship. While liberalism claimed to promise universal liberty and equality, these were in fact only guaranteed to propertied, European male subjects. n81 While some might believe in the promise of universality - that one can infinitely expand the ambit of who is entitled to rights and freedoms - race and other markers appear and reappear to patrol the borders of belonging to political communities. n82 Despite the liberal universalizing [\*1596] discourse of citizenship, not all citizens are equal. n83 These events make apparent how identity in the form of foreignness, or perpetual extraterritorialization, n84 means that the circling of wagons is an uneven process, that drawing tighter together takes place through the expulsion of some.¶ Recent theorizing about diasporic or transnational subjects, while productive in many regards, has on occasion minimized the continued salience of the nation, both in terms of shaping identity and in the form of governmental control. n85 In particular, discussions charting the decline of the nation-state have led to unfortunate implications when two points are stretched to extremes: First, the idea that immigrant communities have complete [\*1597] agency in determining their location and their national identity; and second, the idea that the borders of the nation can be traversed with the greatest of ease and are so reduced as to become almost meaningless. n86¶ Arjun Appadurai, in an essay titled Patriotism and its Futures, written at what was perhaps a more optimistic moment, suggests that we "need to think ourselves beyond the nation," for we now find ourselves in a postnational era. n87 America, he suggests, is "eminently suited to be a sort of cultural laboratory and a free trade zone" to test a "world organized around diasporic diversity." n88 Appadurai argues that the United States should be considered "yet another diasporic switching point, to which people come to seek their fortunes but are no longer content to leave their homelands behind." n89¶ If only this were indeed a postnational era. In a response, titled Transnationalism and its Pasts, Kandice Chuh criticizes the evenness of power relations within and across national borders implied in Appadurai's postnation. n90 Chuh emphasizes the link between transnationalism and state coercion, and reminds us of the forced removal and internment of Japanese Americans by the U.S. government during World War II. n91 A transnational extension of Japan into the United States was relied upon to justify this dispossession. This memory is instructive to us now. We should remember that the idea of transnationality is not solely one where immigrants function as agents in maintaining diasporic ties, but can be one where a state or its people brands its citizens with foreign membership, extraterritorializing them into internment [\*1598] camps, or ejecting them from membership through violence against their bodies. n92¶ We function not just as agents of our own imaginings, but as the objects of others' exclusions. Despite frequent rhetorical claims, this society is neither colorblind nor a happy "nation of immigrants." Certain racialized bodies are always marked and disrupt the idea of integration or assimilation. n93

#### Second, there is a violence DA – merely furthering the notion of inclusion and exclusion STILL EXCLUDES PEOPLE. The aff may include people but perpetuates the very structure that excludes other people. This does unspeakable violence to other in the name to destroy non-liberal ways of life. <Insert aff specific explanation>. This internal link turns all their offense.

Batur 7 [Pinar, PhD @ UT-Austin – Prof. of Sociology @ Vassar, *The Heart of Violence: Global Racism, War, and Genocide*, Handbook of The Sociology of Racial and Ethnic Relations, eds. Vera and Feagin, p. 441-3]

