# 1NC

### 1

#### Targeted killing’s vital to counterterrorism---disrupts leadership and makes carrying out attacks impossible

Byman 2013

(Daniel L., Research Director of Saban Center for Middle East Policy, “Why Drones Work: The Case for Washington's Weapon of Choice”, Foreign Affairs, July/August 2013, <http://www.brookings.edu/research/articles/2013/06/17-drones-obama-weapon-choice-us-counterterrorism-byman>)

The Obama administration relies on drones for one simple reason: they work. According to data compiled by the New America Foundation, since Obama has been in the White House, U.S. drones have killed an estimated 3,300 al Qaeda, Taliban, and other jihadist operatives in Pakistan and Yemen. That number includes over 50 senior leaders of al Qaeda and the Taliban—top figures who are not easily replaced. In 2010, Osama bin Laden warned his chief aide, Atiyah Abd al-Rahman, who was later killed by a drone strike in the Waziristan region of Pakistan in 2011, that when experienced leaders are eliminated, the result is “the rise of lower leaders who are not as experienced as the former leaders” and who are prone to errors and miscalculations. And drones also hurt terrorist organizations when they eliminate operatives who are lower down on the food chain but who boast special skills: passport forgers, bomb makers, recruiters, and fundraisers.¶ Drones have also undercut terrorists’ ability to communicate and to train new recruits. In order to avoid attracting drones, al Qaeda and Taliban operatives try to avoid using electronic devices or gathering in large numbers. A tip sheet found among jihadists in Mali advised militants to “maintain complete silence of all wireless contacts” and “avoid gathering in open areas.” Leaders, however, cannot give orders when they are incommunicado, and training on a large scale is nearly impossible when a drone strike could wipe out an entire group of new recruits. Drones have turned al Qaeda’s command and training structures into a liability, forcing the group to choose between having no leaders and risking dead leaders.

#### Constraining targeted killing’s role in the war on terror causes extinction

Beres 11

Louis Rene Beres 11, Professor of Political Science and International Law at Purdue, 2011, “After Osama bin Laden: Assassination, Terrorism, War, and International Law,” Case Western Reserve Journal of International Law, 44 Case W. Res. J. Int'l L. 93

Even after the U.S. assassination of Osama bin Laden, we are still left with the problem of demonstrating that assassination can be construed, at least under certain very limited circumstances, as an appropriate instance of anticipatory self-defense. Arguably, the enhanced permissibility of anticipatory self-defense that follows generally from the growing destructiveness of current weapons technologies in rogue hands may be paralleled by the enhanced permissibility of assassination as a particular strategy of preemption. Indeed, where assassination as anticipatory self-defense may actually prevent a nuclear or other highly destructive form of warfare, reasonableness dictates that it could represent distinctly, even especially, law-enforcing behavior.

For this to be the case, a number of particular conditions would need to be satisfied. First, the assassination itself would have to be limited to the greatest extent possible to those authoritative persons in the prospective attacking state. Second, the assassination would have to conform to all of the settled rules of warfare as they concern discrimination, proportionality, and military necessity. Third, the assassination would need to follow intelligence assessments that point, beyond a reasonable doubt, to preparations for unconventional or other forms of highly destructive warfare within the intended victim's state. Fourth, the assassination would need to be founded upon carefully calculated judgments that it would, in fact, prevent the intended aggression, and that it would do so with substantially less harm [\*114] to civilian populations than would all of the alternative forms of anticipatory self-defense.

Such an argument may appear manipulative and dangerous; permitting states to engage in what is normally illegal behavior under the convenient pretext of anticipatory self-defense. Yet, any blanket prohibition of assassination under international law could produce even greater harm, compelling threatened states to resort to large-scale warfare that could otherwise be avoided. Although it would surely be the best of all possible worlds if international legal norms could always be upheld without resort to assassination as anticipatory self-defense, the persisting dynamics of a decentralized system of international law may sometimes still require extraordinary methods of law-enforcement. n71¶ Let us suppose, for example, that a particular state determines that another state is planning a nuclear or chemical surprise attack upon its population centers. We may suppose, also, that carefully constructed intelligence assessments reveal that the assassination of selected key figures (or, perhaps, just one leadership figure) could prevent such an attack altogether. Balancing the expected harms of the principal alternative courses of action (assassination/no surprise attack v. no assassination/surprise attack), the selection of preemptive assassination could prove reasonable, life-saving, and cost-effective.¶ What of another, more common form of anticipatory self-defense? Might a conventional military strike against the prospective attacker's nuclear, biological or chemical weapons launchers and/or storage sites prove even more reasonable and cost-effective? A persuasive answer inevitably depends upon the particular tactical and strategic circumstances of the moment, and on the precise way in which these particular circumstances are configured.¶ But it is entirely conceivable that conventional military forms of preemption would generate tangibly greater harms than assassination, and possibly with no greater defensive benefit. This suggests that assassination should not be dismissed out of hand in all circumstances as a permissible form of anticipatory self-defense under international law. [\*115] ¶ What of those circumstances in which the threat to particular states would not involve higher-order (WMD) n72 military attacks? Could assassination also represent a permissible form of anticipatory self-defense under these circumstances? Subject to the above-stated conditions, the answer might still be "yes." The threat of chemical, biological or nuclear attack may surely enhance the legality of assassination as preemption, but it is by no means an essential precondition. A conventional military attack might still, after all, be enormously, even existentially, destructive. n73 Moreover, it could be followed, in certain circumstances, by unconventional attacks.

#### Nuclear terrorism is feasible - high risk of theft and attacks escalate

Dvorkin 12

Vladimir Z. Dvorkin 12 Major General (retired), doctor of technical sciences, professor, and senior fellow at the Center for International Security of the Institute of World Economy and International Relations of the Russian Academy of Sciences. The Center participates in the working group of the U.S.-Russia Initiative to Prevent Nuclear Terrorism, 9/21/12, "What Can Destroy Strategic Stability: Nuclear Terrorism is a Real Threat," belfercenter.ksg.harvard.edu/publication/22333/what\_can\_destroy\_strategic\_stability.html

Hundreds of scientific papers and reports have been published on nuclear terrorism. International conferences have been held on this threat with participation of Russian organizations, including IMEMO and the Institute of U.S. and Canadian Studies. Recommendations on how to combat the threat have been issued by the International Luxembourg Forum on Preventing Nuclear Catastrophe, Pugwash Conferences on Science and World Affairs, Russian-American Elbe Group, and other organizations. The UN General Assembly adopted the International Convention for the Suppression of Acts of Nuclear Terrorism in 2005 and cooperation among intelligence services of leading states in this sphere is developing.¶ At the same time, **these efforts fall short for a number of reasons, partly because various acts of nuclear terrorism are possible. Dispersal of radioactive material by detonation of conventional explosives (“dirty bombs”) is a method that is most accessible for terrorists. With the wide spread of radioactive sources, raw materials for such attacks have become much more accessible than weapons-useable nuclear material or nuclear weapons.** The use of **“**dirty bombs**”** will not cause many immediate casualties, but it **will result into long-term radioactive contamination, contributing to the spread of** panic and socio-economic destabilization**.**¶ Severe **consequences can be caused by sabotaging nuclear power plants, research reactors, and radioactive materials storage facilities. Large cities are especially vulnerable to such attacks. A large city may host dozens of research reactors with a nuclear power plant or a couple of spent nuclear fuel storage facilities and dozens of large radioactive materials storage facilities located nearby.** The past few years have seen significant efforts made to enhance organizational and physical aspects of security at facilities, especially at nuclear power plants. **Efforts have also been made to improve security culture. But these efforts do not preclude the possibility that** well-trained terrorists may be able to penetrate nuclear facilities**.**¶ **Some estimates show that sabotage of a research reactor in a metropolis may expose hundreds of thousands to high doses of radiation. A formidable part of the city would become uninhabitable for a long time**.¶ Of all the scenarios, it **is building an improvised nuclear device by terrorists that poses the maximum risk. There are no engineering problems that cannot be solved if terrorists decide to build a simple “gun-type” nuclear device.** **Information on the design of such devices, as well as implosion-type devices, is available in the public domain**. It is the acquisition of weapons-grade uranium that presents the sole serious obstacle. Despite numerous preventive measures taken, we cannot rule out the possibility that **such materials can be bought on the black market.** Theft of weapons-grade uranium is also possible**. Research reactor fuel is considered to be particularly vulnerable to theft, as it is scattered at sites in dozens of countries. There are about 100 research reactors in the world that run on weapons-grade uranium fuel, according to the International Atomic Energy Agency (IAEA).**¶ **A terrorist “gun-type” uranium bomb can have a yield of least 10-15 kt, which is** comparable to the yield of the bomb dropped on Hiroshima**.** **The explosion of such a bomb in a modern metropolis can kill and wound hundreds of thousands and cause serious economic damage. There will also be long-term sociopsychological and political consequences**.¶ The vast majority of states have introduced unprecedented security and surveillance measures at transportation and other large-scale public facilities after the terrorist attacks in the United States, Great Britain, Italy, and other countries. These measures have proved burdensome for the countries’ populations, but the public has accepted them as necessary. **A nuclear terrorist attack will make the public accept further measures meant to enhance control even if these measures significantly restrict the democratic liberties they are accustomed to. Authoritarian states could be expected to adopt even more restrictive measures**.¶ If a nuclear terrorist act occurs, **nations will delegate tens of thousands of their secret services’ best personnel to investigate and attribute the attack. Radical Islamist groups are among those capable of such an act.** We can imagine what would happen if they do so, **given the anti-Muslim sentiments and resentment that conventional terrorist attacks by Islamists have generated in developed democratic countries. Mass deportation of the non-indigenous population and severe sanctions would follow such an attack in what will cause violent protests in the Muslim world. Series of armed clashing terrorist attacks may follow. The prediction that Samuel Huntington has made in his book “**The Clash of Civilizations **and the Remaking of World Order” may come true**. Huntington’s book clearly demonstrates that it is not Islamic extremists that are the cause of the Western world’s problems. Rather there is a deep, intractable conflict that is rooted in the fault lines that run between Islam and Christianity. **This is especially dangerous for Russia because these fault lines run across its territory.** To sum it up, the political leadership of Russia has every reason to revise its list of factors that could undermine strategic stability.  BMD does not deserve to be even last on that list because its effectiveness in repelling massive missile strikes will be extremely low. BMD systems can prove useful only if deployed to defend against launches of individual ballistic missiles or groups of such missiles. Prioritization of other destabilizing factors—that could affect global and regional stability—merits a separate study or studies. But even without them I can conclude that nuclear terrorism should be placed on top of the list. The threat of nuclear terrorism is real, and a successful nuclear terrorist attack would lead to a radical transformation of the global order.  All of the threats on the revised list must become a subject of thorough studies by experts. States need to work hard to forge a common understanding of these threats and develop a strategy to combat them.

