# ASU Neg Cards Round 7

## 1NC

### 1

#### The affirmative turns debate into “the boy who cried wolf”. Their repetition of the apocalypse reproduces the same impacts they seek to avoid, increases elite control and delegitimates their own advocacy.

De Goede and Randalls, ‘9

[Marieke (Department of European Studies, University of Amsterdam) and Samuel (Department of Geography, University College London), “Precaution, preemption: arts and technologies of the actionable future”, Environment and Planning D: Society and Space 2009, volume 27, pages 859-878, RSR]

Politics We have argued that preemption in contemporary security practice, and precaution in contemporary environmental practice display important affinities and historical entanglements, through the ways in which they imagine apocalypse and deploy arts and technologies that render this imagination banal. We now turn to examine more explicitly the political implications of the importance of precautionary principles and the resulting quests for knowledge. We argue that three broad political outcomes can be considered. First, terrorist and climate change policies may be performative, bringing into being the very realities they seek to avoid. Second, the imagination of apocalypse may depoliticize debates, smuggling other policies in under their rubric; and, third, they may delegitimate positions in the debates. If apocalypse is also about the imagina- tion of a paradise (Enzensberger, 1978; Kumar, 1995), an emergent new order, then the irony of contemporary debates is that they fail to engage in significant political imagination. Thus, we suggest that the banality of apocalypse in these debates fosters a disenchantment that is itself depoliticizing. Masco writes: ``What does it mean when the `state of emergency' has so explicitly become the rule when in order to prevent an apocalypse the governmental apparatus has prepared so meticulously to achieve it?'' (2006, page 12, emphasis in original). First, then, it is important to emphasize that governments not only are anticipating the worst, but also, in trying to prevent that nightmare, act in ways that increase the possibility of its occurrence. This phantasmagoria is thus imagined and made real. Thus, with regard to the politics of security preemption, Massumi (2007, ½16) recounts its logic as follows: ``It is not safe for the enemy to make the first move. You have to move first, to make them move....You test and prod, you move as randomly and unpredictably and ubiquitously as they do....You move like the enemy, in order to make the enemy move.'' That such reasoning is not purely theory was demonstrated by the events surrounding the arrest of six New Jersey men accused of plotting to kill soldiers at Fort Dix in 2007. Reports of the arrest uncovered that the `disrupted plot' was actively encouraged by a police informer, posing as an Egyptian radical. It was the informer who offered to broker a planned weapons purchase, and who, according to New York Times journalist Kocieniewski (2007), ``seemed to be pushing the idea of buying the deadliest items, startling at least one of the suspects.'' In another example of the performativity of security preemption, it is now widely acknowledged that the preemptive strike on Iraq fostered alliances between al Qaeda and Iraqi violent groups that did not exist before the war. Indeed, terrorism expert Richardson (2006, page 166) calls the discursive conflation of the threats of Saddam Hussein and bin Laden a ``self-fulfilling prophecy''. Within climate change, there are two potentially performative aspects. The first relates to the climate stabilization policy framework designed to reduce `dangerous anthropogenic interference' with the climate (such as the EU's 28 target). Although what is dangerous is clearly a political decision, it seems decidedly odd to embark on a policy to get the world to just below the `danger point'. If there is any nonlinear or nonmodelled factor, then the catastrophic images that are to be avoided could be brought about. Thus, precautionary action following this policy logic may, ironically, bring about severe climatic consequences, rather than prevent them. More specula- tively, a second performative element relates to the ways in which geoengineering solutions to climate change become justified as precautionary measures in case emis- sions reductions do not result in a stabilized climate: a `Plan B' as The Independent newspaper called it (Connor and Green, 2009). In placing mirrors in space, or altering ocean chemistry, or otherwise engaging in uncertain large-scale projects, the likelihood of precautionary action on climate change resulting in extensive climate change is likely to be high indeed, that is the very idea(to counteract climate catastrophe). Whilst these remain largely speculative activities at present, they nonetheless represent alarmingly direct militarized technologies that have prompted some serious attention especially in the US (Fleming, 2007). Secondly, contemporary climate change policies act to depoliticize the debate, because they focus narrowly on prescribed modes of thought of climate as an externality. As Swyngedouw (2007, page 23) puts it, the imagination of a Nature that is under threat of apocalypse ``eradicates or evacuates the `political' from debates over what to do with natures''. What get lost here, according to Swyngedouw (2007, page 23), are the prior political questions that ask ``what kind of natures we wish to inhabit, what kind of natures we wish to preserve, to make, or, if need be, to wipe off the surface of the planet''. The larger point, moreover, is that the current debates on climate change may also obscure a wide variety of already existing, or yet to be imagined, strategies to engage with climatic changes (Hulme, 2009). Depoliticizing the debate on climate change and desensitizing the populace from a critical awareness may aid the smuggling through of a number of policies under its rubric, including political- economic policies masquerading as climate policies and the possible introduction of enforced personal carbon trading cards. In the Netherlands, plans to tax drivers by actual kilometers driven from 2012 require detailed information of individual car movements to be made available to authorities, and thus set aside privacy concerns for the sake of the environment. Such developments map onto debates about the registration of travel data and other personal transactions data in the fight against terrorism (Amoore and de Goede, 2008). Other implications within terrorism include enforced immigration controls, the subjection of citizens to full monitoring, and the potential to hold `terrorists' without charges for extended periods of time, which are all examples of the political machinations derived from apocalyptic fear (Ericson, 2007). The problem is that the discursive power of climate change and terrorism could obscure the political debates that should take place on these subjects by the precau- tionary action that must immediately be taken to ensure `our' global future. If we accept Luke's (2005) observation that few people would choose to not `save the planet', much mischief might be done if we do not take Forsyth's (2004, page 212) comment seriously that not all `` `ecological values'are necessarily progressive''. Thirdly, apocalyptic climate change announcements will become increasingly untenable if the expected climate catastrophe does not rapidly materialize (Hulme, 2006). The vitality of apocalypse may be maintained with a variety of extreme weather events that can at least in a journalist's imagination, even if meteorologists are more cautious, be causally attributed to climate change. This parallels issues in terrorist debates where al Qaeda becomes the `organization' assumed to be at the heart of every terror subplot and fear. What this does, however, is delegitimate debate, by making these connections unquestionable (to question these publicly would leave one accused of diverting attention from the `real issue' or of simply being a sceptic). It is not just that debate is depoliticized, but that there appear no legitimate grounds to even question the overpowering assumptions delivering up these apocalyptic scenarios that must be managed globally through all-seeing means. The terms of the debate can become constrained, albeit that resistance can occur such as the nine `factual errors' identified by the British courts of law in relation to Al Gore's movie An Inconvenient Truth.(9) Conclusion In this paper we do not wish to answer questions about whether climate change and terrorism are `really' the biggest threats today. Rather, we have asked how these threats are made real, how they are imagined, and what combination of uncanny and fantasy is prescribed to make them targets of contemporary global governing. In analyzing climate change and terrorism debates in this way, through focusing on the connected discourses associated with precaution and preemption, and the knowledge systems legitimated in their service, we suggest that at the heart of these systems are politics that depoliticize debate, that delegitimate certain kinds of questions, and that have the potential to bring about the worst realities they seek to avoid. Deconstructing the notions of precaution and preemption is not simply about critiquing contemporary policies on climate change and terrorism, but, rather, about opening up new spaces to critical political imaginaries and debates. It is imperative to go beyond debates that have apocalyptic but banal futures, to engage in the frequently absent politics of how to live in the world. We argue that these larger political questions do need to be raised with regard to security preemption, but also with regard to precautionary environmental politics. In fact, it may be argued that a poverty of political imagination pervades the precautionary principle. This poverty of imagination turns apocalypse into banality, but fails to foster the enchantment that, according to Bennett, may be required for ethical engagement with the world. As Bennett (2001, page 91) argues with respect to environmental discourse, ``a strange equivalence gets set up between environmentalist conviction and narrativ- istic despair: the more alarmed an author is about ecodecline, the more thoroughly nature is depicted as a disenchanted set of defeated and exhausted objects. How could such sickly objects inspire the kind of careful attentiveness that ecological living requires?'' In order for tragedy and disaster to translate into meaningful political action, Bennett (pages 159^160) argues, an enchanted attachment to life has to be cultivated that is all too often evacuated from media sensationalism.

#### **Their discourse and representations matter – they are the basis for war.** What we lack is not a proper scientific or empirical challenge to violence; we lack the cultural critics willing to fight the fear mongering which results in war. The AFF’s discourse is enmeshed in a form of affective securitization that makes war inevitable. As scholars, we have an obligation to refuse the way the 1AC was constructed.

Elliot, ‘12

[Emory, University Professor of the University of California and Distinguished Professor of English at the University of California, Riverside, Terror, Theory, and the Humanities ed. Di Leo, Open Humanities Press, Online, RSR]

In a 1991 interview for the New York Times Magazine, Don DeLillo expressed his views on the place of literature in our times in a statement that he has echoed many times since and developed most fully in his novel Mao II: In a repressive society, a writer can be deeply influential, but in a society that’s ﬁlled with glut and endless consumption, the act of terror may be the only meaningful act. People who are in power make their arrangements in secret, largely as a way of maintaining and furthering that power. People who are powerless make an open theater of violence. True terror is a language and a vision. There is a deep narrative structure to terrorist acts, and they infiltrate and alter consciousness in ways that writers used to aspire to. (qtd. in DePietro 84) The implications of DeLillo’s statement are that we are all engaged in national, international, transnational, and global conflicts in which acts of representation, including those of terrorism and spectacular physical violence as well as those of language, performance, and art compete for the attention of audiences and for influence in the public sphere. In the early days of the Iraq War, the United States used the power of images, such as those of the “mother of all bombs” and a wide array of weapons, as well as aesthetic techniques to influence and shape the consciousness of millions and to generate strong support for the war. The shock, fear, and nationalism aroused in those days after 9/11 have enabled the Bush administration to pursue a military agenda that it had planned before 9/11. Since then, the extraordinary death and destruc- tion, scandals and illegalities, and domestic and international demon- strations and criticisms have been unable to alter the direction of this agenda. Those of us in the humanities who are trained as critical readers of political and social texts, as well as of complex artistically constructed texts, are needed now more urgently than ever to analyze the relation- ships between political power and the wide range of rhetorical methods being employed by politicians and others to further their destructive effects in the world. If humanities scholars can create conscious awareness of how such aesthetic devices such as we see in those photos achieve their affective appeal, citizens may begin to understand how they are being manipulated and motivated by emotion rather than by reason and logic. In spite of our ability to expose some of these verbal and visual constructions as devices of propaganda that function to enflame passions and stifle reasonable dis- cussion, we humanities scholars find ourselves marginalized and on the defensive in our institutions of higher learning where our numbers have been diminished and where we are frequently being asked to justify the significance of our research and teaching. While we know the basic truth that the most serious threats to our societies today are more likely to result from cultural differences and failures of communication than from inadequate scientific information or technological inadequacies, we have been given no voice in this debate. With the strong tendency toward po- larized thinking and opinion and the evangelical and fundamentalist re- ligious positions in the US today and in other parts of the world, leaders continue to abandon diplomacy and resort to military actions. Most government leaders find the cultural and social explanations of the problems we face to be vague, and they are frustrated by complex human issues. That is not reason enough, however, for us to abandon our efforts to influence and perhaps even alter the current course of events. In spite of the discouragements that we as scholars of the humanities are experiencing in these times, it seems to me that we have no option but to continue to pursue our research and our teaching and hope to influence others to question the meaning and motives of what they see and hear.