War and genocide are horrid, and taking them for granted is inhuman. In the 21st century, our problem is not only seeing them as natural and inevitable, but even worse: not seeing, not noticing, but ignoring them. Such act and thought, fueled by global racism, reveal that racial inequality has advanced from the establishment of racial hierarchy and institutionalization of segregation, to the confinement and exclusion, and elimination, of those considered inferior through genocide. In this trajectory, global racism manifests genocide. But this is not inevitable. This article, by examining global racism, explores the new terms of exclusion and the path to permanent war and genocide, to examine the integrality of genocide to the frame-work of global antiracist confrontation. GLOBAL RACISM IN THE AGE OF “CULTURE WARS” Racist legitimization of inequality has changed from presupposed biological inferiority to assumed cultural inadequacy. This defines the new terms of impossibility of coexistence, much less equality. The Jim Crow racism of biological inferiority is now being replaced with a new and modern racism (Baker 1981; Ansell 1997) with “culture war” as the key to justify difference, hierarchy, and oppression. The ideology of “culture war” is becoming embedded in institutions, defining the workings of organizations, and is now defended by individuals who argue that they are not racist, but are not blind to the inherent differences between African-Americans/Arabs/Chinese, or whomever, and “us.” “Us” as a concept defines the power of a group to distinguish itself and to assign a superior value to its institutions, revealing certainty that affinity with “them” will be harmful to its existence (Hunter 1991; Buchanan 2002). How can we conceptualize this shift to examine what has changed over the past century and what has remained the same in a racist society? Joe Feagin examines this question with a theory of systemic racism to explore societal complexity of interconnected elements for longevity and adaptability of racism. He sees that systemic racism persists due to a “white racial frame,” defining and maintaining an “organized set of racialized ideas, stereotypes, emotions, and inclinations to discriminate” (Feagin 2006: 25). The white racial frame arranges the routine operation of racist institutions, which enables social and economic repro-duction and amendment of racial privilege. It is this frame that defines the political and economic bases of cultural and historical legitimization. While the white racial frame is one of the components of systemic racism, it is attached to other terms of racial oppression to forge systemic coherency. It has altered over time from slavery to segregation to racial oppression and now frames “culture war,” or “clash of civilizations,” to legitimate the racist oppression of domination, exclusion, war, and genocide. The concept of “culture war” emerged to define opposing ideas in America regarding privacy, censorship, citizenship rights, and secularism, but it has been globalized through conflicts over immigration, nuclear power, and the “war on terrorism.” Its discourse and action articulate to flood the racial space of systemic racism. Racism is a process of defining and building communities and societies based on racial-ized hierarchy of power. The expansion of capitalism cast new formulas of divisions and oppositions, fostering inequality even while integrating all previous forms of oppressive hierarchical arrangements as long as they bolstered the need to maintain the structure and form of capitalist arrangements (Batur-VanderLippe 1996). In this context, the white racial frame, defining the terms of racist systems of oppression, enabled the globalization of racial space through the articulation of capitalism (Du Bois 1942; Winant 1994). The key to understanding this expansion is comprehension of the synergistic relationship between racist systems of oppression and the capitalist system of exploitation. Taken separately, these two systems would be unable to create such oppression independently. However, the synergy between them is devastating. In the age of industrial capitalism, this synergy manifested itself imperialism and colonialism. In the age of advanced capitalism, it is war and genocide. The capitalist system, by enabling and maintaining the connection between everyday life and the global, buttresses the processes of racial oppression, and synergy between racial oppression and capitalist exploitation begets violence. Etienne Balibar points out that the connection between everyday life and the global is established through thought, making global racism a way of thinking, enabling connections of “words with objects and words with images in order to create concepts” (Balibar 1994: 200). Yet, global racism is not only an articulation of thought, but also a way of knowing and acting, framed by both everyday and global experiences. Synergy between capitalism and racism as systems of oppression enables this perpetuation and destruction on the global level. As capitalism expanded and adapted to the particularities of spatial and temporal variables, global racism became part of its legitimization and accommodation, first in terms of colonialist arrangements. In colonized and colonizing lands, global racism has been perpetuated through racial ideologies and discriminatory practices under capitalism by the creation and recreation of connections among memory, knowledge, institutions, and construction of the future in thought and action. What makes racism global are the bridges connecting the particularities of everyday racist experiences to the universality of racist concepts and actions, maintained globally by myriad forms of prejudice, discrimination, and violence (Balibar and Wallerstein 1991; Batur 1999, 2006). Under colonialism, colonizing and colonized societies were antagonistic opposites. Since colonizing society portrayed the colonized “other,” as the adversary and challenger of the “the ideal self,” not only identification but also segregation and containment were essential to racist policies. The terms of exclusion were set by the institutions that fostered and maintained segregation, but the intensity of exclusion, and redundancy, became more apparent in the age of advanced capitalism, as an extension of post-colonial discipline. The exclusionary measures when tested led to war, and genocide. Although, more often than not, genocide was perpetuated and fostered by the post-colonial institutions, rather than colonizing forces, the colonial identification of the “inferior other” led to segregation, then exclusion, then war and genocide. Violence glued them together into seamless continuity. Violence is integral to understanding global racism. Fanon (1963), in exploring colonial oppression, discusses how divisions created or reinforced by colonialism guarantee the perpetuation, and escalation, of violence for both the colonizer and colonized. Racial differentiations, cemented through the colonial relationship, are integral to the aggregation of violence during and after colonialism: “Manichaeism [division of the universe into opposites of good and evil] goes to its logical conclusion and dehumanizes” (Fanon 1963:42). Within this dehumanizing framework, Fanon argues that the violence resulting from the destruction of everyday life, sense of self and imagination under colonialism continues to infest the post-colonial existence by integrating colonized land into the violent destruction of a new “geography of hunger” and exploitation (Fanon 1963: 96). The “geography of hunger” marks the context and space in which oppression and exploitation continue. The historical maps drawn by colonialism now demarcate the boundaries of post-colonial arrangements. The white racial frame restructures this space to fit the imagery of symbolic racism, modifying it to fit the television screen, or making the evidence of the necessity of the politics of exclusion, and the violence of war and genocide, palatable enough for the front page of newspapers, spread out next to the morning breakfast cereal. Two examples of this “geography of hunger and exploitation” are Iraq and New Orleans.