### 2

#### Text: The Executive branch should publicly articulate its legal rationale for its targeted killing policy, including the process and safeguards in place for target selection.

#### CP resolves drone legitimacy and resentment

Daskal 13

Jennifer Daskal, Fellow and Adjunct Professor, Georgetown Center on National Security and the Law, Georgetown University Law Center, April 2013, ARTICLE: THE GEOGRAPHY OF THE BATTLEFIELD: A FRAMEWORK FOR DETENTION AND TARGETING OUTSIDE THE "HOT" CONFLICT ZONE, 161 U. Pa. L. Rev. 1165

4. Procedural Requirements¶ Currently, officials in the executive branch carry out all such ex ante review of out-of-battlefield targeting and detention decisions, reportedly with the involvement of the President, but without any binding and publicly articulated standards governing the exercise of these authorities. n163 All ex post review of targeting is also done internally within the executive branch. There is no public accounting, or even acknowledgment, of most strikes, their success and error rates, or the extent of any collateral damage. Whereas the Department of Defense provides solatia or condolence payments to Afghan civilians who are killed or injured as a result of military actions in Afghanistan (and formerly did so in Iraq), there is no equivalent effort in areas outside the active conflict zone. n164¶ Meanwhile, the degree of ex post review of detention decisions depends on the location of detention as opposed to the location of capture. Thus, [\*1219] Guantanamo detainees are entitled to habeas review, but detainees held in Afghanistan are not, even if they were captured far away and brought to Afghanistan to be detained. n165¶ Enhanced ex ante and ex post procedural protections for both detention and targeting, coupled with transparency as to the standards and processes employed, serve several important functions: they can minimize error and abuse by creating time for advance reflection, correct erroneous deprivations of liberty, create endogenous incentives to avoid mistake or abuse, and increase the legitimacy of state action.¶ a. Ex Ante Procedures¶ Three key considerations should guide the development of ex ante procedures. First, any procedural requirements must reasonably respond to the need for secrecy in certain operations. Secrecy concerns cannot, for example, justify the lack of transparency as to the substantive targeting standards being employed. There is, however, a legitimate need for the state to protect its sources and methods and to maintain an element of surprise in an attack or capture operation. Second, contrary to oft-repeated rhetoric about the ticking time bomb, few, if any, capture or kill operations outside a zone of active conflict occur in situations of true exigency. n166 Rather, there is often the time and need for advance planning. In fact, advance planning is often necessary to minimize damage to one's own troops and nearby civilians. n167 Third, the procedures and standards employed must be transparent and sufficiently credible to achieve the desired legitimacy gains.¶ These considerations suggest the value of an independent, formalized, ex ante review system. Possible models include the Foreign Intelligence [\*1220] Surveillance Court (FISC), n168 or a FISC-like entity composed of military and intelligence officials and military lawyers, in the mode of an executive branch review board. n169¶ Created by the Foreign Intelligence Surveillance Act (FISA) in 1978, n170 the FISC grants ex parte orders for electronic surveillance and physical searches, among other actions, based on a finding that a "significant purpose" of the surveillance is to collect "foreign intelligence information." n171 The Attorney General can grant emergency authorizations without court approval, subject to a requirement that he notify the court of the emergency authorization and seek subsequent judicial authorization within seven days. n172 The FISC also approves procedures related to the use and dissemination of collected information. By statute, heightened restrictions apply to the use and dissemination of information concerning U.S. persons. n173 Notably, the process has been extraordinarily successful in protecting extremely sensitive sources and methods. To date, there has never been an unauthorized disclosure of an application to or order from the FISC court.¶ An ex parte review system for targeting and detention outside zones of active hostility could operate in a similar way. Judges or the review board would approve selected targets and general procedures and standards, while still giving operators wide rein to implement the orders according to the approved standards. Specifically, the court or review board would determine whether the targets meet the substantive requirements and would [\*1221] evaluate the overarching procedures for making least harmful means-determinations, but would leave target identification and time-sensitive decisionmaking to the operators. n174¶ Moreover, there should be a mechanism for emergency authorizations at the behest of the Secretary of Defense or the Director of National Intelligence. Such a mechanism already exists for electronic surveillance conducted pursuant to FISA. n175 These authorizations would respond to situations in which there is reason to believe that the targeted individual poses an imminent, specific threat, and in which there is insufficient time to seek and obtain approval by a court or review panel as will likely be the case in instances of true imminence justifying the targeting of persons who do not meet the standards applicable to operational leaders. As required under FISA, the reviewing court or executive branch review board should be notified that such an emergency authorization has been issued; it should be time-limited; and the operational decisionmakers should have to seek court or review board approval (or review, if the strike has already taken place) as soon as practicable but at most within seven days. n176¶ Finally, and critically, given the stakes in any application namely, the deprivation of life someone should be appointed to represent the potential target's interests and put together the most compelling case that the individual is not who he is assumed to be or does not meet the targeting criteria.¶ The objections to such a proposal are many. In the context of proposed courts to review the targeting of U.S. citizens, for example, some have argued that such review would serve merely to institutionalize, legitimize, and expand the use of targeted drone strikes. n177 But this ignores the reality of their continued use and expansion and imagines a world in which targeted [\*1222] killings of operational leaders of an enemy organization outside a zone of active conflict is categorically prohibited (an approach I reject n178). If states are going to use this extraordinary power (and they will), there ought to be a clear and transparent set of applicable standards and mechanisms in place to ensure thorough and careful review of targeted-killing decisions. The formalization of review procedures along with clear, binding standards will help to avoid ad hoc decisionmaking and will ensure consistency across administrations and time.¶ Some also condemn the ex parte nature of such reviews. n179 But again, this critique fails to consider the likely alternative: an equally secret process in which targeting decisions are made without any formalized or institutionalized review process and no clarity as to the standards being employed. Institutionalizing a court or review board will not solve the secrecy issue, but it will lead to enhanced scrutiny of decisionmaking, particularly if a quasi-adversarial model is adopted, in which an official is obligated to act as advocate for the potential target.¶ That said, there is a reasonable fear that any such court or review board will simply defer. In this vein, FISC's high approval rate is cited as evidence that reviewing courts or review boards will do little more than rubber-stamp the Executive's targeting decisions. n180 But the high approval rates only tell part of the story. In many cases, the mere requirement of justifying an application before a court or other independent review board can serve as an internal check, creating endogenous incentives to comply with the statutory requirements and limit the breadth of executive action. n181 Even if this system does little more than increase the attention paid to the stated requirements and expand the circle of persons reviewing the factual basis for the application, those features in and of themselves can lead to increased reflection and restraint.¶ Additional accountability mechanisms, such as civil or criminal sanctions in the event of material misrepresentations or omissions, the granting of far-reaching authority to the relevant Inspectors General, and meaningful ex post review by Article III courts, n182 are also needed to help further minimize abuse.¶ Conversely, some object to the use of courts or court-like review as stymying executive power in wartime, and interfering with the President's Article II powers. n183 According to this view, it is dangerous and potentially unconstitutional to require the President's wartime targeting decisions to be subject to additional reviews. These concerns, however, can be dealt with through emergency authorization mechanisms, the possibility of a presidential override, and design details that protect against ex ante review of operational decisionmaking. The adoption of an Article II review board, rather than an Article III-FISC model, further addresses some of the constitutional concerns.¶ Some also have warned that there may be no "case or controversy" for an Article III, FISC-like court to review, further suggesting a preference for an Article II review board. n184 That said, similar concerns have been raised with respect to FISA and rejected. n185 Drawing heavily on an analogy to courts' roles in issuing ordinary warrants, the Justice Department's Office of Legal Counsel concluded at the time of enactment that a case and controversy existed, even though the FISA applications are made ex parte. n186 [\*1224] Here, the judges would be issuing a warrant to kill rather than surveil. While this is significant, it should not fundamentally alter the legal analysis. n187 As the Supreme Court has ruled, killing is a type of seizure. n188 The judges would be issuing a warrant for the most extreme type of seizure. n189¶ It is also important to emphasize that a reviewing court or review board would not be "selecting" targets, but determining whether the targets chosen by executive branch officials met substantive requirements much as courts do all the time when applying the law to the facts. Press accounts indicate that the United States maintains lists of persons subject to capture or kill operations lists created in advance of specific targeting operations and reportedly subject to significant internal deliberation, including by the President himself. n190 A court or review board could be incorporated into the existing ex ante decisionmaking process in a manner that would avoid interference with the conduct of specific operations reviewing the target lists but leaving the operational details to the operators. As suggested above, emergency approval mechanisms could and should be available to deal with exceptional cases where ex ante approval is not possible.¶ Additional details will need to be addressed, including the temporal limits of the court's or review board's authorizations. For some high-level operatives, inclusion on a target list would presumably be valid for some set period of [\*1225] time, subject to specific renewal requirements. Authorizations based on a specific, imminent threat, by comparison, would need to be strictly time-limited, and tailored to the specifics of the threat, consistent with what courts regularly do when they issue warrants.¶ In the absence of such a system, the President ought to, at a minimum, issue an executive order establishing a transparent set of standards and procedures for identifying targets of lethal killing and detention operations outside a zone of active hostilities. n192 To enhance legitimacy, the procedures should include target list reviews and disposition plans by the top official in each of the agencies with a stake in the outcome the Secretary of Defense, the Director of the CIA, the Secretary of State, the Director of Homeland Security, and the Director of National Intelligence, with either the Secretary of Defense, Director of National Intelligence, or President himself, responsible for final sign-off. n193 In all cases, decisions should be unanimous, or, in the absence of consensus, elevated to the President of the United States. n194 Additional details will need to be worked out, including critical questions about the standard of proof that applies. Given the stakes, a clear and convincing evidentiary standard is warranted. n195¶ While this proposal is obviously geared toward the United States, the same principles should apply for all states engaged in targeting operations. n196 States would ideally subject such determinations to independent review or, alternatively, clearly articulate the standards and procedures for their decisionmaking, thus enhancing accountability.¶ b. Ex Post Review¶ For targeted-killing operations, ex post reviews serve only limited purposes. They obviously cannot restore the target's life. But retrospective review either by a FISC-like court or review board can serve to identify errors or overreaching and thereby help avoid future mistakes. This can, and ideally would, be supplemented by the adoption of an additional Article III damages mechanism. n197 At a minimum, the relevant Inspectors General should engage in regular and extensive reviews of targeted-killing operations. Such post hoc analysis helps to set standards and controls that then get incorporated into ex ante decisionmaking. In fact, post hoc review can often serve as a more meaningful and often more searching inquiry into the legitimacy of targeting decisions. Even the mere knowledge that an ex post review will occur can help to protect against rash ex ante decisionmaking, thereby providing a self-correcting mechanism.¶ Ex post review should also be accompanied by the establishment of a solatia and condolence payment system for activities that occur outside the active zone of hostilities. Extension of such a system beyond Afghanistan and Iraq would help mitigate resentment caused by civilian deaths or injuries and would promote better accounting of the civilian costs of targeting operations. n198