#### The alternative is to refuse the framing of the 1AC for a new form of political representations -

#### We must be able to debate the terms of our debates – otherwise planning becomes apolitical turning any portable value to debate.

Metzger, Division of Urban and Regional Studies, Department of Urban Planning and Environment, Royal Institute of Technology, Stockholm, ‘11

[Jonathan, “Neither revolution, nor resignation: (re)democratizing contemporary planning praxis: a commentary on Allmendinger and Haughton's ``Spatial planning, devolution, and new planning spaces''’, Commentary, Environment and Planning C: Government and Policy 2011, volume 29, pages 191-196, RSR]

Now, though, it appears as if the pendulum has swung the other way. The emerging, amorphous networks of multilevel spatial (meta)governance that are taking form in Europe often have a very limited degree of transparency and questionable levels of democratic accountability (Allmendinger and Haughton, 2010; Haughton et al, 2009; Swyngedouw, 2005). The building of such semiformal or informal networks are celebrated by many practitioners and some academics as potent methods of circum- scribing and avoiding ``administrative clutter''and a way of really ``getting things done'' (Allmendinger and Haughton, 2009, page 619). Still, if someone wishes to challenge decisions made within these networks, what court of appeal can he or she turn to when it is sometimes even difficult to figure out who is responsible for the decision, or if any decision formally even has been made, or if some loose consensus to `go ahead in a certain direction' just appears to have taken form and taken on a life of its own, within this emerging truly Kafkaesque landscape of planning and spatial policy development? For, as Swyngedouw (2005, page 1999) notes, even if the democratic lacunae of pluralist liberal democracy are well known, at least the procedures of democratic governing are formally codified, transparent, and easily legible where as the emerging ``proliferating maze of opaque networks, fuzzy institutional arrangements, ill-defined responsibilities and ambiguous political objectives and priorities'' of many `joined-up' policy networks most often lack ``explicit lines of accountability'' (pages 1999^2000). So, does this mean that the new practices of spatial planning `neutralize politics'? Do they serve to herald in a `postpolitical' condition whereby radical political alter- natives are crowded out and marginalized (cf Allmendinger and Haughton, 2010, page 804)? What I would like to suggest here is that we, in line with Allmendinger and Haughton (although they do not use this specific term) and following Marres (2005), more gainfully might analyze the present condition of spatial planning as a pertinent contemporary illustration of some of the mechanisms whereby politics is displaced into other spheres of society than the formal spaces of politics. The displacement of politics into other spheres than the formalized spaces of parliamentary democracy is according to Marres a fundamental component of political practice, and not, as some would argue, a specific historical condition related to the emergence of a late-modern (pseudo)global information society. Thus, there is nothing `postpolitical' about what is going on when highly political issues that often affect the life situation of large and diverse groups of both humans and nonhumans are displaced from parliamentary procedures or formalized bureaucracy into more amorphous spaces, such as those of public opinion formation or informal policy networks. Rather, Marres (2005) argues that, in political processes, actors constantly attempt to displace the burning issues at hand into settings which allow for a framing of the specific issue in a way that reformulates the issue into terms that increases the likeliness of the outcome being in their favor [the power of frame setting is also an ongoing discussion in planning literature (see Healey, 1997; 2007; Hoch, 2009; Scho« n and Rein, 1994)]. Thus, from this perspective, the displacement of political issues between different settings where actors attempt to place the issue in a forum that will allow its settlements on terms that are as favorable as possible to the interests of said actor is an ever-present and central component of political action in general. The struggles between competing definitions of who the relevant democratic subjects in a particular instance really are, who is to be qualified to be a legitimately concerned party, and which the appropriate democratic forms for settling a particular issue really should be are all constantly up for grabs. As Marres (2005) argues, it cannot be ascertained that the displacement of politics will necessarily lead to democratic deficits, but, if the result of the displacement of an issue leads to the issue being resolved or dealt with in a forum that either recasts the issue at hand to such an extent that important demands or claims are shed along the way, thus disqualifying the positions of certain interested parties whose voice is muted, or if certain subjects are completely disqualified from speaking, we can speak of concrete democratic deficits, as displacement of the issue appears to `close down' rather than `open up' the issue at hand as a public matter (pages 134^135; cf also Latour, 2005). Marres (2005) further states that, ``in the case of settlement of public affairs, attempts to short-cut displacements of the issues to sites where the antagonism among attachments can be made manifest must be persistently resisted'' (page 149). Thus, when political controversies become public affairs, according to Marres, this must not be seen as a `failure'of the political system of governance. Rather, these are events to be celebrated as ``occasions of democracy'' (page 136), whereby democratic politics is incarnated in practice. This perspective, which highlights both the ubiquity and the democratic importance of conflict, strife, and opposition within policy processes, also resonates with the work of planning theorists such as Hillier (2002) and PlÖger (2004), who building primarily upon the agonistic philosophy of Mouffe have discussed the importance of planning actors to sometimes consciously avoid being drawn into `consensus-steering', legitimizing processes of governance and to instead opt to`go public' with their grievances. Or, as Marres (2005) notes, when a site of politics does not facilitate the articulation of issues in which actors are caught up, or even contributes to their disarticulation, it cannot be considered a matter of pathology when actors refuse to participate,``they are right to stay away'' (page151;see also Swyngedouw, 2005, page 2000). Taking up the challenge of reforming spatial planning Relating back to Marres's discussion on `good' and `bad' issue displacements that either open up issues for public contestation or close them down, it is quite obvious that the networked governance processes described by Allmendinger and Haughton most often would qualify in the second category. Surveying the present situation thus generates the question: what can be done about this troubling tendency towards growing democratic deficits within spatial planning processes (and policy development in general)? Swyngedouw's later writings on the `postpolitical' condition (eg Swyngedouw, 2009) can sometimes convey a sense that we today live in a globally all-encompassing and foolproof postpolitical, postdemocratic, neoliberal, capitalist `system' that can at best be `tickled' but never truly changed, leaving as the only alternatives for response either whole-scale global revolution or complete resignation. Painting such a bleak picture can be performative in itself in unfortunate ways, through conveying a disabling sense of overpowering structuring forces against which the individual policy maker or administrator cannot stand a chance of challenge. This defeatist way of framing policy situations is dangerous, since it alleviates responsibility from the individual: if nothing can be done, I do not have the responsibility to do anything. If I am up against the mechanics of all of Capitalism (capital `C'), history, or the laws of the universe, why bother even trying? I am relieved of responsibility to do anything. Fortunately, Allmendinger and Haughton wisely avoid falling into this trap but neither do they offer any suggestions as to howc ontemporary planning practices might come to be transformed in a more democratic and transparent manner. For, pace Swyngedouw (2009), there are most probably many other planning practi- tioners, educators, and scholars who worry about the emerging democratic deficits of an increasingly opaque and amorphous multilevel governance structure in Europe, but perhaps would not go as far as to argue that being uncompromising and striving for the `obliteration' of anyone is something to strive for (page 612). Rather, even if we prefer the less glorious wrangling, compromises, and partial agreements of democratic politics before radicalist staunchness, we can still recognize that the right to take place, to voice dissent, and to have somewhere to take your dissent is a crucial and foundational feature of any democratic system worthy of its name. So how can efforts that aim to close down and obfuscate the potentially contro- versial issues of spatial development be challenged through processes and mechanisms that instead open up these issues for democratic debate and transparency? Marres does not offer any cut-and-paste solution for what such mechanisms might look like; she notes only that they must be worked out on a case-to-case basis, as part of the `occasion'. An interesting venue of investigation, though, might be to actually revisit Healey's Collaborative Planning from 1997. In her book Healey sounds a warning that overcosy informal relationships between key public and private stakeholders in spatial planning processes often will have a tendency to degenerate into the building of democratically problematic corporatist alliances, legitimated through sometimes quite shady consensus-building planning efforts (pages 224^228). Rereading Healey's classic text, it becomes obvious that what appears to have widely translated into planning practice from the book is a focus on facilitating efficient `governance' through the establishment of nonadversarial planning forums and arenas, while conveniently missing out on one of Healey's absolutely central points in the book: the importance of designing `court' institutions (not necessarily formal legal courts) within planning processes, which provide formalized forms through which the planning decisions worked out in forums and arenas can, and should be, continuously challenged (pages 279^280). Such court-like institutions, for instance public hearing procedures, can in the best of cases provide forums for the articulation of antagonistic interests within anagonistic framing, thus generating possibilities for opening up democratically crucial debates concerning core values and trajectories towards the future (cf Asdal, 2008; Mouffe, 2005; Oosterlynck and Swyngedouw, 2010). But, relating back to Marres and the agonistic planning theorists, we must also realize that simply providing for institutionalized courts of appeal and similar proce- dures within planning and policy processes, although important, is not enough. In any democratic system worthy of its name, actors must also have an exercisable option to `go public' with their grievances: through the media, Internet opinion-raising activities, or taking to the streets in direct action or civil disobedience. Planners and other policy practitioners should begin to recognize that this type of displacement of politics or `doing politics by other means' is a central component of functioning democratic societies, and learn to see that what Latour (2007) discusses as the ``Habermasian moment'' of consensus-seeking deliberation is but one (potential) stage in the devel- opmental trajectory of the public controversies that are so crucial for the functioning of democracy (see also Callon et al, 2009). Planners and other policy practitioners must therefore train themselves not only to appreciate, but also to actively facilitate, those moments when crucial policy issues are opened up to public dispute, and not see these occasions as `snags' or hurdles to be avoided in carefully engineered and rigged policy processes, instead valuing them as central components of democracy in practice. The above injunctions must not be shrugged off as philosophical musings, for, if we reject the defeatist position and see the policy practitioner as vested with both a capacity and perhaps a duty to make a difference to how policy formulation and implementation play out in practice, we will often be able to identify a certain `margin of manoeuver' for policy practitioners (cf Callon,1986), within which they actually have a real possibility to challenge established mechanisms and to tactically act in ways that facilitate the development of alternative types of planning methods and ways of going about. Thus, if we take our cue from Healey (2010, page 19) and choose to see the ``twenty-first century `planning project'''as not only a set of expert skills, a techne¨, but also as a calling for justice, an ethos, it becomes a crucial task for planning scholars to proceed to attempt to define some of the potential content of this calling for how this calling is articulated will decide how it is responded to: how it engenders respons(e)i- bility among planners and policy practitioners.(1) As Allmendinger and Haughton's paper shows us, a reinvigorated discussion on the transparency and accountability of planning decisions should form a pivotal point for such emergent discussions, and perhaps will also contribute to a widening of interest in the democratic merits of strife and conflict, not only in spatial planning and other policy theory, but also in practice. This might play out as a renewed interest in the facilitation of `court' institutions within planning processes that is, the provision of spaces where policy decisions might be challenged, but will hopefully also entail experimentation with new methods to accommodate fruitfully dissensus already at an early stage within the planning process where the `opening out' of issues through the articulation of opposing value systems might take place (cf Brand and Gaffikin, 2007; Metzger, 2011; Oosterlynck and Swyngedouw, 2010). Possibly, it could also entail a renewed interest in a rediscovery and reworking of advocacy planning theory to put it more in tune with the demands of contemporary society and the present challenge of confronting neocorporatist governance structures in which spatial planning is reduced to little else than pseudodemocratic window dressing of dominant corporatist interests.