### Masculinities

#### In their world there is a legal way to kill people, they don’t change the motivation or need to kill people – administration will use legal trickery to change through. This means the aff maintains biopolitical strategies that sanitizes the killing of people in the first place. It’s the root cause of the aff.

Morrissey 2011 [John, Department of Geography at the National University of Ireland, “Liberal Lawfare and Biopolitics: US Juridical Warfare in the War on Terror,” *Geopolitics* 16:280-305]

Nearly two centuries ago, Prussian military strategist, Carl von Clausewitz, observed how war is merely a “continuation of political commerce” by “other means”.70 Today, the lawfare of the US military is a continuation of war by legal means. Indeed, for US Deputy Judge Advocate General, Major General Charles Dunlap, it “has become a key aspect of modern war”.71 For Dunlap and his colleagues in the JAG corps, the law is a “force multiplier”, as Harvard legal scholar, David Kennedy, explains: it “structures logistics, command, and control”; it “legitimates, and facilitates” violence; it “privileges killing”; it identifies legal “openings that can be made to seem persuasive”, promissory, necessary and indeed therapeutic; and, of course, it is “a communication tool” too because defining the battlefield is not only a matter of “privileging killing”, it is also a “rhetorical claim”.72 Viewed in this way, the law can be seen to in fact “contribute to the proliferation of violence rather than to its containment”, as Eyal Weizman has instructively shown in the case of recent Israeli lawfare in Gaza.73 In the US wars in Iraq, Afghanistan and broader war on terror, the Department of Defense has actively sought to legalize its use of biopolitical violence against all those deemed a threat. Harvey Rishikof, the former Chair of the Department of National Security Strategy at the National War College in Washington, recently underlined ‘juridical warfare’ (his preferred designation over ‘lawfare’) as a pivotal “legal instrument” for insurgents in the asymmetric war on terror.74 For Rishikof and his contemporaries, juridical warfare is always understood to mean the legal strategies of the weak ‘against’ the United States; it is never acknowledged as a legal strategy ‘of’ the United States. However, juridical warfare has been a proactive component of US military strategy overseas for some time, and since the September 11 attacks in New York and Washington in 2001, a 15 renewed focus on juridical warfare has occurred, with the JAG Corps playing a central role in reforming, prioritizing and mobilizing the law as an active player in the war on terror.75 Deputy Judge Advocate General, Major General Charles Dunlap, recently outlined some of the key concerns facing his corps and the broader US military; foremost of which is the imposing of unnecessary legal restraints on forward-deployed military personnel.76 For Dunlap, imposing legal restraints on the battlefield as a “matter of policy” merely “play[s] into the hands of those who would use [international law] to wage lawfare against us”.77 Dunlap’s counter-strategy is simply “adhering to the rule of law”, which “understands that sometimes the legitimate pursuit of military objectives will foreseeably – and inevitably – cause the death of noncombatants”; indeed, he implores that “this tenet of international law be thoroughly understood”.78 But ‘the’ rule of international law that Dunlap has in mind is merely a selective and suitably enabling set of malleable legal conventions that legitimate the unleashing of military violence.79 As David Kennedy illuminates so brilliantly in Of War and Law: We need to remember