### 3

#### Interpretation- the aff cannot claim advantages not tied to the implementation of the plan

#### Key to predictable limits- infinite number of benefits the aff could claim to their speech act our discourse- impossible to get offense against.

#### Key to education- can’t clash with portions off the aff that aren’t predicated off of affirming the resolution- clash is key to two way education

#### Voting issue for fairness and education

#### Debate has value outside of \_\_\_\_\_ — all of their framework arguments presume they win their impact framing. Simulation should involve contestation of competing policy options

Eijkman 12

The role of simulations in the authentic learning for national security policy development: Implications for Practice / Dr. Henk Simon Eijkman. [electronic resource] <http://nsc.anu.edu.au/test/documents/Sims_in_authentic_learning_report.pdf>. Dr Henk Eijkman is currently an independent consultant as well as visiting fellow at the University of New South Wales at the Australian Defence Force Academy and is Visiting Professor of Academic Development, Annasaheb Dange College of Engineering and Technology in India. As a sociologist he developed an active interest in tertiary learning and teaching with a focus on socially inclusive innovation and culture change. He has taught at various institutions in the social sciences and his work as an adult learning specialist has taken him to South Africa, Malaysia, Palestine, and India. He publishes widely in international journals, serves on Conference Committees and editorial boards of edited books and international journal

Policy simulations stimulate Creativity Participation in policy games has proved to be a highly effective way of developing new combinations of experience and creativity, which is precisely what innovation requires (Geurts et al. 2007: 548). Gaming, whether in analog or digital mode, has the power to stimulate creativity, and is one of the most engaging and liberating ways for making group work productive, challenging and enjoyable. Geurts et al. (2007) cite one instance where, in a National Health Care policy change environment, ‘the many parties involved accepted the invitation to participate in what was a revolutionary and politically very sensitive experiment precisely because it was a game’ (Geurts et al. 2007: 547). Data from other policy simulations also indicate the uncovering of issues of which participants were not aware, the emergence of new ideas not anticipated, and a perception that policy simulations are also an enjoyable way to formulate strategy (Geurts et al. 2007). Gaming puts the players in an ‘experiential learning’ situation, where they discover a concrete, realistic and complex initial situation, and the gaming process of going through multiple learning cycles helps them work through the situation as it unfolds. Policy gaming stimulates ‘learning how to learn’, as in a game, and learning by doing alternates with reflection and discussion. The progression through learning cycles can also be much faster than in real-life (Geurts et al. 2007: 548). The bottom line is that problem solving in policy development processes requires creative experimentation. This cannot be primarily taught via ‘camp-fire’ story telling learning mode but demands hands-on ‘veld learning’ that allow for safe creative and productive experimentation. This is exactly what good policy simulations provide (De Geus, 1997; Ringland, 2006). In simulations participants cannot view issues solely from either their own perspective or that of one dominant stakeholder (Geurts et al. 2007). Policy simulations enable the seeking of Consensus Games are popular because historically people seek and enjoy the tension of competition, positive rivalry and the procedural justice of impartiality in safe and regulated environments. As in games, simulations temporarily remove the participants from their daily routines, political pressures, and the restrictions of real-life protocols. In consensus building, participants engage in extensive debate and need to act on a shared set of meanings and beliefs to guide the policy process in the desired direction

### 4

#### CP Text: The United States federal government should substantially restrict the power of the United States’ war powers on targeted killing.