### 2

#### Presidential war powers authority captures the legal system—statutory and judicial restrictions on the president only serve to legitimate state monopolies on violence which make the worst atrocities possible.

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

#### The impact is 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.

#### The alternative is to reject their understanding of the law as an independent neutral entity with the power to restrict practices apart from practices. Instead, we should conceive of the law and practice as co-constitutive—this opens up the space to change the relationship between lived decisionmaking and the autocracy of bureaucratic legal determinations.

Krassman 2012 [Susan, Professor at the Institute for Criminological Research at the University of Hamburg. “Targeted Killing and Its Law: On a Mutually Constitutive Relationship,” *Leiden Journal of International Law* 25.03]

Foucault did not elaborate on a comprehensive theory of law – a fact that critics have attributed to his allegedly underestimating law's political and social relevance. Some statements by Foucault may have provoked this interpretation, among them his assertion that law historically ‘recedes’ with,46 or is being ‘colonized’ by,47 forms of knowledge that are addressed at governing people and populations. It is, though, precisely this analytical perspective that allows us to capture the mutually productive relationship between targeted killing and the law. In contrast to a widely shared critique, then, Foucault did not read law merely as a negative instrument of constraint. He referred, instead, to a particular mode of juridical power that operates in terms of repressive effects.48 Moreover, rather than losing significance coextensively with the ancient sovereign power, law enters new alliances, particularly with certain knowledge practices and attendant expertise.49 This linkage proves to be relevant in the present context, considering not only the interchange between the legal and political discourse on targeted killing, but notably the relationship between law and security. According to Foucault, social phenomena cannot be isolated from and are only decipherable within the practices, procedures, and forms of knowledge that allow them to surface as such.50 In this sense, ‘all phenomena are singular, every historical or social fact is a singularity’.51 Hence, they need to be studied within their historically and locally specific contexts, so as to account for both the subject's singularity and the conditions of its emergence. It is against this background that a crucial question to be posed is how targeted killing could emerge on the political stage as a subject of legal debate. Furthermore, this analytical perspective on power and knowledge intrinsically being interlinked highlights that our access to reality always entails a productive moment. Modes of thinking, or what Foucault calls rationalities, render reality conceivable and thus manageable.52 They implicate certain ways of seeing things, and they induce truth effects whilst translating into practices and technologies of government. These do not merely address and describe their subject; they constitute or produce it.53 Law is to be approached accordingly.54 It cannot be extracted from the forms of knowledge that enact it, and it is in this sense that law is only conceivable as practice. Even if we only think of the law in ideal terms, as being designated to contain governmental interference, for example, or to provide citizens’ rights, it is already a practice and a form of enacting the law. To enforce the law is always a form of enactment, since it involves a productive moment of bringing certain forms of knowledge into play and of rendering legal norms meaningful in the first place. Law is susceptible to certain forms of knowledge and rationalities in a way that these constitute it and shape legal claims. Rather than on the application of norms, legal reasoning is on the production of norms. Legality, within this account of law, then, is not only due to a normative authority that, based in our political culture, is external to law, nor is it something that is just inherent in law, epitomized by the principles that constitute law's ‘inner morality’.55 Rather, the enforcement of law and its attendant reasoning produce their own – legal – truth effects. Independently of the purported intentions of the interlocutors, the juridical discourse on targeted killing leads to, in the first instance, conceiving of and receiving the subject in legal terms. When targeted killing surfaced on the political stage, appropriate laws appeared to be already at hand. ‘There are more than enough rules for governing drone warfare’, reads the conclusion of a legal reasoning on targeted killing.56 Yet, accommodating the practice in legal terms means that international law itself is undergoing a transformation. The notion of dispositifs is useful in analysing such processes of transformation. It enables us to grasp the minute displacements of established legal concepts that,57 while undergoing a transformation, at the same time prove to be faithful to their previous readings. The displacement of some core features of the traditional conception of the modern state reframes the reading of existing law. Hence, to give just one example for such a rereading of international law: legal scholars raised the argument that neither the characterization of an international armed conflict holds – ‘since al Qaeda is not a state and has no government and is therefore incapable of fighting as a party to an inter-state conflict’58 – nor that of an internal conflict. Instead, the notion of dealing with a non-international conflict,59 which, in view of its global nature, purportedly ‘closely resembles’ an international armed conflict, serves to provide ‘a fuller and more comprehensive set of rules’.60 Established norms and rules of international law are preserved formally, but filled with a radically different meaning so as to eventually integrate the figure of a terrorist network into its conventional understanding. Legal requirements are thus meant to hold for a drone programme that is accomplished both by military agencies in war zones and by military and intelligence agencies targeting terror suspects beyond these zones,61 since the addressed is no longer a state, but a terrorist network. However, to conceive of law as a practice does not imply that law would be susceptible to any form of knowledge. Not only is its reading itself based on a genealogy of practices established over a longer period.62 Most notably, the respective forms of knowledge are also embedded in varying procedures and strategic configurations. If law is subject to an endless deference of meaning,63 this is not the case in the sense of arbitrary but historically contingent practices, but in the sense of historically contingent practices. Knowledge, then, is not merely an interpretive scheme of law. Rather than merely on meaning, focus is on practices that, while materializing and producing attendant truth effects, shape the distinctions we make between legal and illegal measures. What is more, as regards anticipatory techniques to prevent future harm, this perspective allows for our scrutinizing the division made between what is presumably known and what is yet to be known, and between what is presumably unknown and has yet to be rendered intelligible. This prospect, as will be seen in the following, is crucial for a rereading of existing law. It was the identification of a new order of threat since the terror attacks of 9/11 that brought about a turning point in the reading of international law. The identification of threats in general provides a space for transforming the unknowable into new forms of knowledge. The indeterminateness itself of legal norms proves to be a tool for introducing a new reading of law.

### Solvency

#### 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.

#### Ex ante requirements turn the case\*\*

Nzelibe 7 [Jide Nzelibe (Asst. Professor of Law @ Northwestern); “Are Congressionally Authorized Wars Perverse?”; *Stanford Law Review*: Vol. 59, 2007; <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=952490>]

Contrary to the received wisdom, this **experimental Article advances the empirically plausible assumption that congressional authorization of the use of force might actually have a perverse effect.** Thus, **rather than create a drag effect that minimizes the impulse to rush into imprudent wars, congressional authorization might** actually **do the** opposite: because such **authorization allows the President to** spread the potential political costs **of military failure or stalemate to other elected officials, it will lead the President to** select into more high risk wars **than he would otherwise choose if he were acting unilaterally.** In other words, **since congressional authorization acts as a political “insurance policy” that** partially protects the President against the possible political fallout from a military misadventure, **he is** likely to be more willing to engage in wars **where the expected outcome is uncertain**. More importantly, not only is the President likely to use congressional authorization as a hedge to prevent future political opponents from exploiting his misfortunes, he is also likely to use it to protect members of his party in Congress who are more likely to be electorally vulnerable in the absence of such authorization. While this notion of **congressional authorization as political insurance** might appear puzzling, it **makes sense** when understood **as a cheap mechanism designed to protect a vulnerable President** or ruling party **from the insecure political atmosphere** that is **likely to exist in the aftermath of a high risk conflict.** Significantly, **two factors** operate in tandem to **ensure** that **the** initial Presidential **decision to seek congressional authorization will not be** particularly **costly** from a political perspective. First, **since a member of Congress is likely to have less information than the President about the likely outcome of a high risk conflict, he or she is likely to** defer to the President’s judgment **that the conflict will have a positive outcome and hope to ride the President’s electoral coattails** as voters rally around the flag. Thus, **the purported** institutional **benefit of deliberation by multiple voices** that congressional authorization is supposed to confer **is likely to be** trivial**, if not non-existent**. Second, **since the electoral consequences of voting against a successful war are likely to be dearer than voting for a losing war, the President is** relatively assured **of getting a favorable vote to use force** from those members of Congress who are elected from swing districts. In sum, seeking congressional authorization for the use of force becomes a tradeoff in which Presidents are willing to accept the relatively low short-term costs of involving other elected officials in the war decision-making process in exchange for longterm political security.

#### 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.

### Intervention

#### The aff’s obsession with nuclear miscalculation instills a pretraumatic stress that makes their impacts more likely.

Saint-Amour 2000 (Paul, Diacritics 30.4: 59-82, in the winter edition, “Bombing and the Symptom: Traumatic Earliness and the Nuclear Uncanny,”) RCM

Zizek’s notion of the time travel of the symptom assumes that it will rendezvous with its symbolic place or signifying frame, its meaning or hidden kernel, in the future of its interpretation. However, because of its either/or structure, the nuclear condition promises no such entry into the fullness of symbolic place. The binary future it constructs will deliver either a nonevent that exposes the anticipatory symptom as a needless phantasm, or a limit-event that obliterates the symptom, the activity of interpretation, and, one could even say, the symbolic order itself. Because it offers the possibility of a future without symptoms, without a symbolic order—in other words, no future at all—the nuclear condition can, in a sense, only cause anticipatory symptoms; in relation to nuclear annihilation, the preposterousness of the symptom would then be site-specific, as against Zizek’s generalizing account of all symptoms as returning from the future. But what Zizek writes about the anticipation of catastrophe does shed light on a survivable nuclear event, and particularly on bukimi, its uncanny anticipation. Discussing the sinking of the Titanic in 1912, Zizek notes that a space had already been cleared for just such an event in the fantasy-Zeitgeist of the moment. This does not mean that the sinking was inevitable, the product of some technological or cultural determinism, but that a receptivity had appeared in response to its growing likelihood, one that could amplify and even sacralize its effects should it come to pass [69–71].4 Like bukimi, this notion goes contrary to what is usually said of trauma, that the belatedness with which it is apprehended arises from the lack of any commensurate experience or even fantasy on the part of survivors. It suggests that traumatic aftereffects can obtain despite the event’s having had a kind of precedent, even if that precedent only occurred in fantasy. This is nothing against the overwhelming immediacy or singularity of the limit event; but it does question the assumption that that event must be a sudden and totally unheralded irruption of violence into a world, or a consciousness, utterly unprepared for it. To the contrary, it suggests that a certain preparation for trauma may amplify, rather than mitigate, the ensuing post-traumatic syndrome, insofar as those undergoing the trauma have had to confront not the question “What is this?” but the more horrifying question “Is this the real thing, then, which I have dreaded all along? Is this really it?” This sense that the event manifests what was feared ahead of time may, paradoxically, be that which prevents its being registered, leaving a void, a hole—as Dori Laub puts it, a “record that has yet to be made” [57].