what it means to say that compliance with international law “legitimates.” It means, of course, that killing, maiming, humiliating, wounding people is legally privileged, authorized, permitted, and justified”.80 The recent ‘special issue on juridical warfare’ in the US military’s flagship journal, Joint Force Quarterly, brought together a range of leading judge advocates, specialists in military law, and former legal counsels to the Chairman of the Joint Chiefs of Staff. All contributions addressed the question of “[w]hich international conventions govern the confinement and interrogation of terrorists and how”.81 The use of the term ‘terrorists’ instead of suspects sets the tone for the ensuing debate: in an impatient defense of ‘detention’, Colonel James Terry bemoans the “limitations inherent in the Detainee Treatment Act of 2005 and the Military Commissions Act of 2006” (which he underlines only address detainees at the US Naval Base at Guantanamo) and asserts that “requirements inherent in the war on terror will likely warrant expansion of habeas 16 corpus limitations”;82 considering ‘rendition’, Colonel Kevin Cieply asks the shocking question “[i]s rendition simply recourse to the beast at a necessary time”;83 Colonel Peter Cullen argues for the necessity of the “role of targeted killing in the campaign against terror”;84 Commander Brian Hoyt contends that it is “time to re-examine U.S. policy on the [international criminal] court, and it should be done through a strategic lens”;85 while Colonel James Terry furnishes an additional concluding essay with the stunningly instructive title ‘The International Criminal Court: A Concept Whose Time Has Not Come’.86 These rather chilling commentaries attest to one central concern of the JAG Corps and the broader military-political executive at the Pentagon: that enemies must not be allowed to exploit “real, perceived, or even orchestrated incidents of law-of-war violations being employed as an unconventional means of confronting American military power”.87 And such thinking is entirely consistent with the defining National Defense Strategy of the Bush administration, which signalled the means to win the war on terror as follows: “we will defeat adversaries at the time, place, and in the manner of our choosing”.88 If US warfare in the war on terror is evidently underscored by a ‘manner of our choosing’ preference – both at the Pentagon and in the battlefield – this in turn prompts an especially proactive ‘juridical warfare’ that must be simultaneously pursued to legally capacitate, regulate and maximize any, and all, military operations. The 2005 National Defense Strategy underlined the challenge thus: Many of the current legal arrangements that govern overseas posture date from an earlier era. Today, challenges are more diverse and complex, our prospective contingencies are more widely dispersed, and our international partners are more numerous. International agreements relevant to our posture must reflect these circumstances and support greater operational flexibility.89 It went on to underline its consequent key juridical tactic and what I argue is a critical weapon in the US military-legal arsenal in the war on terror: the securing of ‘Status of Forces Agreements’ – 17 to “provide legal protections” against “transfers of U.S. personnel to the International Criminal Court”.90

### Solvency

#### Their ev concludes circumvention.

Barron & Lederman, 8 --- \*Professor of Law at Harvard, AND \*\* Visiting Professor of Law at Georgetown

(February 2008, David J. Barron and Martin S. Lederman, Harvard Law Review, “THE COMMANDER IN CHIEF AT THE LOWEST EBB -- A CONSTITUTIONAL HISTORY,” 121 Harv. L. Rev. 941)