#### The government has power over us but not authority. 1AC language assumes that authority is objective and neutral, which imbues power with social legitimacy. This mobilizes mass atrocities and oppression

Hasnas 95 (John, Assistant Professor of Business Ethics, Georgetown University and Senior Research Fellow, Kennedy Institute of Ethics, Wisconsin Law Review, “The Myth of the Rule of Law,” January/February, Wis. L. Rev. 199, Lexis-Nexis Universe)

This raises an interesting question. If it has been known for 100 years that the law does not consist of a body of determinate rules, why is the belief that it does still so widespread? If four generations of jurisprudential scholars have shown that the rule of law is a myth, why does the concept still command such fervent commitment? The answer is implicit in the question itself, for the question recognizes that the rule of law is a myth and like all myths, it is designed to serve an emotive, rather than cognitive, function. The purpose of a myth is not to persuade one's reason, but to enlist one's emotions in support of an idea. And this is precisely the case for the myth of the rule of law; its purpose is to enlist the emotions of the public in support of society's political power structure. People are more willing to support the exercise of authority over themselves when they believe it to be an objective, neutral feature of the natural world. This was the idea behind the concept of the divine right of kings. By making the king appear to be an integral part of God's plan for the world rather than an ordinary human being dominating his fellows by brute force, the public could be more easily persuaded to bow to his authority. However, when the doctrine of divine right became discredited, a replacement was needed to ensure that the public did not view political authority as merely the exercise of naked power. That replacement is the concept of the rule of law. People who believe they live under "a government of laws and not people" tend to view their nation's legal system as objective and impartial. They tend to see the rules under which they must live not as expressions of human will, but as embodiments of neutral principles of justice, i.e., as natural features of the social world. Once they believe that they are being commanded by an impersonal law rather than other human beings, they view their obedience to political authority as a public-spirited acceptance of the requirements of social life rather than mere acquiescence to superior power. In this way, the concept of the rule of law functions much like the use of the passive voice by the politician who describes a delict on his or her part with the assertion "mistakes were made." It allows people to hide the agency of power behind a facade of words; to believe that it is the law which compels their compliance, not self-aggrandizing politicians, or highly capitalized special interests, or wealthy white Anglo-Saxon Protestant males, or \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (fill in your favorite culprit). But the myth of the rule of law does more than render the people submissive to state authority; it also turns them into the state's accomplices in the exercise of its power. For people who would ordinarily consider it a great evil to deprive individuals of their rights or oppress politically powerless minority groups will respond with patriotic fervor when these same actions are described as upholding the rule of law. Consider the situation in India toward the end of British colonial rule. At that time, the followers of Mohandas Gandhi engaged in nonviolent civil disobedience by manufacturing salt for their own use in contravention of the British monopoly on such manufacture. The British administration and army responded with mass imprisonments and shocking brutality. It is difficult to understand this behavior on the part of the highly moralistic, ever-so-civilized British unless one keeps in mind that they were able to view their activities not as violently repressing the indigenous population, but as upholding the rule of law. The same is true of the violence directed against the nonviolent civil rights protestors in the American South during the civil rights movement. Although much of the white population of the southern states held racist beliefs, one cannot account for the overwhelming support given to the violent repression of these protests on the assumption that the vast majority of the white Southerners were sadistic racists devoid of moral sensibilities. The true explanation is that most of these people were able to view themselves not as perpetuating racial oppression and injustice, but as upholding the rule of law against criminals and outside agitators. Similarly, since despite the . 60s rhetoric, all police officers are not "fascist pigs," some other explanation is needed for their willingness to participate in the "police riot" at the 1968 Democratic convention, or the campaign of illegal arrests and civil rights violations against those demonstrating in Washington against President Nixon's policies in Vietnam, or the effort to infiltrate and destroy the sanctuary movement that sheltered refugees from Salvadorian death squads during the Reagan era or, for that matter, the attack on and destruction of the Branch Davidian compound in Waco. It is only when these officers have fully bought into the myth that "we are a government of laws and not people," when they truly believe that their actions are commanded by some impersonal body of just rules, that they can fail to see that they are the agency used by those in power to oppress others. The reason why the myth of the rule of law has survived for 100 years despite the knowledge of its falsity is that it is too valuable a tool to relinquish. The myth of impersonal government is simply the most effective means of social control available to the state.

### Solvency

#### No political will to implement the plan

Druck 12

Druck, JD – Cornell Law, ‘12¶ (Judah, 98 Cornell L. Rev. 209)

There are obvious similarities between the causes and effects of the public scrutiny associated with the larger wars discussed above. In each situation, the United States was faced with some, or even all, of the traditional costs associated with war: a draft, an increasingly large military industry, logistical sacrifices (such as rationing and other noncombat expenses), and significant military casualties. n114 Americans looking to keep the United States out of foreign affairs ob-viously had a great deal on the line, which provided sufficient incentive to scrutinize military policy. In the face of these potentially colossal harms, the public was willing to assert a significant voice, which in turn increased the willingness of politicians to challenge and subsequently shift presidential policy. As a result, public scrutiny and activism placed a President under constant scrutiny in one war, delayed U.S. intervention in another, and even helped end two wars entire-ly. Thus, we may extract a general principle from these events: when faced with the prospect of a war requiring heavy domestic sacrifices, and absent an incredibly compelling reason to engage in such a war (as seen in World War II, for example), n115 the public is properly incentivized to emerge and exert social (and, consequently, political) pressure in order to engage and shift foreign policy. However, as we will see, the converse is true as well. B. The Introduction of Technology-Driven Warfare and Shifting Wartime Doctrines The recent actions in Libya illustrate the culmination of a shift toward a new era of warfare, one that upsets the system of social and political checks on presidential military action. Contrary to the series of larger conflicts fought in the twen-tieth century, this new era has ushered in a system of war devoid of some of the fundamental aspects of war, including the traditional costs discussed above. Specifically, through the advent of military technology, especially in the area of robotics, modern-day hostilities no longer require domestic sacrifices, thereby concealing the burden of war from main-stream consciousness. n116 By using fewer troops and introducing drones and other [\*228] forms of mechanized warfare into hostile areas more frequently, n117 an increased number of recent conflicts have managed to avoid many domestic casualties, economic damages, and drafts. n118 In a way, less is on the line when drones, rather than people, take fire from enemy combatants, and this reality displaces many hindrances and considerations when deciding whether to use drones in the first place. n119 This move toward a limited form of warfare has been termed the "Obama Doctrine," which "emphasizes air power and surgical strikes, rather than boots on the ground." n120 Under this military framework, as indicated by the recent use of drones in the Middle East, the traditional harms associated with war might become increasingly obsolete as technolo-gy replaces the need for soldiers. Indeed, given the increased level of firepower attached to drones, we can imagine a situation where large-scale military engagements are fought without any American soldiers being put in harm's way, without Americans having to ration their food purchases, and without teenagers worrying about being drafted. n121 For example, "with no oxygen-and sleep-needing human on board, Predators and other [unmanned aerial vehicles] can watch over a potential target for 24 hours or more - then attack when opportunity knocks." n122 Thus, if the recent actions in Libya are any indication of what the future will look like, we can predict a major shift in the way the United States carries out wars . n123 [\*229] C. The Effects of Technology-Driven Warfare on Politics and Social Movements The practical effects of this move toward a technology-driven, and therefore limited, proxy style of warfare are mixed. On the one hand, the removal of American soldiers from harm's way is a clear benefit, n124 as is the reduced harm to the American public in general. For that, we should be thankful. But there is another effect that is less easy to identify: pub-lic apathy. By increasing the use of robotics and decreasing the probability of harm to American soldiers, modern war-fare has "affected the way the public views and perceives war" by turning it into "the equivalent of sports fans watching war, rather than citizens sharing in its importance." n125 As a result, the American public has slowly fallen victim to the numbing effect of technology-driven warfare; when the risks of harm to American soldiers abroad and civilians at home are diminished, so too is the public's level of interest in foreign military policy. n126 In the political sphere, this effect snowballs into both an uncaring public not able (or willing) to effectively mobi-lize in order to challenge presidential action and enforce the WPR, and a Congress whose own willingness to check presidential military action is heavily tied to public opinion. n127 Recall, for example, the case of the Mayaguez, where potentially unconstitutional action went unchecked because the mission was perceived to be a success. n128 Yet we can imagine that most missions involving drone strikes will be "successful" in the eyes of [\*230] the public: even if a strike misses a target, the only "loss" one needs to worry about is the cost of a wasted missile, and the ease of deploying another drone would likely provide a quick remedy. Given the political risks associated with making critical statements about military action, especially if that action results in success, n129 we can expect even less congressional WPR en-forcement as more military engagements are supported (or, at the very least, ignored) by the public. In this respect, the political reaction to the Mayaguez seems to provide an example of the rule, rather than the exception, in gauging politi-cal reactions within a technology-driven warfare regime. Thus, when the public becomes more apathetic about foreign affairs as a result of the limited harms associated with technology-driven warfare, and Congress's incentive to act consequently diminishes, the President is freed from any possible WPR constraints we might expect him to face, regardless of any potential legal issues. n130 Perhaps unsurpris-ingly, nearly all of the constitutionally problematic conflicts carried out by presidents involved smaller-scale military actions, rarely totaling more than a few thousand troops in direct contact with hostile forces. n131 Conversely, conflicts that have included larger forces, which likely provided sufficient incentive for public scrutiny, have generally complied with domestic law. n132 The result is that as wars become more limited, n133 unilateral presidential action will likely become even more un-checked as the triggers for WPR enforcement fade away. In contrast with the social and political backlash witnessed during the Civil War, World War I, the Vietnam War, and the Iraq War, contemporary military actions provide insuffi-cient incentive to prevent something as innocuous and limited as a drone strike. Simply put, technology-driven warfare is not conducive to the formation of a substantial check on presidential action. n134

#### Executive branch lawyers will circumvent

Cheng 12

Cheng, co-director – Institute for Global Law, Justice, & Policy and professor @ NYU Law, ‘12¶ (Tai-Heng, 106 A.J.I.L. 710)