#### No escalation—executives will be responsible

Weiner 2007

Michael Anthony, J.D. Candidate, Vanderbilt School of Law, 2007, “A Paper Tiger with Bite: A Defense of the War Powers Resolution,” http://www.vanderbilt.edu/jotl/manage/wp-content/uploads/Weiner.pdf

IV. CONCLUSION: THE EXONERATED WPR AND THE WOLF IN SHEEP'S CLOTHING The WPR is an effective piece of war powers legislation. As Part III made clear, no presidential unilateral use of force since 1973 has developed into a conflict that in any way resembles the WPR's impetus, Vietnam. Rather, the great majority of these conflicts have been characterized by their brevity, safety, and downright success. Yes, there have been tragic outcomes in Lebanon and Somalia; but what happened in response to those tragedies? In Lebanon, President Reagan actually submitted to being Congress's "messengerboy," 203 asking for its permission, per the WPR, to continue the operation. And in Somalia, at the first sight of a looming disaster, it was President Clinton who cut short the operation. Thus, from 1973 on, it is easy to argue that sitting Executives have made responsible use of their power to act unilaterally in the foreign affairs realm. The WPR has even contributed to a congressional resurgence in the foreign affairs arena. In many of these conflicts, we have seen Congress conducting numerous votes on whether and how it should respond to a unilaterally warring Executive. In some of the conflicts, Congress has come close to invoking the WPR against rather impetuous Executives. 20 4 In Lebanon, Congress actually succeeded in the task.20 5 It is this Note's contention, though, that even when Congress failed to legally invoke the WPR, these votes had normative effects on the Executives in power. Such votes demonstrate that Congress desires to be, and will try to be, a player in foreign affairs decisions. So, perhaps the enactment of the WPR, the rise of Congress (at least in the normative sense) and the successful string of unilateral presidential uses of force are just a series of coincidences. This Note, however, with common sense as its companion, contends that they are not. Rather, it is self-evident that the WPR has played a significant role in improving the implementation of presidential unilateral uses of force.

### SoP

#### SOP norms fail.

Jeremy Rabkin 13, Professor of Law at the George Mason School of Law. Model, Resource, or Outlier? What Effect Has the U.S. Constitution Had on the Recently Adopted Constitutions of Other Nations?, 29 May 2013, www.heritage.org/research/lecture/2013/05/model-resource-or-outlier-what-effect-has-the-us-constitution-had-on-the-recently-adopted-constitutions-of-other-nations

Even when people are not ambivalent in their desire to embrace American practices, they may not have the wherewithal to do so, given their own resources. That is true even for constitutional arrangements. You might think it is enviable to have an old, well-established constitution, but that doesn’t mean you can just grab it off the shelf and enjoy it in your new democracy. You might think it is enviable to have a broad respect for free debate and tolerance of difference, but that doesn’t mean you can wave a wand and supply it to your own population. We can’t think of most constitutional practices as techniques or technologies which can be imported into different cultures as easily as cell phones or Internet connections.

#### The plan identifies the non-Western world as a space devoid of the rule of law---that sets the stage for aggressive intervention and colonial plunder, which locks in neoliberal structural violence.

Mattei, Professor at Hastings College of the Law & University of Turin, ‘9

[Ugo and Marco de Morpurgo, M.Sc. Candidate, International University College of Turin, LL.M. Candidate, Harvard Law School, 2009, “GLOBAL LAW & PLUNDER: THE DARK SIDE OF THE RULE OF LAW,” online: <http://works.bepress.com/cgi/viewcontent.cgi?article=1014&context=bocconi_legal_papers>]

Within this framework, Western law has constantly enjoyed a dominant position during the past centuries and today, thus being in the position to shape and bend the evolution of other legal systems worldwide. During the colonial era, continental-European powers have systematically exported their own legal systems to the colonized lands. During the past decades and today, the United States have been dominating the international arena as the most powerful economic power, exporting their own legal system to the ‘periphery’, both by itself and through a set of international institutions, behaving as a neo-colonialist within the ideology known as neoliberalism. ¶ Western countries identify themselves as law-abiding and civilized no matter what their actual history reveals. Such identification is acquired by false knowledge and false comparison with other peoples, those who were said to ‘lack’ the rule of law, such as China, Japan, India, and the Islamic world more generally. In a similar fashion today, according to some leading economists, Third World developing countries ‘lack’ the minimal institutional systems necessary for the unfolding of a market economy. ¶ The theory of ‘lack’ and the rhetoric of the rule of law have justified aggressive interventions from Western countries into non-Western ones. The policy of corporatization and open markets, supported today globally by the so-called Washington consensus3, was used by Western bankers and the business community in Latin America as the main vehicle to ‘open the veins’ of the continent—to borrow Eduardo Galeano’s metaphor4—with no solution of continuity between colonial and post-colonial times. Similar policy was used in Africa to facilitate the forced transfer of slaves to America, and today to facilitate the extraction of agricultural products, oil, minerals, ideas and cultural artefacts in the same countries. The policy of opening markets for free trade, used today in Afghanistan and Iraq, was used in China during the nineteenth century Opium War, in which free trade was interpreted as an obligation to buy drugs from British dealers. The policy of forcing local industries to compete on open markets was used by the British empire in Bengal, as it is today by the WTO in Asia, Africa, and Latin America. ¶ Foreign-imposed privatization laws that facilitate unconscionable bargains at the expense of the people have been vehicles of plunder, not of legality. In all these settings the tragic human suffering produced by such plunder is simply ignored. In this context law played a major role in legalizing such practices of powerful actors against the powerless.5 Yet, this use of power is scarcely explored in the study of Western law. ¶ The exportation of Western legal institutions from the West to the ‘rest’ has systematically been justified through the ideological use of the extremely politically strong and technically weak concept of ‘rule of law’. The notion of ‘rule of law’ is an extremely ambiguous one. Notwithstanding, within any public discussion its positive connotations have always been taken for granted. The dominant image of the rule of law is false both historically and in the present, because it does not fully acknowledge its dark side. The false representation starts from the idea that good law (which others ‘lack’) is autonomous, separate from society and its institutions, technical, non-political, non-distributive and reactive rather than proactive: more succinctly, a technological framework for an ‘efficient’ market. ¶ The rule of law has a bright and a dark side, with the latter progressively conquering new ground whenever the former is not empowered by a political soul. In the absence of such political life, the rule of law becomes a cold technology. Moreover, when large corporate actors dominate states (affected by a declining regulatory role), law becomes a product of the economy, and economy governs the law rather than being governed by it.

### Anielabaijan

#### Congress doesn’t enhance cred --- narrow majorities make us look unsure --- empirics prove

John Yoo 4, Emanuel S. Heller Professor of Law @ UC-Berkeley Law, visiting scholar @ the American Enterprise Institute, former Fulbright Distinguished Chair in Law @ the University of Trento, served as a deputy assistant attorney general in the Office of Legal Council at the U.S. Department of Justice between 2001 and 2003, received his J.D. from Yale and his undergraduate degree from Harvard, “War, Responsibility, and the Age of Terrorism,” UC-Berkeley Public Law and Legal Theory Research Paper Series, http://works.bepress.com/cgi/viewcontent.cgi?article=1015&context=johnyoo

It is also not obvious that congressional deliberation ensures consensus. Legislative authorization might reflect ex ante consensus before military hostilities, but it also might merely represent a bare majority of Congress or an unwillingness to challenge the President’s institutional and political strengths regardless of the merits of the war. It is also no guarantee of an ex post consensus after combat begins. Thus, the Vietnam War, which Ely and others admit satisfied their constitutional requirements for congressional approval, did not meet with a consensus over the long term but instead provoked some of the most divisive politics in American history. It is also difficult to claim that the congressional authorizations to use force in Iraq, of either the 1991 or 2002 varieties, reflected a deep consensus over the merits of war there. Indeed, the 1991 authorization barely survived the Senate and the 2002 one received significant negative votes and has become an increasingly divisive issue in national political and the 2004 presidential election. Congress’s authorization for the use of force in Iraq in 2003 has not served as a guarantee of political consensus. ¶ Conversely, a process without congressional declarations of war does not necessarily result in less deliberation or consensus. Nor does it seem to inexorably lead to poor or unnecessary war goals. Perhaps the most important example, although many might consider it a “war,” is the conflict between the United States and the Soviet Union from 1946 through 1991. War was fought throughout the world by the superpowers and their proxies during this period. Yet the only war arguably authorized by Congress – and even this is a debated point – was Vietnam. The United States waged war against Soviet proxies in Korea and Vietnam, the Soviet Union fought in Afghanistan, and the two almost came into direct conflict during the Cuban Missile Crisis. Despite the division over Vietnam, there appeared to be a significant bipartisan consensus on the overall strategy (containment) and goal (defeat of the Soviet Union, protection of Europe and Japan), and Congress consistently devoted significant resources to the creation of a standing military to achieve them. Different conflicts during this period that did not benefit from congressional authorization, such as conflicts in Korea, Grenada, Panama, and Kosovo, did not suffer from a severe lack of consensus, at least at the outset. Korea initially received the support of the nation’s political leadership, and it seems that support declined only once battlefield reverses had occurred. Grenada and Panama did not seem to suffer from any serious political challenge, and while Kosovo met with some political resistance, it does not appear to have been significant.

#### No risk of Armenian/Azerbaijan conflict.

Babayeva, 1-3

[Jamila, “Azerbaijani MPs optimistic over Nagorno-Karabakh conflict settlement in 2014”, 1-3-14, Azernews,

http://www.azernews.az/azerbaijan/63074.html, RSR]

"But the reality is that Armenia is struggling with difficult socio-economic, and domestic political problems that may force the country to take certain steps, which, in turn, will contribute to the final resolution of the problem in the future," Sadikhov concluded. Political analyst, Rasim Musabeyov, believes that after the last meeting of the presidents of Azerbaijan and Armenia in December 2013 a new round of negotiations has begun. "This is positive. But based on past experiences, some high expectations are misplaced, because, unfortunately, the talks have been unsuccessful so far. But there is a hope that these efforts will not be fruitless this time, because eventually the Armenian side sees that neither her tenacity, nor the support of countries that usually patronize Armenians, is able to force Azerbaijan to take actions that are inconsistent with the country's sovereignty," Musabeyov stressed. He further said the social and economic situation of Armenia is getting worse day by day and there is no prospect. "This will encourage them to take a more realistic approach. Progress in the negotiations can be achieved, but in general, we should still be cautious," he concluded. Armenia occupied over 20 percent of Azerbaijan's internationally recognized territory, including Nagorno-Karabakh and seven adjacent regions, after laying territorial claims against its South Caucasus neighbor. The occupation caused a lengthy war in the early 1990s. The UN Security Council has adopted four resolutions on Armenia's withdrawal from the Azerbaijani territory, but they have not been enforced to this day. Peace talks, mediated by Russia, France and the U.S. through the OSCE Minsk Group, are underway on the basis of a peace outline proposed by the Minsk Group co-chairs, dubbed the Madrid Principles. The negotiations have been largely fruitless so far.

## 2NC

### Risk K

### Overview

#### The role of the ballot is to hold the affirmative responsible for their knowledge production within the debate space.

#### The aff’s framing of catastrophic imagery is bad for debate and evaluating it is a prerequisite to determining whether the affirmative is a good idea. In order for them to access fiat, they have to prove that their presentation of knowledge is a GOOD IDEA in the 1AC. It isn’t because it creates a self fulfilling prophecy, depoliticizes and delegitimizes the debate and results in more war mongering. That’s the 1NC.

#### The alternative refuses the 1ACs framing of knowledge production to allow for a more responsive, democratic politics. We must be willing to debate about the terms of debate. That’s Metzger.

#### This means that means that the aff results in more militarization rather than checks on it.

#### We control the biggest ethical impact – they create a violent death culture within debate. Moving away from apocalyptic scenarios via the alt is key to solve.