VII. Conclusion

Powers once claimed by the Executive are not easily relinquished. One sees from our narrative how, in a very real sense, the constitutional law of presidential power is often made through accretion. A current administration eagerly seizes upon the loose claims of its predecessors, and applies them in ways perhaps never intended or at least not foreseen or contemplated at the time they were first uttered. The unreflective notion that the "conduct of campaigns" is for the President alone to determine has slowly insinuated itself into the consciousness of the political departments (and, at times, into public debate), and has gradually been invoked in order to question all manner [\*1112] of regulations, from requirements to purchase airplanes, to limitations on deployments in advance of the outbreak of hostilities, to criminal prohibitions against the use of torture and cruel treatment. In this regard, the claims of the current Administration represent as clear an example of living constitutionalism in practice as one is likely to encounter. There is a radical disjuncture between the approach to constitutional war powers the current President has asserted and the one that prevailed at the moment of ratification and for much of our history that followed. But that dramatic deviation did not come from nowhere. Rarely does our constitutional framework admit of such sudden creations. Instead, the new claims have drawn upon those elements in prior presidential practice most favorable to them. That does not mean our constitutional tradition is foreordained to develop so as to embrace unchecked executive authority over the conduct of military campaigns. At the same time, it would be wrong to assume, as some have suggested, that the emergence of such claims will be necessarily self-defeating, inevitably inspiring a popular and legislative reaction that will leave the presidency especially weakened. In light of the unique public fears that terrorism engenders, the more substantial concern is an opposite one. It is entirely possible that the emergence of these claims of preclusive power will subtly but increasingly influence future Executives to eschew the harder work of accepting legislative constraints as legitimate and actively working to make them tolerable by building public support for modifications. The temptation to argue that the President has an obligation to protect the prerogatives of the office asserted by his or her predecessors will be great. Congress's capacity to effectively check such defiance will be comparatively weak. After all, the President can veto any effort to legislatively respond to defiant actions, and impeachment is neither an easy nor an attractive remedy.

#### History proves that Obama will say that his interventions don’t meet the threshold of hostilities – all branches agree with this interp.

Vigeant, J.D. 2015, Columbia Law School, ‘13

[Matthew, “Unforeseen Consequences: The Constitutionality of Unilateral Executive R2P Deployments and the Need for Congressional and Judicial Involvement”, Columbia Journal of Law and Social Problems, RSR]

The second prong of the test examines the scope, nature and duration of a conflict, asking whether a deployment of military force amounts to “hostilities” under the WPR such that it triggers the requirement for Congressional authorization. Analyzing a trigger is critical here because since the passage of the WPR, both Congress and the President have stated that not every use or deployment of military forces rises to the level of hostilities covered by the Resolution.71 Immediately following passage of the WPR, a 1975 Executive Branch opinion on the definition of hostilities said that “hostilities” do not include situations where the: nature of the mission is limited . . . situations that do not “involve the full military engagements with which the Resolution is primarily concerned”; where the exposure of U.S. forces is limited . . . [or] involving “sporadic military or paramilitary attacks on our armed forces” in which the overall threat faced by our military is low; and where the risk of escalation is therefore limited.