Lubell's analysis of drone attacks shows the limits of his method in clarifying the law as it stands. He explains that "IHL and human rights law can lead to differing conclusions" about the legality of drone attacks (p. 258). Under human rights law, "the intentional killing of the individuals is likely to have been unlawful" (p. 255). In contrast, in an armed conflict, "[t]argeting [persons] could be lawful under IHL if they are seen to be non-civilians" (p. 257). Although he proposes various criteria for selecting between human rights law and IHL, Lubell ultimately concludes: "While the concurrent applicability of human rights and IHL is a legal reality, the lack of an agreed approach to interpretation leads to difficulties of implementation in practice" (pp. 258-59), resulting in "difficulty in achieving certainty on this matter" (p. 258). Ruys's survey of state practice to determine whether customary international law currently permits the use of force against nonstate actors in a foreign state illustrates the limits of his method in identifying clear legal rules, even within a single legal regime. He concedes that the legal significance of relevant incidents is open to interpretation. For example, whether the invasion of Afghanistan by the United States and its allies extended the right of self-defense to armed attacks by nonstate actors is open to "a wide range of possible interpretative outcomes depending on one's point of view" (p. 442). Similarly, a "possible interpretation" of Turkey's attacks on Iraqi Kurds in 2008 (p. 461) is that it changed the law to authorize force against nonstate actors, but an observer could also conclude that "States felt uncomfortable about setting a new precedent" (p. 462). Likewise, when Ethiopian troops were sent in 2006 into Somalia to fight the Union of Islamic Courts that threatened Ethiopia, the lack of legal debates among states about Ethiopia's actions "impede[s] the analysis" of that incident (p. 470). Based on his review of events, Ruys proposes that the attack **[\*713]** on these nonstate actors is "not unambiguously illegal" (p. 487). This triple negative assessment of legality leaves much room for further clarification of the law. Lubell's and Ruys's analyses of preemptive self-defense also show how policy appraisals of what the law ought to be can shape the law as it stands. Both authors argue that customary international law prohibits the use of preemptive force against a nonimminent threat. Lubell supports his contention with a Security Council resolution that "strongly condemn[ed] Israel for carrying out a pre-emptive strike [in 1981] against the Osiraq nuclear reactor in Iraq" (p. 61). However, he also concedes that this evidence of *opinio juris* against preemptive attacks is inconclusive because the resolution "can be the result of a number of factors, including a perception that the circumstances of that particular case may not have warranted an attack due to a lack of exhaustion of viable alternatives as well as no imminent need" (*id.*). Faced with this inconclusive evidence of state practice and *opinio juris*, the reader might infer that Lubell believes that preemptive self-defense is legally prohibited for policy reasons. Quoting Rosalyn Higgins, he emphasizes a "primary and fundamental concern . . . that preemption will become 'a pretext for unprovoked aggression'" (p. 62). Ruys similarly rejects the legality of preemptive self-defense on policy grounds. As noted, Ruys argues that the 2003 invasion of Iraq by the United States and its allies did not constitute state practice and *opinio juris* permitting preemptive self-defense because, inter alia, the states that supported the invasion did not justify it with a broad reading of Article 51 of the UN Charter and "a majority of States apparently held the opinion that the operation violated the UN Charter" (pp. 317-18). His footnotes show, however, that, while many states opposed the invasion, the number was far short of "a majority of States" in the world and that some of those states criticized the invasion as illegitimate rather than a violation of the Charter (p. 317 nn.338-39). Ruys also acknowledges that Michael Reisman has found numerous statements by states about the legality of preemptive force but minimizes their importance as "political sabre-rattling . . . rather than as reliable manifestations of States' *opinio juris*" (pp. 333-34). Based on these interpretations of evidence, Ruys concludes that "it is impossible to identify *de lege lata* a general right of pre-emptive--and a fortiori preventive--self-defence" (p. 342). Taken alone, this analysis of preemptive self-defense might persuade some readers. Yet when studied alongside Ruys's analysis of the use of force against terrorists, doubts emerge. Just as Ruys's evidence for the acceptance of preemptive self-defense is mixed, his evidence for the legality of use of force against nonstate actors is not entirely persuasive. While Ruys dismisses statements by states in favor of preemptive self-defense as political and not legal, he characterizes the acquiescence of some states to the use of force against nonstate actors to be "a fickle barometer of *opinio juris*" (p. 462). However, although he claims that a right of preemptive self-defense does not exist because no evidence clearly supports it, Ruys concludes in contrast, as noted, that the use of force against nonstate actors is "not unambiguously illegal" (p. 487) in spite of the equivocal evidence. Although his assessment about the legality of force against nonstate actors is couched in qualified terms, the practical difference with his position on preemptive force is sharp. If policy makers accept his view, they may choose to attack, without clearly breaking the law, nonstate actors who have attacked the state of those policy makers. However, if they use force preemptively against a state or nonstate actor, they will have acted unlawfully. Certainly, one might finely parse the evidence to argue that state practice as well as *opinio juris* in support of the use of force against nonstate actors was stronger than the evidence in support of preemptive force, thereby justifying Ruys's conclusions that the former is "not unambiguously illegal" while the latter remains clearly illegal. However, another equally plausible--and perhaps more compelling--explanation is that Ruys was guided by his differing policy appraisals of the use of force against nonstate actors versus the use of preemptive force. When considering the use of force against nonstate actors, Ruys emphasizes "the delicacy of balancing the national security interests of a State that falls victim to non-State attacks and the fundamental rights to sovereignty" [\*714] (*id.*). He explicitly acknowledges the competing policy concerns of magnified "destructive potential" of terrorists through modern technologies (p. 488) versus the risks of "increased legitimacy of the non-State group [once they are attacked] or a further degradation of the authority of the 'host State' . . . [or] military escalation" (*id.*). In contrast, Ruys appraises preemptive force as "highly undesirable from a *de lege ferenda* perspective" because it would usurp the Security Council's responsibility for keeping international peace and because the right to use preemptive force would be open to abuse (p. 324). While acknowledging that supporters of preemptive self-defense "stress time and again . . . the increasing speed and destructive potential of modern weaponry" (p. 257), Ruys neither explicitly assesses the weight of this policy concern relative to the potential for abuse nor explains why he chose not to do so. These methodological observations about Ruys's and Lubell's findings do not significantly diminish their contribution to international legal scholarship. Quite the contrary. Their books are not just studies on the use of force. They are also case studies of contemporary positivism. Ruys's and Lubell's methods reveal how much it has in common with other international legal theories. As discussed earlier, Lubell recognizes that the choice between IHL and human rights law can lead to different conclusions about the legality *vel non* of drone attacks, but the methods of choosing among legal theories remain unclear. This conclusion is consistent with Martii Koskemenmi's recent critical legal studies research showing uncertainty about the legality of actions where different legal regimes may apply to the same international problem and where each regime may lead to a different legal conclusion. n1 Ruys asserts that the legal significance of "incidents"--a term of art proposed by Reisman to describe basic epistemic units in international law n2 --is determined by claims and counterclaims among states (p. 51). This view comes close to the conceptualization of law in policy-oriented jurisprudence as an ongoing process of communication among relevant actors, n3 with which international legal process and constructivist international relations theories also seem to agree. n4

#### Obama will circumvent

Michaels 13

(Martin Michaels, Mint Press staff writer, “The Human Side Of Drones: Congress Fails In Oversight” May 13, 2013, <http://www.mintpressnews.com/the-human-side-of-drones-congress-fails-in-oversight/158722/>, KB)

“The Obama administration justifies its use of armed drones with reference to the Authorization for the Use of Military Force that Congress passed just days after the Sept. 11 attacks. In the AUMF, Congress authorized force against groups and countries that had supported the terrorist strikes. But Congress rejected the Bush administration’s request for open-ended military authority ‘to deter and preempt any future acts of terrorism or aggression against the United States,’” said Cohn, former president of the National Lawyers Guild.¶ Congress has placed limitations upon the Bush administration’s use of force and similarly restricted Obama with the passage of the 2012 National Defense Authorization Act (NDAA), denying the president authority to expand the war on terror, including through drone strikes.¶ “Deterrence and preemption are exactly what Obama is trying to accomplish by sending robots to kill ‘suspected militants’ or those who happen to be present in an area where suspicious activity has taken place. Moreover, in the National Defense Authorization Act of 2012, Congress specifically declared, ‘Nothing in this section is intended to … expand the authority of the President or the scope of the Authorization for the Use of Military Force [of September 2001],” Cohn adds.¶ It hasn’t slowed down the president, who has authorized dozens of strikes in Southeast Asia and the Middle East over the course of his two terms in office.