Bjork 92 (Rebecca, Former Debate Coach at the University of Utah, “Symposium: Women in Debate: Reflections on the Ongoing Struggle”, 1992 - Effluents and affluence: The Global Pollution Debate, RSR]

While reflecting on my experiences as a woman in academic debate in preparation for this essay, I realized that I have been involved in debate for more than half of my life. I debated for four years in high school, for four years in college, and I have been coaching intercollegiate debate for nine years. Not surprisingly, much of my identity as an individual has been shaped by these experiences in debate. I am a person who strongly believes that debate empowers people to be committed and involved individuals in the communities in which they live. I am a person who thrives on the intellectual stimulation involved in teaching and traveling with the brightest students on my campus. I am a person who looks forward to the opportunities for active engagement of ideas with debaters and coaches from around the country. I am also, however, a college professor, a "feminist," and a peace activist who is increasingly frustrated and disturbed by some of the practices I see being perpetuated and rewarded in academic debate. I find that I can no longer separate my involvement in debate from the rest of who I am as an individual. Northwestern I remember listening to a lecture a few years ago given by Tom Goodnight at the University summer debate camp. Goodnight lamented what he saw as the debate community's participation in, and unthinking perpetuation of what he termed the "death culture." He argued that the embracing of "big impact" arguments--nuclear war, environmental destruction, genocide, famine, and the like-by debaters and coaches signals a morbid and detached fascination with such events, one that views these real human tragedies as part of a "game" in which so-called "objective and neutral" advocates actively seek to find in their research the "impact to outweigh all other impacts"--the round-winning argument that will carry them to their goal of winning tournament X, Y, or Z. He concluded that our "use" of such events in this way is tantamount to a celebration of them; our detached, rational discussions reinforce a detached, rational viewpoint, when emotional and moral outrage may be a more appropriate response. In the last few years, my academic research has led me to be persuaded by Goodnight's unspoken assumption; language is not merely some transparent tool used to transmit information, but rather is an incredibly powerful medium, the use of which inevitably has real political and material consequences. Given this assumption, I believe that it is important for us to examine the "discourse of debate practice:" that is, the language, discourses, and meanings that we, as a community of debaters and coaches, unthinkingly employ in academic debate. If it is the case that the language we use has real implications for how we view the world, how we view others, and how we act in the world, then it is imperative that we critically examine our own discourse practices with an eye to how our language does violence to others. I am shocked and surprised when I hear myself saying things like, "we killed them," or "take no prisoners," or "let's blow them out of the water." I am tired of the "ideal" debater being defined as one who has mastered the art of verbal assault to the point where accusing opponents of lying, cheating, or being deliberately misleading is a sign of strength. But what I am most tired of is how women debaters are marginalized and rendered voiceless in such a discourse community. Women who verbally assault their opponents are labeled "bitches" because it is not socially acceptable for women to be verbally aggressive. Women who get angry and storm out of a room when a disappointing decision is rendered are labeled "hysterical" because, as we all know, women are more emotional then men. I am tired of hearing comments like, "those 'girls' from school X aren't really interested in debate; they just want to meet men." We can all point to examples (although only a few) of women who have succeeded at the top levels of debate. But I find myself wondering how many more women gave up because they were tired of negotiating the mine field of discrimination, sexual harassment, and isolation they found in the debate community. As members of this community, however, we have great freedom to define it in whatever ways we see fit. After all, what is debate except a collection of shared understandings and explicit or implicit rules for interaction? What I am calling for is a critical examination of how we, as individual members of this community, characterize our activity, ourselves, and our interactions with others through language. We must become aware of the ways in which our mostly hidden and unspoken assumptions about what "good" debate is function to exclude not only women, but ethnic minorities from the amazing intellectual opportunities that training in debate provides. Our nation and indeed, our planet, faces incredibly difficult challenges in the years ahead. I believe that it is not acceptable anymore for us to go along as we always have, assuming that things will straighten themselves out. If the rioting in Los Angeles taught us anything, it is that complacency breeds resentment and frustration. We may not be able to change the world, but we can change our own community, and if we fail to do so, we give up the only real power that we have.

### A2: Framework

#### **1. Counter interpretation – default to the stakes of the debate round. Vote for the team that allows for the best production of knowledge within the debate space. We have to debate the terms of debate in order to improve the skills that we garner from this space.**

#### 2. We also internal link turn all their policymaking good arguments. Randalls and Elliot both say that the way you represent your knowledge within the policy making field affects the policies that are ultimately carried out. It determines our capacity to act and the world in which we think we live. Specifically true in the context of foreign policy.

#### 3. Framework is a negative argument. Only we get access to productive state policies because the aff’s deployment of risk rolls back democratic politics and leads to error replication.

Beck, Professor of Sociology at the Ludwig-Maximilians-University Munich, ‘92

[Ulrich, Risk Society: Towards a New Modernity, Published in association with Theory, Culture & Society, pgs. 79-80, RSR]

We know all too well from the history of Germany in this century that an actual or potential catastrophe is no teacher of democracy. How ambivalent and scandalous the accumulating explosive already is becomes perfectly clear in the report of the 'environmental experts', despite themselves (Rat der Sachverstiindigen fiir Umweltfragen 1985). The urgency of the environmental dangers to the lives of plants, animals, and people depicted there 'legitimates' these experts with a confessional ecological morality typical of the turn of the twenty-first century. It gives birth to a language that fairly crawls with expressions like 'control' 'official ~approval:' and 'official supervision'. Characteristically, far reaching intervention, planning and control possibilities and rights are demanded there, on a graduated scale depending on the severity of the results to the environment (45). There is discussion of an 'expansion of the surveillance and information system for agriculture' (45). They dramatize the challenges to 'comprehensive land planning' with 'biotopic surveys' and 'plans for protection of an area', based on 'scientifically exact surveys down to the level of individual plots' to be 'imposed against competing utilization demands' (48f.). In order to accomplish its plan of 'renaturation' (51), the Council recommends 'removing the most important areas ... completely from the cultivation interests of their owners' (49). The farmers should 'be motivated by compensation to forgo certain usage. rights or to adopt required protective measures' (49). They discuss fertilization permits subject to official approval', 'legally binding fertilization plans with concrete provisions on type, extent and time of application' (53). This 'planned fertilization' (59), like other protective measures, requires a differentiated system of 'environmental surveillance' that is to be set up nationally, regionally and on the scale of individual operations (61), and will 'require a revision and further development of the basic legal provisions' (64). In short, the panorama of a scientific and bureaucratic authoritarianism is being laid out. Farmers were viewed for centuries as the 'peasantry' wresting the fruits from the soil, on which the life and survival of everyone depended, but this image is beginning to be transformed into its opposite. In this new view, agriculture becomes a distribution point for the toxins that threaten the lives of animals, plants and people. To turn aside the threatening dangers at the currently achieved high level of agricultural productivity, people demand expropriation and/or plans and controls governing every detail of work, all under the patronage of science and bureaucracy. It is not just these demands (or even the matter-of-fact way they are raised) that is the disturbing element here. Instead it is that they are part of the logic of hazard prevention, and that, considering the Impending hazards, it will not likely prove to be at all easy to point to political alternatives that really prevent what must be prevented under the dictatorship of dangers. With the increase of hazards totally new types of challenges to democracy arise in the risk society. It harbors a tendency to a legitimate totalitarianism of hazard prevention, which takes the right to prevent the worst and, in an all too familiar manner, creates something even worse. The political 'side effects' of civilization's 'side effects' threaten the continued existence of the democratic political system. That system is caught in the unpleasant dilemma of either failing in the face of systematically produced hazards, or suspending fundamental democratic principles through the addition of authoritarian, repressive 'buttresses'. Breaking through this alternative is among the essential tasks of democratic thought and action in the already apparent future of the risk society.

### A2: Kursawa

#### Their Kurasawa card is a good defense of futurism in the abstract but not specific enough to the way that catastrophe is deployed within POLITICAL INSTITUTIOINS. Those institutions are the internal link to solving for the entirety of the aff and radically react to representations of catastrophe through affect. That’s the entire premise of the K.

#### Kursawa concludes neg – their futurism is coopted to produce a culture of alarmism that rolls back effective democratic dialogue.

Kurasawa, Associate Professor of Sociology at York University, ‘10

[Fuyuki, “Cautionary Tales: The Global Culture of Prevention and the Work of Foresight”, Constellations, Vol. 11, No. 4, 2004, RSR]

Up to this point, I have tried to demonstrate that transnational socio-political relations are nurturing a thriving culture and infrastructure of prevention from below, which challenges presumptions about the inscrutability of the future (II) and a stance of indifference toward it (III). Nonetheless, unless and until it is substan- tively ‘filled in,’ the argument is vulnerable to misappropriation since farsighted- ness does not in and of itself ensure emancipatory outcomes. Therefore, this section proposes to specify normative criteria and participatory procedures through which citizens can determine the ‘reasonableness,’ legitimacy, and effectiveness of com- peting dystopian visions in order to arrive at a socially self-instituting future. Foremost among the possible distortions of farsightedness is alarmism, the manufacturing of unwarranted and unfounded doomsday scenarios. State and market institutions may seek to produce a culture of fear by deliberately stretch- ing interpretations of reality beyond the limits of the plausible so as to exaggerate the prospects of impending catastrophes, or yet again, by intentionally promoting certain prognoses over others for instrumental purposes. Accordingly, regressive dystopias can operate as Trojan horses advancing political agendas or commercial interests that would otherwise be susceptible to public scrutiny and opposition. Instances of this kind of manipulation of the dystopian imaginary are plentiful: the invasion of Iraq in the name of fighting terrorism and an imminent threat of use of ‘weapons of mass destruction’; the severe curtailing of American civil liberties amidst fears of a collapse of ‘homeland security’; the neoliberal dismant- ling of the welfare state as the only remedy for an ideologically constructed fiscal crisis; the conservative expansion of policing and incarceration due to supposedly spiraling crime waves; and so forth. Alarmism constructs and codes the future in particular ways, producing or reinforcing certain crisis narratives, belief struc- tures, and rhetorical conventions. As much as alarmist ideas beget a culture of fear, the reverse is no less true. If fear-mongering is a misappropriation of preventive foresight, resignation about the future represents a problematic outgrowth of the popular acknow- ledgment of global perils. Some believe that the world to come is so uncertain and dangerous that we should not attempt to modify the course of history; the future will look after itself for better or worse, regardless of what we do or wish. One version of this argument consists in a complacent optimism perceiving the future as fated to be better than either the past or the present. Frequently accompanying it is a self-deluding denial of what is plausible (‘the world will not be so bad after all’), or a naively Panglossian pragmatism (‘things will work themselves out in spite of everything, because humankind always finds ways to survive’).37 Much more com- mon, however, is the opposite reaction, a fatalistic pessimism reconciled to the idea that the future will be necessarily worse than what preceded it. This is sustained by a tragic chronological framework according to which humanity is doomed to decay, or a cyclical one of the endless repetition of the mistakes of the past. On top of their dubious assessments of what is to come, alarmism and resigna- tion would, if widely accepted, undermine a viable practice of farsightedness. Indeed, both of them encourage public disengagement from deliberation about scenarios for the future, a process that appears to be dangerous, pointless, or unnecessary. The resulting ‘depublicization’ of debate leaves dominant groups and institutions (the state, the market, techno-science) in charge of sorting out the future for the rest of us, thus effectively producing a heteronomous social order. How, then, can we support a democratic process of prevention from below? The answer, I think, lies in cultivating the public capacity for critical judgment and deliberation, so that participants in global civil society subject all claims about potential catastrophes to examination, evaluation, and contestation. Two norma- tive concepts are particularly well suited to grounding these tasks: the precaution- ary principle and global justice.

#### Your heuristic is bad – four warrants.

#### First, self-fulfilling prophecy – their politics of trying to secure ourselves from catastrophe is the same politics that justified preemptive strikes during the war in Iraq that led to more terrorist connections than what was there in the first place.