72 Similarly, according to a 1984 OLC opinion, as early as the Ford Administration the Executive Branch “took the position that ‘hostilities’ meant a situation in which units of our armed forces are ‘actively engaged in exchanges of fire.’”73 So from the time the WPR became law, the Executive Branch has attempted to carve out an exception for deployments that do not meet the definition of hostilities under the WPR, and thus, do not require approval from Congress. Indeed, since the enactment of the WPR, the Executive Branch has argued that various unilateral Presidential deployments have not risen to the WPR threshold of hostilities. For example, in 1994 the Executive Branch argued that the WPR was only meant to capture “major, prolonged conflicts such as the wars in Vietnam and Korea, rather than to prohibit the President from using or threatening to use troops to achieve important diplomatic objectives where the risk of sustained military conflict was negligible.”74 Therefore the OLC argued that a President had the power to deploy 20,000 peacekeepers for a limited duration of time to Haiti since the risk of armed conflict was low.75 Discussing the Bosnia engagement in 1995, the OLC stated that President Clinton’s unilateral deployment of forces and assets were Constitutional because the “deployment is intended to be a limited mission . . . [it] is reasonably possible that little or no re-sistance to the deployment will occur . . . [and] it is not likely that the United States will find itself involved in extensive or sustained hostilities.”76 Also, the Bosnia mission did not include “significant bodies of military personnel.”77 Congress apparently agreed with these views, because it did not oppose these unilateral deployments, and under Youngstown, acquiescence signals agreement.78 Additionally, the judicial branch has accepted the Executive’s view on what constitutes “hostilities”: in Dellums v. Bush, the District Court for the District of Columbia held that congressional authorization for deployments was only required where “the forces involved are of such magnitude and significance as to present no serious claim that a war would not ensue if they became engaged in combat.”79 Since a “pattern of executive conduct, made under claim of right, extended over many decades and engaged in by Presidents of both parties, ‘evidences the existence of broad constitutional power’” in this area of law, the proposition that minor engagements do not trigger the WPR is now a quasi-constitutional custom — meaning that even if the drafters of the WPR did not imagine Presidential deployments of thousands of troops without Congressional authorization, the President now has the constitutional authority to do this.80 Thus in Libya, the Obama Administration reiterated the distinction between full military encounters and more constrained operations, stating that “intermittent military engagements” did not require Congressional approval, and the definition of hostilities “will be satisfied only by prolonged and substantial military engagements, typically involving exposure of U.S. military personnel to significant risk over a substantial period.”81 Because the Libyan intervention was limited to an air campaign, the risk of U.S. forces being injured or killed was low. Similarly, the risk of escalation of the campaign would also be minimal, and the scope of U.S. involvement limited to en-forcing a no-fly zone and protecting civilians.82 Therefore, according to the Obama administration, this engagement did not reach the level of action requisite to implicate hostilities under the WPR.83

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#### Our interpretation is more historically accurate and therefore predictable – the president does not have unlimited war powers authority, regardless of Bush’s assertions

Schwarz, senior counsel, and Huq, associate counsel at the Brennan Center for Justice at NYU School of Law, 2007 [Frederick A.O., Jr., partner at Cravath, Swaine & Moore, chief counsel to the Church Committee, and Aziz Z, former clerk for the U.S. Supreme Court, Unchecked and Unbalanced: Presidential Power in a Time of Terror, p. 171]

While claiming to have an "originalist" view of the Constitution, the acolytes of exclusive presidential power in fact ignore all those parts of the Constitution that are inconvenient for their views of the text. Military matters are simply not an area in which presidents, even when they act as commander in chief, have a wholly free hand. On the contrary, the "Commander in Chief" clause reflects nothing more than the Founding Generation's commitment to insuring that the military would never again be "independent of and superior to the Civil power," as it had been under British rule. As Justice Robert H. Jackson said in rejecting sweeping war powers claims by President Harry Truman, "the Constitution did not contemplate that the title Commander-in-Chief of the Army and Navy" would make a president "also Commander-in-Chief of the country, its industries, and its inhabitants." Jackson added that a president "has no monopoly of 'war powers: whatever they are."58 But it is precisely this monopoly that the supposedly originalist post-9/11 Administration, in reckless disregard of the Constitution's text, asserts.

#### “In the area” means all of the activities

United Nations 13 (United Nations Law of the Sea Treaty, http://www.un.org/depts/los/convention\_agreements/texts/unclos/part1.htm, da 3-26-14) PC

1. For the purposes of this Convention:(1) "Area" means the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction; (2) "Authority" means the International Seabed Authority; (3) "activities in the Area" means all activities of exploration for, and exploitation of, the resources of the Area;