### C1

#### Evaluate consequences

Weiss, Prof Poli Sci – CUNY Grad Center, ‘99

(Thomas G, “Principles, Politics, and Humanitarian Action,” *Ethics and International Affairs* 13.1)

Scholars and practitioners frequently employ the term “dilemma” to describe painful decision making but “quandary” would be more apt.27A dilemma involves two or more alternative courses of action with unintended but unavoidable and equally undesirable consequences. If consequences are equally unpalatable, then remaining inactive on the sidelines is an option rather than entering the serum on the field. A quandary, on the other hand, entails tough choices among unattractive options with better or worse possible outcomes. While humanitarians are perplexed, they are not and should not be immobilized. The solution is not indifference or withdrawal but rather appropriate engagement. The key lies in making a good faith effort to analyze the advantages and disadvantages of different alloys of politics and humanitarianism, and then to choose what often amounts to the lesser of evils.

Thoughtful humanitarianism is more appropriate than rigid ideological responses, for four reasons: goals of humanitarian action often conflict, good intentions can have catastrophic consequences; there are alternative ways to achieve ends; and even if none of the choices is ideal, victims still require decisions about outside help. What Myron Wiener has called “instrumental humanitarianism” would resemble just war doctrine because contextual analyses and not formulas are required. Rather than resorting to knee-jerk reactions to help, it is necessary to weigh options and make decisions about choices that are far from optimal.

Many humanitarian decisions in northern Iraq, Somalia, Bosnia, and Rwanda—and especially those involving economic or military sanctions— required selecting least-bad options. Thomas Nagle advises that “given the limitations on human action, it is naive to suppose that there is a solution to every moral problem. “29 Action-oriented institutions and staff are required in order to contextualized their work rather than apply preconceived notions of what is right or wrong. Nonetheless, classicists continue to insist on Pictet’s “indivisible whole” because humanitarian principles “are interlocking, overlapping and mutually supportive. . . . It is hard to accept the logic of one without also accepting the others. “30

The process of making decisions in war zones could be compared to that pursued by “clinical ethical review teams” whose members are on call to make painful decisions about life-and-death matters in hospitals.sl The sanctity of life is complicated by new technologies, but urgent decisions cannot be finessed. It is impermissible to long for another era or to pretend that the bases for decisions are unchanged. However emotionally wrenching, finding solutions is an operational imperative that is challenging but intellectually doable. Humanitarians who cannot stand the heat generated by situational ethics should stay out of the post-Cold War humanitarian kitchen.

Principles in an Unprincipled World

Why are humanitarians in such a state of moral and operational disrepair? In many ways Western liberal values over the last few centuries have been moving toward interpreting moral obligations as going beyond a family and intimate networks, beyond a tribe, and beyond a nation. The impalpable moral ideal is concern about the fate of other people, no matter how far away.szThe evaporation of distance with advances in technology and media coverage, along with a willingness to intervene in a variety of post–Cold War crises, however, has produced situations in which humanitarians are damned if they do and if they don’t. Engagement by outsiders does not necessarily make things better, and it may even create a “moral hazard by altering the payoffs to combatants in such a way as to encourage more intensive fighting.“33

This new terrain requires analysts and practitioners to admit ignorance and question orthodoxies. There is no comfortable theoretical framework or world vision to function as a compass to steer between integration and fragmentation, globalization and insularity. Michael Ignatieff observes, “The world is not becoming more chaotic or violent, although our failure to understand and act makes it seem so. “34Gwyn Prins has pointed to the “scary humility of admitting one’s ignorance” because “the new vogue for ‘complex emergencies’ is too often a means of concealing from oneself that one does not know what is going on. “3sTo make matters more frustrating, never before has there been such a bombardment of data and instant analysis; the challenge of distilling such jumbled and seemingly contradictory information adds to the frustration of trying to do something appropriate fast.

International discourse is not condemned to follow North American fashions and adapt sound bites and slogans. It is essential to struggle with and even embrace the ambiguities that permeate international responses to wars, but without the illusion of a one-size-fits-all solution. The trick is to grapple with complexities, to tease out the general without ignoring the particular, and still to be inspired enough to engage actively in trying to make a difference.

Because more and more staff of aid agencies, their governing boards, and their financial backers have come to value reflection, an earlier policy prescription by Larry Minear and me no longer appears bizarre: “Don’t just do something, stand there! “3sThis advice represented our conviction about the payoffs from thoughtful analyses and our growing distaste for the stereotypical, yet often accurate, image of a bevy of humanitarian actors flitting from one emergency to the next.

#### Util

Harries, 94 – Editor @ The National Interest

(Owen, Power and Civilization, The National Interest, Spring, lexis)

Performance is the test. Asked directly by a Western interviewer, “In principle, do you believe in one standard of human rights and free expression?”, Lee immediately answers, “Look, it is not a matter of principle but of practice.” This might appear to represent a simple and rather crude pragmatism. But in its context it might also be interpreted as an appreciation of the fundamental point made by Max Weber that, in politics, it is “the ethic of responsibility” rather than “the ethic of absolute ends” that is appropriate. While an individual is free to treat human rights as absolute, to be observed whatever the cost, governments must always weigh consequences and the competing claims of other ends. So once they enter the realm of politics, human rights have to take their place in a hierarchy of interests, including such basic things as national security and the promotion of prosperity. Their place in that hierarchy will vary with circumstances, but no responsible government will ever be able to put them always at the top and treat them as inviolable and over-riding. The cost of implementing and promoting them will always have to be considered.

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

Kacou 8

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

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

#### Value to life should be individually determined – their impact claims invalidate personal autonomy

Schwartz et al 4

SCHWARTZ, HENDRY, & PREECE 2004 Professional Metaphysician, Senior Lecturer, General Practicianer Professor, Academic Surgeon [“Medical Ethics: A case based approach,” Lisa, Paul, and Robert]

Those who choose to reason on this basis hope that if the quality of a life can be measured then the answer to whether that life has value to the individual can be determined easily. This raises special problems, however, because the idea of quality involves a value judgement, and value judgements are, by their essence, subject to indeterminate relative factors such as preferences and dislikes. Hence, **quality of life is** difficult to measure **and** will vary **according to individual tastes, preferences and aspirations**. As a result, **no general rules or principles can be asserted that would simplify decisions about the value of a life based on its quality**. Nevertheless, **quality is still an essential criterion in making such decisions because it gives legitimacy to the possibility that rational, autonomous persons can decide for themselves that their own lives either are worth, or are no longer worth, living. To disregard this possibility would be to imply that no individuals can legitimately make such value judgements about their own lives** and, if nothing else, that would be counterintuitive. 2 In our case, Katherine Lewis had spent 10 months considering her decision before concluding that her life was no longer of a tolerable quality. She put a great deal of effort into the decision and she was competent when she made it. Who would be better placed to make this judgement for her than Katherine herself? And yet, a doctor faced with her request would most likely be uncertain about whether Katherine's choice is truly in her best interest, and feel trepidation about assisting her. We need to know which considerations can be used to protect the patient's interests. The quality of life criterion asserts that there is a difference between the type of life and the fact of life. This is the primary difference between it and the sanctity criterion discussed on page 115. Among quality of life considerations rest three assertions: 1. there is relative value to life 2. the value of a life is determined subjectively 3. not all lives are of equal value. Relative value The first assertion, that life is of relative value, could be taken in two ways. In one sense, it could mean that the value of a given life can be placed on a scale and measured against other lives. The scale could be a social scale, for example, where the contributions or potential for contribution of individuals are measured against those of fellow citizens. **Critics of quality of life criteria frequently name this as a potential** slippery slope **where lives would be deemed worthy of saving, or even** not saving**, based on the relative social value of the individual concerned.** So, for example, a mother of four children who is a practising doctor could be regarded of greater value to the community than an unmarried accountant. The concern is that the potential for discrimination is too high. **Because of the possibility of prejudice and injustice, supporters of the quality of life criterion reject this interpersonal construction in favour of a second, more personalized, option.** According to this interpretation, the notion of relative value is relevant not between individuals but within the context of one person's life and is measured against that person's needs and aspirations. So Katherine would base her decision on a comparison between her life before and after her illness. The value placed on the quality of a life would be determined by the individual depending on whether he or she believes the current state to be relatively preferable to previous or future states and whether he or she can foresee controlling the circumstances that make it that way. Thus, the life of an athlete who aspires to participate in the Olympics can be changed in relative value by an accident that leaves that person a quadriplegic. The athlete might decide that the relative value of her life is diminished after the accident, because she perceives her desires and aspirations to be reduced or beyond her capacity to control. However, if she receives treatment and counselling her aspirations could change and, with the adjustment, she could learn to value her life as a quadriplegic as much or more than her previous life. This illustrates how it is possible for a person to adjust the values by which they appraise their lives. For Katherine Lewis, the decision went the opposite way and she decided that a life of incapacity and constant pain was of relatively low value to her. It is not surprising that the most vociferous protesters against permitting people in Katherine's position to be assisted in terminating their lives are people who themselves are disabled. Organizations run by, and that represent, persons with disabilities make two assertions in this light. First, they claim that accepting that Katherine Lewis has a right to die based on her determination that her life is of relatively little value is demeaning to all disabled people, and implies that any life with a severe disability is not worth living. Their second assertion is that with proper help, over time Katherine would be able to transform her personal outlook and find satisfaction in her life that would increase its relative value for her. The first assertion can be addressed by clarifying that the case of Katherine Lewis must not be taken as a general rule. Deontologists, who are interested in knowing general principles and duties that can be applied across all cases would not be very satisfied with this; they would prefer to be able to look to duties that would apply in all cases. Here, a case-based, context-sensitive approach is better suited. Contextualizing would permit freedom to act within a particular context, without the implication that the decision must hold in general. So, in this case, Katherine might decide that her life is relatively valueless. In another case, for example that of actor Christopher Reeve, the decision to seek other ways of valuing this major life change led to him perceiving his life as highly valuable, even if different in value from before the accident that made him a paraplegic. This invokes the second assertion, that Katherine could change her view over time. Although we recognize this is possible in some cases, it is not clear how it applies to Katherine. Here we have a case in which a rational and competent person has had time to consider her options and has chosen to end her life of suffering beyond what she believes she can endure. Ten months is a long time and it will have given her plenty of opportunity to consult with family and professionals about the possibilities open to her in the future. Given all this, it is reasonable to assume that Katherine has made a well-reasoned decision. It might not be a decision that everyone can agree with but if her reasoning process can be called into question then at what point can we say that a decision is sound? She meets all the criteria for competence and she is aware of the consequences of her decision. It would be very difficult to determine what arguments could truly justify interfering with her choice. Subjective determination The second assertion made by supporters of the quality of life as a criterion for decisionmaking is closely related to the first, but with an added dimension. This assertion suggests that the **determination of the value of the quality of a given life is a** subjective determination **to be made by the person experiencing that life.** The important addition here is that **the decision is a personal one that, ideally, ought not to be made externally by another person but internally** by the individual **involved.** Katherine Lewis made this decision for herself based on a comparison between two stages of her life. So did James Brady. Without this element**, decisions based on quality of life criteria lack salient information and the patients concerned cannot give informed consent. Patients must be given the opportunity to decide for themselves whether they think their lives are worth living or not. To ignore or overlook patients' judgement in this matter is to** violate their autonomy and their freedom **to decide for themselves on the basis of relevant information about their future, and comparative consideration of their past.** As the deontological position puts it so well, **to do so is to violate the imperative that we must treat persons as rational and as ends in themselves**.