#### Second, depoliticization – framing ideas within existential terms narrows the fields of those who can be involved in discussions about the issue at hand by neglecting important prior questions. This turns any political engagement that is necessary to solve the affirmative.

#### Third, delegitimization – repetition of existential discourse discourages actual action against an issue because if the risks don’t come true when they’re supposed to, policymakers become less and less willing to act on such threats. This is an 100% solvency take out to the affirmative.

#### Fourth, warmongering – existential threats promote an affective response to the situation that encourages preemptive military action. Especially true in the context of this topic and with the war in Iraq, catastrophic imagery of the WMDs in Iraq promoted military maneuvers rather than diplomatic solutions. This means it doesn’t become an issue of what the plan text intends but rather, the aff gets coopted by the military industrial complex.

#### That’s **De Goede, Randalls and Elliot.**

### A2: Anxiety

#### 1AC hype creates THE WORST OF BOTH WORLDS, both COMPLACENCY towards genuine threat—AND irrational OVERREACTIONS like Vietnam.

Krepon, co-founder of Stimson, and director of the South Asia and Space Security programs, ‘9

[Michael, “The Mushroom Cloud That Wasn't: Why Inflating Threats Won't Reduce Them” 88 Foreign Affairs, 2009 p. 2-6, RSR]

At the height of the Cold War, almost no one was bold enough or foolish enough to predict the Soviet Unions collapse, let alone without the eruption of a nuclear exchange between the two superpowers. One of the few who prophesied its demise, George Kennan, was deeply worried about a nuclear cataclysm. Kennan, a former U.S. ambassador to the Soviet Union and the father of containment policy, warned repeatedly that unwise U.S. nuclear policies could lead to Armageddon. The Cold War is now history, but warnings of an impending nuclear catastrophe are still very much alive. Anxieties today stem not from the threat of a surprise Soviet missile attack but from the fear of Iran, North Korea, Pakistan, and terrorist groups seeking to carry out catastrophic attacks against soft targets in the United States. And yet, not a single death has occurred as a result of nuclear terrorism. Since 9/11, there have been more than 36,000 terrorist attacks, resulting in approximately 57,000 fatalities and 99,000 casualties. A terrible, mass-casualty attack using nuclear or bio logical weapons could occur at any time, and much more can be done to keep the United States safe. As the attacks that have occurred have repeatedly demonstrated, terrorists do not need weapons of mass destruction (wmd) to cause grievous harm; they can do so using hijacked airplanes, fertilizer, automatic weapons, and grenades. But the situation is far from bleak. It is not easy for terrorist groups to acquire the skills and materials necessary to construct a nuclear weapon. Meanwhile, Washington and Moscow have reduced their nuclear arsenals by 34,000 weapons over the past two decades, nuclear testing is now rare, the list of countries with worrisome nu clear programs is very short by historical standards, and the permanent members of the un Security Council now have less to fight about and more reasons to cooper ate in preventing worst-case scenarios from occurring?than ever before. t warnings of the possibility of nuclear, chemical, or biological weapons attacks are as loud as ever. These warnings must be put in perspective. The United States has managed to remain safe from nuclear catastrophes in far more dangerous times. And if the threat is so great, and the protections so weak, why have there not been grievous wmd attacks on U.S. cities already? Wise U.S. initiatives to reduce these dangers have helped tremen dously, such as programs initiated by then Senator Sam Nunn (D-Ga.) and Senator Richard Lugar (R-Ind.) to lock down dangerous weapons and materials and to dismantle Cold War-era missiles and bombers. There is another explanation as well: the threat itself has been greatly exaggerated. CRYING WOLF Predicting nuclear disasters was common during the Cold War. Paul Nitze, Kennans successor as director of the State Depart ment s policy planning staff, issued the Cold Wars most famous warning to President Harry Truman in April 1950, forecasting four or five years of great dan ger ahead facing an emboldened Joseph Stalin. The anxieties expressed in Nitzes report?known as nsc-68?were reason able given that the Soviet Union had conducted its first nuclear test in August 1949, Mao Zedong had just taken over mainland China, and the Korean War, which was to begin in June 1950, was already brewing. The next warning of nuclear danger came in November 1957, f?ur days after the launch of the second Sputnik. The Gaither Committee, headed by a Ford Foundation and rand Corporation executive and as sisted by Nitze, warned President Dwight Eisenhower, "The evidence clearly indicates an increasing threat, which may become critical in 1959 or early i960." Such anxieties stemmed from presumed gaps between the bomber and missile capacities of the United States and those of the Soviet Union. But these gaps proved to be imaginary? Washington actually led Moscow in these areas. The most harrowing episode of the Cold War the Cuban missile crisis, of October 1962?was in fact prompted by Moscow's weakness, rather than its strength, as the Soviets sought a quick fix for their perceived strategic disadvantage. The doomsayers got it wrong again during the Ford administration, when a group of experts was assembled to deter mine whether the U.S. intelligence com munity was underestimating the Soviet threat. These hawkish experts, known as Team B, included the historian Richard Pipes; a young Paul Wolfowitz, who would later become deputy secretary of defense; and Nitze. Team B issued a report in 1976 predicting that unless urgent measures were taken, the Soviet threat would reach its peak between 1980 and 1983. Although the 1979 Soviet invasion of Afghanistan lent credence to Team Bs assessment at first, the ill-conceived occupation that followed turned out to be a harbinger of the Soviet Unions dissolution rather than a step pingstone to more ambitious conquests. Today, as was the case during the Cold War, there is no shortage of nonprolifer ation specialists predicting impending nuclear disasters. Eighty-five experts polled by Senator Lugar in 2005 estimated that the risk of a wmd attack occurring before 2010 was 50 percent and before 2015, 70 percent. The Bulletin of the Atomic Scientists has set its iconic Doomsday Clock at five minutes to midnight two minutes loser to Armageddon than it was during the Cuban missile crisis. A bipartisan congressional commission concluded in 2008 that "Americas margin of safety is shrinking, not growing" and that "unless the world community acts decisively and with great urgency, it is more likely than not that a weapon of mass destruction will be used in a terrorist attack somewhere in the world by the end of 2013." Graham Allison, one of the commissions members, had warned in 2004 that "the detonation of a nuclear device in an American city is inevitable if the U.S. continues on its present course." And soon after leaving office, former Vice President Dick Cheney warned that there is a "high probability" that terrorists will attempt a catastrophic nuclear or biological attack on the United States in the coming years. These sorts of scary predictions have a basis in reality. After all, Iran has mastered the ability to enrich uranium, is laying the foundation for a nuclear weapons program, and has close ties to terrorist groups; Pakistan is ramping up its capacity to pro duce plutonium as the central government s influence is waning; and North Korea has a bomb-making capacity, weapons-grade material, and a need for hard currency. Al Qaedas leaders have sought to acquire and use these weapons, and other extremist groups have an interest in doing so, too. Experts cite such worrisome developments and then use threat inflation to seize the public s attention and to secure sufficient appropriations for their preferred remedies. They, along with government officials, members of Congress, and the intelligence community are all safer warning of great danger than downplaying threats except when their inflated anxieties facilitate a preventive war based on false premises. The Iraq war notwithstanding, when worst cases do not materialize, those who issued dire warnings can take credit. And if attacks do occur, the alarmists can always say, "I told you so." As real as these threats are, hyping them carries its own risks. Crying wolf too often can lead to complacency when action is needed most. Repeated warnings can also prompt taxpayers and lawmakers to question what was gained from prior investments in reducing threats and so limit appropriations for new ones. This is a major problem, since remedial efforts over short periods of time are insufficient; reducing the nuclear threat requires success over the long haul. Most important, fear-based strategies lead to wasteful spending and costly errors in judgment. Dire warnings of impending nuclear dangers during the Cold War led the United States and the Soviet Union to produce a staggering 125,000 nuclear warheads and test an average of one nuclear weapon per week between 1962 and 1989. The cost of building, operating, and maintaining the U.S. nuclear arsenal from 1945 to 1991 was approximately $5 tril lion. Likewise, excessive anxieties have led to wars that did not extend American ideals or defend U.S. national interests. The misguided and poorly executed war in Vietnam killed almost 60,000 U.S. troops. The 2003 war to oust Saddam Hussein, justified as a mission to keep wmd out of the hands of Washingtons foes, has cost the lives of over 4,000 U.S. military personnel, perhaps 100,000 or more Iraqis, and more than $1 trillion. These costs have far exceeded any pre sumed benefits. The fact that a major attack has not occurred on U.S. soil since Saddam was ousted has little to do with George W. Bushs war of choice, which has fueled anti-American extremism in the Middle East. Rather, it has everything to do with cooperative threat-reduction programs and improved intelligence coordination among U.S. agencies and between the United States and foreign intelligence services.

### A2: No Framing

#### Brain Science proves framing is key to argument analysis

The Rockridge Institute ‘7( Think tank lead by George Lakoff, Goldman Distinguished Professor of Cognitive Science and Linguistics at the University of California at Berkeley, July 26, 2007 “Frames and Framing” http://web.archive.org/web/20071219003037/http://www.rockridgeinstitute.org/aboutus/frames-and-framing/

Framing matters

Expressing progressive political ideas and values effectively begins with understanding frames. Frames are the mental structures that allow human beings to understand reality – and sometimes to create what we take to be reality. Contemporary research on the brain and the mind has shown that most thought – most of what the brain does – is below the level of consciousness, and these unconscious thoughts frame conscious thought in ways that are not obvious. These mental structures, or frames, appear in and operate through the words we use to discuss the world around us, including politics. Frames simultaneously shape our thinking and language at multiple levels – the level of moral values, the level of political principles, the level of issue areas (e.g., the environment), the level of a single issue (e.g., the climate crisis), and the level of specific policy (e.g., cap-and-auction). Successful political arguments depend as much on a well-articulated moral frame as they do on policy details – often more. The most effective political messages are those that clearly and coherently link an issue area, single issue, or specific policy to fundamental moral values and political principle frames. Rockridge is the only progressive think tank that takes such a comprehensive view of framing and messaging. The primary determinant of how someone thinks about politics is what we refer to as their fundamental moral frame or their moral worldview. Progressive politics is about morality, about doing what is right. That moral frame is not always obvious, yet it can be stated simply: Progressives care about people and the earth, and act responsibly on that sense of care. All other progressive values – freedom, fairness, equality, security, opportunity, honesty, community, and all the rest – flow from that basic moral understanding of how people should act in the world. Conservatives have been more effective than progressives at getting their worldview, or moral frame, into public discourse. So effective, that progressives all too often adopt conservative frames – as members of Congress did in adopting the President’s “unitary executive” frame which defined Congress as responsible for carrying out his mission – and thus primarily responsible for the safety of the troops. Congress may argue against the President’s Iraq policy, but when they do so using his words, and thus his fundamental moral frame, they put themselves at a distinct disadvantage. It is nearly impossible to persuasively present a progressive policy using conservative language and frames. The debate on the U.S. response to 9/11 is a great example of how frames work. The phrases “war on terror” and “crimes against humanity” use different words to frame the same issue and, in doing so, evoke different ideas and guide us toward different actions. The phrase “war on terror” frames the issue as an open-ended military action against a vague, indeterminate enemy, with open-ended war powers given to the President for an indefinite period. “Crimes against humanity” frames our response to 9/11 as a police action where international law enforcement agencies are directed to root out groups and individual criminals using many of the same methods effective against crime syndicates. Further, these phrases trigger related moral and political principle frames deep in our unconscious minds, shaping how we experience our relationships to our political leaders and to people in other countries. “War” triggers fundamental moral and political principle frames that evoke an evil world in which we must look to an authoritarian President as commander-in-chief, whose orders we obey in order to protect our entire society from destruction by foreign enemies. With these frames dominating our thinking, we are more likely to tolerate giving up some of our civil liberties and dropping bombs that kill innocent civilians. By contrast, “crimes against humanity,” as both a word and issue frame, triggers deep moral and political principle frames of an interdependent world where dangers occur, but they are not debilitating. With this frame foremost in our minds, we are more likely to protect society by enlisting the police, while also reaching out to our neighbors, who are suffering in other countries where poverty, disease, and opposition make it more likely that people will become terrorists. The persistent repetition of the “war on terror” word and issue frame triggers and reinforces deep moral and political principle frames. So, even when someone opposes the Iraq policy, they often do it by invoking the frame they wish to negate. This is why Americans who want to shift the ideas underlying American political debate – towards a greater emphasis on the values of empathy, social responsibility, fairness, honesty, integrity, and community – must do so by changing the deep moral and political principle frames that we use in thinking. We do this in large part by stating these frames openly and often. In other words, it is nearly impossible to persuasively articulate a law enforcement policy on Iraq when one is continually using the phrase “war on terror.” Frames matter. Our fundamental moral frame, our worldview, determines how we experience and think about every aspect of our lives, from child rearing to healthcare, from public transportation to national security, from religion to love of country. Yet, people are typically unconscious of how their fundamental moral frames shape their political positions. The Rockridge Institute works to make that thinking more explicit in order to improve political debate.

### A2: Particularity Thesis

#### This argument is non responsive – we criticize your particular use of catastrophic imagery. That was entirely in the overview. We read specific evidence in the context of foreign policy and how that’s shaped by affect. That’s Leep.

#### Price is a neg card - this is an article criticizing constructivists for abandoning grounding in *critical* theory and *interpretivist* methods.

#### Here’s the abstract:

Richard PRICE AND Christian REUS-SMIT ’98 “Dangerous Liaisons? Critical International

Theory and Constructivism” http://www.artsrn.ualberta.ca/courses/PoliticalScience/661B1/documents/PriceReusSmithCriticalInternatlTheoryConstructivism.pdf

The 1990s have seen the emergence of a new ‘constructivist’ approach to international theory and analysis. This article is concerned with the relationship between constructivism and critical international theory, broadly defined. Contrary to the claims of several prominent critical theorists of the Third Debate, we argue that constructivism has its intellectual roots in critical social theory, and that the constructivist project of conceptual elaboration and empirical analysis need not violate the principal epistemological, methodological or normative tenets of critical international theory. Furthermore, we contend that constructivism can make a vital contribution to the development of critical international theory, offering crucial insights into the sociology of moral community in world politics. The advent of constructivism should thus be seen as a positive development, one that not only enables critical theorists to mount a more powerful challenge to the dominant rationalist theories**,** but one that also promises to advance critical international theory itself.

### Solvency

#### Obama will use a signing statement on the affirmative – that’s 1NC Crouch. He will pick the law apart section by section claiming that it violates his CnC powers. This takes out the aff because the restriction is hollowed out.

#### Signing statements makes the aff meaningless—destroys the aff’s clarity and signal—AND causes a huge fight

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

Signing statements become objectionable when a president attempts to transform statutory authority and circumvent the rule of law. To be sure, a president may find that certain provisions of legislative enactments violate executive authority or principles of separation of powers. Such weighty issues are appropriate for resolution through a process of deliberation and accommodation between the political branches or, if not settled in that fashion, through the courts. However, signing statements do not, as some suggest, start a productive dialogue (Ostrander and Sievert 2013b, 60). Instead, they invite interbranch conflict and encourage additional acts of presidential unilateralism. From Andrew Jackson through Obama's 2009 objection to various provisions of the Supplemental Appropriations Act, signing statements have resulted in unnecessary battles between the branches. Members of Congress often object to signing statements because the presence of one sometimes means that the administration is attempting to settle a policy debate without legislative input. The proper time to exchange views is during the legislative process, which takes place before a bill is submitted to the president to sign. Presidents often make deals with members of Congress on legislation in order to secure its passage. In 2009, President Obama did just that. In the process of convincing Congress to pass a funding measure for the International Monetary Fund and the World Bank “Obama agreed to allow the Congress to set conditions on how the money would be spent” and to attach a reporting requirement provision. However, the president turned around and issued a signing statement arguing that those restrictions would “interfere with my constitutional authority to conduct foreign relations.” Congress was not happy. Representative Barney Frank (D-MA) wrote to the president and accused him of breaking his word. The House even passed a bill that barred funding of the president's challenges (Kelley 2012, 11-12). Instead of encouraging dialogue and political accommodations, such actions by presidents actually short circuit the free exchange of ideas and poison relations with Congress, including lawmakers of the president's own party. If a proposed statute so clearly violates what the president views as vital constitutional principles, then he has an obligation to veto it. He should not agree to the provisions during the legislative process and then turn around and effectively challenge them. Not only does this approach increase distrust and promote greater polarization on Capitol Hill, but it also goes against the text of the Constitution. Nowhere in Article I or Article II does the Constitution provide line-item veto authority to the chief executive. As George Washington explained, “From the nature of the constitution I must approve all the parts of a bill, or reject it in toto” (Washington 1889-93, XII, 327). Even if a president makes constitutional objections during the lawmaking process, such protests do not make credible his actions of signing a bill and later challenging certain provisions through a signing statement. As Representative Frank remarked, presidents “have a legitimate right to tell us their constitutional concerns—that's different from having a signing statement.” However, he explained that “Anyone who makes the argument that ‘once we have told you we have constitutional concerns and then you pass it anyway, that justifies us in ignoring it'—that is a constitutional violation. Those play very different roles and you can't bootstrap one into the other” (Savage 2010). Louis Fisher cuts to the core of the problem with constitutional signing statements that purport to nullify statutory provisions. He argues that such statements “encourage the belief that the law is not what Congress puts in public law but what the administration decides to do later on.” Continuing, Fisher notes that “if the volume of signing statements gradually replaces Congress-made law with executive-made law and treats a statute as a mere starting point on what executive officials want to do, the threat to the rule of law is grave” (Fisher 2007, 210). We agree. It is unilateral presidential decision making itself that in this context strikes a serious blow against the core principles of separation of powers. Another problem with constitutional **signing statements** is that they generally lack clarity and precision, which greatly hinders the idea that they could be used to help facilitate a dialogue between a president and Congress in the first place (Fisher 2007, 210). As noted earlier, signing statements are often crafted in a world of doublespeak where words are distorted to create confusion, and ambiguity is preferred in order to muddle the president's true intent. President Bush received frequent criticism for his vague statements. Likewise, as Christopher Kelley explained, “there are numerous instances where **Ob**ama's signing statements resort to the vagaries seen in the Bush signing statements, where it becomes difficult to discern precisely what is being challenged or why” (2012, 10). The benefits of the obfuscating language are clear. Even when a president intends to ignore a statutory provision, there will be sufficient confusion among reporters, scholars, members of Congress, and certainly the public to prevent any kind of universal response. Consider, for example, President Obama's April 15, 2011, signing statement dealing with the provision to cut off funding for certain czar positions within the White House. In his analysis of that statement, presidential scholar Robert J. Spitzer argued that it merely “expresses displeasure, not disobedience to the law” (2012, 11). Two of us took the opposite view and declared that the president's statement “effectively nullified” the anti-czars provision (Sollenberger and Rozell 2011, 819). If scholars can disagree about the intended meaning of presidential signing statements, it is doubtful that a layperson can clearly discern the president's intentions.

#### Motive is inevitable—the president always wants to retain authority—signing statements guarantee he’s effective

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

Signing statements are a natural result of the vast growth in the exercise of unilateral presidential powers in the modern era. Presidents increasingly seek methods for governing by avoiding the traditional constraints provided by a system of separated powers. The rise of an increasingly powerful and virtually unchecked executive has been aided by various factors, including what Gene Healy (2008) calls a “cult of the presidency” in which power-seeking presidents are seen as the norm and even the ideal. It is hard to imagine a president today suggesting the need to give greater deference to the other branches of government. Nonetheless, the Bush era witnessed a remarkably open and critical national debate over the limits of presidential powers. In 2007-08, presidential candidate Obama made no secret of his disagreement with President Bush's conception of executive powers. Through his pledges during the campaign, Senator Obama gave clear signals that he would not push the outer limits of executive power and that he would respect the system of checks and balances. Maybe he was not exactly promising to scale back the presidency, but he left the unmistakable impression that he would not continue the Bush era trend of runaway executive powers. It is therefore appropriate to criticize President Obama for the actions we have described here because he had promised a higher standard of conduct than that practiced by his predecessors. Longtime observers of the modern presidency should not be surprised, though, as his actions fall into a customary pattern: when a new president sees the utility of a particular power established by his predecessors, he is not going to give that power away. On several occasions now, what President Obama has not been able to achieve through the normal ebb and flow of deliberations with the legislative branch, he has stipulated through the issuance of a signing statement. He has even made quips about how he looks for ways to govern without direct congressional involvement (Savage 2012). The “Unitary Executive” Theory During the George W. Bush presidency, there was substantial scholarly debate over what had been termed the “unitary executive” theory, defined by Stephen Skowronek as the claim “that the Constitution mandates an integrated and hierarchical administration—a unified executive branch—in which all officers performing executive business are subordinate to the President, accountable to his interpretations of their charge, and removable at his discretion” (2009, 2077). Skowronek's definition is drawn from four crucial constitutional provisions relating to presidential power. First, the “executive power” vested in the president by Article II is interpreted broadly by unitary executive theory proponents to justify vast authority over the rest of the executive branch. Second, the “vesting” clause of Article II, which does not contain the “herein granted” language of Article I, seems to imply greater executive power than the explicit words of the Constitution may suggest. Third, the president's oath of office is his responsibility to “preserve, protect and defend the Constitution.” Finally, the “take care” clause—the idea that the president has total control over his subordinates in the executive branch and is responsible to the entire nation for the implementation of the laws—rounds out the list (Skowronek 2009, 2076; see Kelley, forthcoming, 12-13). For legal scholars Steven Calabresi and Christopher Yoo “all of our nation's presidents have believed in the theory of the unitary executive” (2008, 4). Along similar lines, although looking at the question from a political development perspective, Skowronek casts the unitary executive theory backers as the latest in a long line of insurgents. In the past progressives extolled the virtues of a strong presidency; more recently the rebels have been conservatives who see the unitary executive theory as a way to gather power and avoid accountability (Skowronek 2009). The unitary executive theory—at least, in its current form—was essentially a creation of conservative attorneys in the Ronald Reagan Justice Department. As Christopher Kelley and Bryan Marshall note, presidents from Reagan onward have, to some degree, exhibited a belief in the unitary executive theory (2007, 144). After Watergate, the presidency faced unprecedented scrutiny from the public and the mass media, and Congress had passed a series of laws intended to check presidential power, including the Congressional Budget and Impoundment Control Act, the Ethics in Government Act, and the War Powers Resolution (Kelley 2010, 108; see Kelley 2003, 23; Rudalevige 2006). To fight back, lawyers in the Reagan OLC devised plans for the president to act unilaterally, even if against Congress's wishes (Kelley forthcoming, 6). Their actions stimulated a debate over the constitutional powers of the presidency. One prominent critic, Cass Sunstein, writes, “It has become a pervasive view within the executive branch, and to a large degree within the courts, that the original vision of the Constitution put the President on top of a pyramid, with the administration below him. This vision, set out in numerous documents by the Department of Justice's Office of Legal Counsel, my former home, is not an accurate interpretation of the Constitution. It is basically a fabrication by people of good intentions who have spoken ahistorically” (Sunstein 1993-94, 300). Similarly, it is obvious to Louis Fisher that the president does not have complete control over the executive branch. The Constitution assumes that others will share in the workload: “The Constitution does not empower the President to carry out the law. That would be an impossible assignment. It empowers the President to see that the law is faithfully carried out” (Fisher 2009-10, 591). In the separation of powers system, those executive branch agencies actually executing the laws necessarily have relationships with—and are responsible to—the other branches of government and to the laws passed by Congress, not just the president. The “Decider” Model Peter Shane argues that a different presidential model took hold during the Bush years. Shane contends that the traditional understanding of the president's role is that of the chief executive regarding himself as the “overseer” of the executive branch responsible for “general oversight” and able to “indirectly” influence his subordinates. In contrast, Bush believed more in the “decider” model, which gave him direct input into everything his subordinates might do, “without regard to any limitations Congress might try to impose on the President's power of command” (Shane 2009, 144-45). Shane concludes that the “decider” model is “profoundly undemocratic and deeply dangerous” (2009, 144). It is also contrary to law. Executive officials carry out numerous mandatory and adjudicatory duties pursuant to statutory policy. Presidents and White House aides may not intervene to change the outcomes of those decisions. Many attorneys general have advised presidents that they may not interfere with statutory duties assigned to particular executive officials (Fisher 2009-10, 576-79). Signing statements comfortably fit the “decider” model of presidential power. Scholars identify signing statements as among the current litany of unilateral presidential powers (see Cooper 2002; Moe and Howell 1999), and some see no danger in the exercise of this practice (Ostrander and Sievert 2013a, 2013b). The trouble is that some presidents have used signing statements