#### No impact to econ decline

Miller 2k

(Morris, economist, adjunct professor in the University of Ottawa’s Faculty of Administration, consultant on international development issues, former Executive Director and Senior Economist at the World Bank, Winter, Interdisciplinary Science Reviews, Vol. 25, Iss. 4, “Poverty as a cause of wars?” p. Proquest)

The question may be reformulated. Do wars spring from a popular reaction to a sudden economic crisis that exacerbates poverty and growing disparities in wealth and incomes? Perhaps one could argue, as some scholars do, that it is some dramatic event or sequence of such events leading to the exacerbation of poverty that, in turn, leads to this deplorable denouement. This exogenous factor might act as a catalyst for a violent reaction on the part of the people or on the part of the political leadership who would then possibly be tempted to seek a diversion by finding or, if need be, fabricating an enemy and setting in train the process leading to war. According to a study undertaken by Minxin Pei and Ariel Adesnik of the Carnegie Endowment for International Peace, there would not appear to be any merit in this hypothesis. After studying ninety-three episodes of economic crisis in twenty-two countries in Latin America and Asia in the years since the Second World War theyconcluded that:19 Much of the conventional wisdom about the political impact of economic crises may be wrong ... The severity of economic crisis - as measured in terms of inflation and negative growth - bore no relationship to the collapse of regimes ... (or, in democratic states, rarely) **to** an outbreak of violence ... In the cases of dictatorships and semidemocracies, the ruling elites responded to crises by increasing repression (thereby using one form of violence to abort another).

#### Econ is resilient

Oliver ‘9

Business columnist for the Star, a Canadian newspaper, “David Olive: Will the economy get worse?,” <http://www.thestar.com/printArticle/598050>, AM

Should we brace for another Great Depression? No. The notion is ludicrous. Conditions will forever be such that the economic disaster that helped define the previous century will never happen again. So why raise the question? Because it has suited the purposes of prominent folks to raise the spectre of a second Great Depression. Stephen Harper has speculated it could happen. Barack Obama resorted to apocalyptic talk in selling his economic stimulus package to the U.S. Congress. And British author Niall Ferguson, promoting his book on the history of money, asserts "there will be blood in the streets" from the ravages dealt by this downturn. Cue the famished masses' assault on a latter-day Bastille or Winter Palace. As it happens, the current economic emergency Obama has described as having no equal since the Great Depression has not yet reached the severity of the recession of 1980-82, when U.S. unemployment reached 11 per cent. The negativism has become so thick that Robert Shiller was prompted to warn against it in a recent New York Times essay. Shiller, recall, is the Yale economist and author of Irrational Exuberance who predicted both the dot-com collapse of the late 1990s and the likely grim outcome of a collapse in the U.S. housing bubble. Shiller worries that the Dirty Thirties spectre "is a cause of the current situation – because the Great Depression serves as a model for our expectations, damping what John Maynard Keynes called our `animal spirits,' reducing consumers' willingness to spend and businesses' willingness to hire and expand. The Depression narrative could easily end up as a self-fulfilling prophecy." Some relevant points, I think: LOOK AT STOCKS Even the prospects of a small-d depression – defined by most economists as a 10 per drop in GDP for several years – are slim. In a recent Wall Street Journal essay, Robert J. Barro, a Harvard economist, described his study of 251 stock-market crashes and 97 depressions in 34 nations dating back to the mid-19th century. He notes that only mild recessions followed the U.S. stock-market collapses of 2000-02 (a 42 per cent plunge) and 1973-74 (49 per cent). The current market's peak-to-trough collapse has been 51 per cent. Barro concludes the probability today of a minor depression is just 20 per cent, and of a major depression, only 2 per cent. LOOK AT JOBS NUMBERS In the Great Depression, GDP collapsed by 33 per cent, the jobless rate was 25 per cent, 8,000 U.S. banks failed, and today's elaborate social safety net of state welfare provisions did not exist. In the current downturn, GDP in Canada shrank by 3.4 per cent in the last quarter of 2008, and in the U.S. by 6.2 per cent. A terrible performance, to be sure. But it would take another 10 consecutive quarters of that rate of decline to lose even the 10 per cent of GDP that qualifies for a small-d depression. Allowing that 1,000 economists laid end to end still wouldn't reach a conclusion, their consensus view is economic recovery will kick in next year, if not the second half of this year. The jobless rate in Canada and the U.S. is 7.2 per cent and 8.1 per cent, respectively. Again, the consensus among experts is that a worst-case scenario for U.S. joblessness is a peak of 11 per cent. There have been no bank failures in Canada. To the contrary, the stability of Canadian banks has lately been acclaimed worldwide. Two of America's largest banks, Citigroup Inc. and Bank of America Corp., are on government life support. But otherwise the rate of collapse of U.S. lenders outside of the big "money centre" banks at the heart of the housing-related financial crisis has been only modestly higher than is usual in recessionary times. LOOK AT INTERVENTIONS In the Great Depression, Herbert Hoover and R.B. Bennett, just prior to the appearance of the Keynesian pump-priming theories that would soon dominate modern economic management, obsessed with balanced budgets, seizing upon precisely the wrong cure. They also moved very slowly to confront a crisis with no precedent. (So did Japan's economic administrators during its so-called "lost decade" of the 1990s.) Most earlier U.S. "panics" were directly tied to abrupt collapses in stock or commodity values not accompanied by the consumer-spending excesses of the Roaring Twenties and greatly exacerbated by a 1930s global trade war. Today, only right-wing dead-enders advance balanced budgets as a balm in this hour of economic emergency. In this downturn, governments from Washington to Ottawa to Beijing have been swift in crafting Keynesian stimulus packages. Given their recent legislative passage – indeed, Harper's stimulus package awaits passage – the beneficial impact of these significant jolts is only beginning to be felt. And, if one believes, as I long have, that this is a financial crisis – the withholding of life-sustaining credit from the economy by a crippled global banking system – and not a crisis with origins on Main Street, then the resolution to that banking failure may trigger a much faster and stronger economic recovery than anyone now imagines. tune out the static It's instructive that there was much talk of another Great Depression during the most painful recession since World War II, that of 1980-82. Indeed, alarmist talk about global systemic collapses has accompanied just about every abrupt unpleasantness, including the Latin American debt crisis of the 1980s, the Mexican default in 1995, the Asian currency crisis of the late 1990s, financial havoc in Argentina early this decade, and even the failure of U.S. hedge fund Long-Term Capital Management in the late 1990s. Modern economic recoveries tend to be swift and unexpected. The nadir of the 1980-82 downturn, in August 1982, kicked off the greatest stock-market and economic boom in history. And no sooner had the dot-com and telecom wreckage been cleared away, with the Dow Jones Industrial Average bottoming out at 7,286 in October 2002, than the next stock boom was in high gear. It reached its peak of 14,164 – 2,442 points higher than the previous high, it's worth noting – just five years later. look at the big picture Finally, the case for a sustained economic miasma is difficult to make. You'd have to believe that the emerging economic superpowers of China and India will remain for years in the doldrums to which they've recently succumbed; that oil, steel, nickel, wheat and other commodities that only last year skyrocketed in price will similarly fail to recover, despite continued global population growth, including developing world economies seeking to emulate the Industrial Revolutions in China and South Asia.