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to revise legislative intent or even to alter the balance of power between the political branches and have thus undermined democratic controls on executive power (Pfiffner 2008, 196; see also Korzi 2011, 197; Fisher 2006, 1).

## 1NR

### Conditionality

#### Counter interp - the negative gets

<Whatever you ran conditionally, eg. one condition alt, cp and the status quo.>

#### a. real world education – attacks will come from all sides of the aisle in the real world the aff should prepare against all attacks

#### b. neg flex – the neg is overlimited by topic literature we need as many strategic options as possible to check the 1000s of affs on the topic

#### c. topic education – this topic uniquely has literature from all three perspectives affs should have to debate all of them

#### d. checks aff side bias – the aff gets the first and last speech and infinite prep

#### e. Dispo can’t solve it destroys negative strategy by letting the aff dictate block choices, which kills aff education because they’ll only have to debate one or two things all year.

#### f. At worst reject the argument not the team – stick us with the status quo. Don’t vote on potential abuse we’re not cross-applying things from kicked flows.

### Alt

#### The way we present representations is the only way to solve – prevents a break down in rational risk calculus and production of anti-knowledge.

Kessler ‘8 [Oliver Kessler, Sociology at University of Bielefeld, “From Insecurity to Uncertainty: Risk and the Paradox of Security Politics” Alternatives 33 (2008), 211-232]

The problem of the second method is that it is very difficult to  "calculate" politically unacceptable losses. **If** the **risk** of terrorism **is defined** in traditional terms **by** probability and **potential loss,** then the focus on dramatic terror attacks leads to the marginalization of probabilities. The reason is that **even the highest degree of improb- ability becomes irrelevant as** the measure of **loss goes to infinity**.^o The mathematical calculation of the risk of terrorism thus tends to overestimate and to dramatize the danger. This has consequences beyond the actual risk assessment for the formulation and execution of "risk policies": If one factor of the risk calculation approaches infinity (e.g., if a case of nuclear terrorism is envisaged), then there is no balanced measure for antiterrorist efforts, and **risk manage- ment as a rational endeavor breaks down**. Under the historical con- dition of bipolarity, the "ultimate" threat with nuclear weapons could be balanced by a similar counterthreat, and new equilibria could be achieved, albeit on higher levels of nuclear overkill. Under the new condition of uncertainty, no such rational balancing is possible since knowledge about actors, their motives and capabilities, is largely absent. The second form of security policy that emerges when the deter- rence model collapses mirrors the "social probability" approach. It represents a logic of catastrophe. In contrast to risk management framed in line with logical probability theory, the logic of catastro- phe does not attempt to provide means of absorbing uncertainty. Rather, it takes uncertainty as constitutive for the logic itself; **uncer- tainty is a** crucial **precondition for catastrophies.** In particular, cata- strophes happen at once, **without a warning**, but with major impli- cations for the world polity. In this category, **we find** the impact of **meteorites.** Mars attacks, the **tsunami in South East Asia, and 9/11.** To conceive of terrorism as catastrophe has consequences for the formulation of an adequate security policy. Since catastrophes hap- pen irrespectively of human activity or inactivity, no political action could possibly prevent them. Of course, there are precautions that can be taken, but the framing of terrorist attack as a catastrophe points to spatial and temporal characteristics that are beyond "ratio- nality." Thus, political decision makers are exempted from the responsibility to provide security—as long as they at least try to pre- empt an attack. Interestingly enough, 9/11 was framed as catastro- phe in various commissions dealing with the question of who was responsible and whether it could have been prevented. This makes clear that under the condition of uncertainty, there are no objective criteria that could serve as an anchor for measur- ing dangers and assessing the quality of political responses. For ex- ample, as much as one might object to certain measures by the US administration, it is almost impossible to "measure" the success of countermeasures. Of course, there might be a subjective assessment of specific shortcomings or failures, but there is no "common" cur- rency to evaluate them. As a consequence, the framework of the security dilemma fails to capture the basic uncertainties. Pushing the door open for the security paradox, the main prob- lem of security analysis then becomes the question how to integrate dangers in risk assessments and security policies about which simply nothing is known. In the mid 1990s, a Rand study entitled "New Challenges for Defense Planning" addressed this issue arguing that "most striking is the fact that we do not even know who or what will constitute the most serious future threat, "^i In order to cope with this challenge it would be essential, another Rand researcher wrote, to break free from the "tyranny" of plausible scenario planning. The decisive step would be to create "discontinuous scenarios ... in which there is no plausible audit trail or storyline from current events"52 These nonstandard scenarios were later called "wild cards" and became important in the current US strategic discourse. They justified the transformation from a threat-based toward a capability- based defense planning strategy.53 The problem with this kind of risk assessment is, however, that **even** the most **absurd scenarios** can **gain plausibility. By** construct- ing **a chain** of potentialities**, improbable events are linked** and brought into the realm of the possible, if not even the probable. **"Although** the **likelihood of the scenario dwindles with each step, the** residual **impression is** one of **plausibility**. "54 This so-called Oth- ello effect has been effective in the dawn ofthe recent war in Iraq**.** **The connection between Saddam** Hussein **and Al Qaeda** that the US government tried to prove was disputed from the very begin- ning. False evidence **was** again and again **presented and refuted, but this did not prevent** the administration from presenting as the main rationale for war **the improbable yet possible connection** between Iraq and the terrorist network and the improbable yet possible proliferation of an improbable yet possible nuclear weapon into the hands of Bin Laden. As Donald **Rumsfeld** famously **said: "Absence of evidence is not evidence of absence."** This sentence indicates that under the condition

### 2NC/1NR – Ex Ante Requirements Turn Aff XT

#### Ex ante Congressional authorization turns the aff – that’s 1NC **Nzelibe. The president will select into more high risks conflict since he figures that Congressional authorization will check. However, Congress will defer to the president because he’s assumed to be more knowledgeable on the issue. Takes out the aff.**

#### Increasing procedural constraints provides political insurance to the President – that incentivizes risk-taking and moral hazard – makes wars more frequent and less careful

Nzelibe 7 [Jide Nzelibe (Asst. Professor of Law @ Northwestern); “Are Congressionally Authorized Wars Perverse?”; *Stanford Law Review*: Vol. 59, 2007; <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=952490>]

To recapitulate, **the conventional wisdom that prior congressional authorization for the use of force will lead to less dangerous wars by the United States** has not been shown, and there is deductive **logic and** some contrary **evidence** that **suggest**s **that congressional authorization will actually** do the opposite. In other words, **congressional authorization to use force, ostensibly intended as an institutional constraint on the executive branch’s discretion, is** more likely to act as a form of political insurance which protects the President against thepolitical fallout from high risk wars. But like all insurance systems, **congressional authorization is prone to the** pathology of moral hazard **because it is likely to** encourage excessive risk-taking by the insured. More significantly, **the moral hazard problem** created by congressional authorization **is likely to be acute because the ex ante costs incurred** by the President in seeking congressional authorization **are likely to be** insignificant when **compared to the political insurance benefits reaped by the President**. Critics of the model might object by pointing out that increasing **procedural barriers** on the President’s foreign policy discretion should limit the President’s military initiatives, even if it only does so marginally. But this objection **fail**s **to appreciate that bifurcating the burden of political accountability when one party has almost complete control of the crisis escalation agenda can have** unintended consequences**.** In other words, **congressional authorization** for the use of force **means that** no single political actor is completely responsible for the political fallout **from imprudent or unpopular wars even though one actor is very much responsible for framing the agenda for going to war. By making the war initiation process** less of a high-stakes decision **than it would be otherwise, congressional authorization can influence the President’s calculus in a direction towards** more high-risk and unpredictable wars.

#### Perception of the plan makes presidential adventurism uniquely worse than the squo – accelerates risky and unpredictable warmaking – that’s true EVEN IF the President wouldn’t actually survive the political fallout

Nzelibe 7 [Jide Nzelibe (Asst. Professor of Law @ Northwestern); “Are Congressionally Authorized Wars Perverse?”; *Stanford Law Review*: Vol. 59, 2007; <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=952490>]

The Mechanics of Moral Hazard in the War Powers Context

Like all insurance schemes, **congressional authorization is subject to** the potential risk of moral hazard.58 In this picture, **one** significant **consequence of providing political insurance to the President is that he is likely to be** less careful about the kinds of wars he chooses, provided that he knows that he will share any down-side risks with other political actors.Thus **an institutional framework** ostensibly **designed to create stumbling blocks in the war-making decision process might very well have the unintended consequence of** increasing the amount of risky wars **entered into by the U**nited **S**tates. Of course, **if Congress only authorized wars in which it independently determined that the risks and objectives were worth the military and political costs, it might reduce some of the moral hazard effects**. **But** there is very little empirical evidence that **suggests that Congress engages in any kind of meaningful oversight**

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**when it approves the President’s request to use force.** One way for Congress to reduce the moral hazard problem is to distribute some of the risks of military failure back to the President. In practice, this is what normally happens whenever the President seeks congressional authorization for the use of force. As discussed earlier in Part II, when members of Congress authorize the President’s military initiatives, they do not reallocate all the political risks of going to war from the President to themselves.59 Indeed, congressional authorization operates more like a severe co-insurance scheme in which the bulk of the political risk of military failure still remains with the insured—the President. However, this approach does not completely eliminate the moral hazard effect. **So long as congressional authorization offers the President** some prospect of protection **from punishment by a disappointed domestic audience, it creates some moral hazard** even though it does not guarantee that the President will survive the political fallout **from a failed military engagement.**