Marshall ‘8

[William P. Marshall, Kenan Professor of Law, University of North Carolina. Boston Law Review 88:505. http://www.bu.edu/law/central/jd/organizations/journals/bulr/documents/MARSHALL.pdf ETB]

Reasons Why Presidential Power Continues to Expand 1. The Constitutional Indeterminacy of the Presidency¶ The first and perhaps overarching reason underlying the growth of ¶ presidential power is that the constitutional text on the subject is notoriously ¶ unspecific, allowing as one writer maintains, for the office “to grow with the ¶ developing nation.”19 Unlike Article I, which sets forth the specific powers ¶ granted to Congress,20 the key provisions of Article II that grant authority to ¶ the President are written in indeterminate terms such as “executive power,”21¶ or the duty “to take care that the laws be faithfully executed.”22 Moreover, ¶ unlike the other branches, the Presidency has consistently been deemed to ¶ possess significant inherent powers.23 Thus, many of the President’s recognized powers, such as the authority to act in times of national ¶ emergency24 or the right to keep advice from subordinates confidential,25 are ¶ nowhere mentioned in the Constitution itself.¶ In addition, case law on presidential power is underdeveloped. Unlike the ¶ many precedents addressing Congressional26 or federal judicial27 power, there ¶ are remarkably few Supreme Court cases analyzing presidential power. And ¶ the leading case on the subject, Youngstown Sheet & Tube Co. v. Sawyer,¶ 28 is ¶ known less for its majority opinion than for its concurrence by Justice Jackson, ¶ an opinion primarily celebrated for its rather less-than-definitive ¶ announcement that much of presidential power exists in a “zone of twilight.”29¶ Accordingly, the question whether a President has exceeded her authority is ¶ seldom immediately obvious because the powers of the office are so openended.30 This fluidity in definition, in turn, allows presidential power to ¶ readily expand when factors such as national crisis, military action, or other ¶ matters of expedience call for its exercise.31 Additionally, such fluidity allows ¶ political expectations to affect public perceptions of the presidential office in a ¶ manner that can lead to expanded notions of the office’s power.32 This ¶ perception of expanded powers, in turn, can then lead to the perceived ¶ legitimacy of the President actually exercising those powers. Without direct ¶ prohibitions to the contrary, expectations easily translate into political reality.33

# 2NC

### DA Turns Case

#### Any attack turns the K

Peter **Beinart 8**, associate professor of journalism and political science at CUNY, The Good Fight; Why Liberals – and only Liberals – Can Win the War on Terror and Make America Great Again, 110-1

Indeed, while the Bush administration bears the blame for these hor- rors, White House officials exploited a shift in public values after 9/11. When asked by Princeton Survey Research Associates in 1997 whether stopping terrorism required citizens to cede some civil liberties, less than one-t hird of Americans said yes. By the spring of 2002, that had grown to almost three- quarters. Public support for the government’s right to wire- tap phones and read people’s mail also grew exponentially. In fact, polling in the months after the attack showed Americans less concerned that the Bush administration was violating civil liberties than that **it wasn’t violating them enough**. What will happen the next time? It is, of course, impossible to predict the reaction to any particular attack. But in 2003, the Center for Public Integrity got a draft of something called the Domestic Security Enhance- ment Act, quickly dubbed Patriot II. According to the center’s executive director, Charles Lewis, **it expanded government power** five or **ten times as much**

 **as its predecessor**. One provision permitted the government to strip native-born Americans of their citizenship, allowing them to be indefinitely imprisoned without legal recourse if they were deemed to have provided any support—even nonviolent support—to groups designated as terrorist. After an outcry, the bill was shelved. But it offers a hint of what this administration—or any administration—might do if the United States were hit again. ¶ When the CIA recently tried to imagine how the world might look in 2020, it conjured four potential scenarios. One was called the “cycle of fear,” and it drastically inverted the assumption of security that C. Vann Woodward called central to America’s national character. The United States has been attacked again and the government has responded with “large- scale intrusive security measures.” In this dystopian future, two arms dealers, one with jihadist ties, text- message about a potential nuclear deal. One notes that terrorist networks have “turned into mini-s tates.” The other jokes about the global recession sparked by the latest attacks. And he muses about how terrorism has changed American life. “That new Patriot Act,” he writes, “went **way beyond anything imagined after 9/11**.” “The fear cycle generated by an increasing spread of WMD and terrorist attacks,” comments the CIA report, “once under way, would be one of the **hardest to break**.” And the more entrenched that fear cycle grows, the less free America will become. Which is why a new generation of American liberals must make the fight against this new totalitarianism their own.

**Solving the root causes of terrorism is impossible because of expansive jihadist demands---the aff’s attempt at reconciliation collapses causes global violence**

Peter **Beinart 8**, associate professor of journalism and political science at CUNY, The Good Fight; Why Liberals – and only Liberals – Can Win the War on Terror and Make America Great Again, 100-2

While different U.S. policies may be more or less important at differ- ent times, most experts agree that it is American actions (“what we do”), not American values (“who were are”) that have made the United States the target of salafist jihad. While in his ideal world Bin Laden would cer- tainly like to see the United States ditch its barbaric culture and convert to Islam, that is low on his list of concerns. As he himself has pointed out, if Al Qaeda were offended primarily by the licentiousness Western societies practice at home, it would have attacked Sweden. ¶ The problem is that while salafists might theoretically leave the United States alone if we left them alone, their concerns are vast and their hostility to liberal values is profound. Salafism is not a universalist ideology in the way that Communism was. (That is not to say its devotees do not dream of a world completely under God’s rule—they do—only that the cultural barriers preventing, say, an Argentinean from adopting the religion of Qutb are far greater than the barriers preventing him from adopting the religion of Marx.) But neither is salafism easy to avoid. Bin Laden has said the United States can escape “this ordeal” of terrorism if “it leaves the Arabian Peninsula, and stops its involvement in Palestine, and in all the Islamic world.” Unfortunately, Zawahiri, his second in command, has defined the Islamic world as stretching from “Eastern Turkestan [ Xinjiang, in western China] to Andalusia [Spain and Portugal].” Azzam has gone further, including among the territory that must be “returned to us so that Islam will reign again” sub- Saharan African countries like Chad, Eritrea, and Somalia and Asian nations like Burma and the Philippines. Salafists want to restore the caliphate that once ruled much of the Islamic world. But even at its eighth- century peak, the caliphate only stretched from In- dia to Spain. Under Al Qaeda’s more expansive definition, it seems to include every country or region once under Muslim rule. To comply with those terms, the United States would have to **retreat** virtually **to the Western Hemisphere.** ¶ Needless to say, for the United States to withdraw from a swath of territory stretching from West Africa to Southeast Asia would constitute a geostrategic revolution. American power is the guarantor of last resort for the government of Pakistan, which has nuclear weapons, a volatile border with nuclear- armed India, and salafist elements in its security services. It plays the same role in Jordan and Egypt, the lynchpins of peace between Israel and the Arab world. And, of course, America protects the Saudi monarchy, whose kingdom sits atop one quarter of the world’s proven oil reserves. As the Bush administration has rightly recognized, these relation- ships are unsustainable in their current form, and America’s long-t erm safety requires that its clients evolve in a democratic direction, even if it means they prove less compliant. But were the jihadist movement to force the United States to withdraw its military, political, or economic influence ¶ from these crucial areas—producing governments with dramatically dif- ferent orientations—**the consequences for American security, the world economy, and regional peace could be grave**. ¶ And a withdrawal from the Muslim world would not only imperil American interests, it would also imperil American values. Al Qaeda may not hate us for “who we are”—unless “who we are” obligates us to oppose what might be called “religious cleansing,” the violent purification of large swaths of the globe. After all, **if the U**nited **S**tates **withdrew from its war against salafism, salafism would still be at war**. Al Qaeda’s ultimate goal is not to expel the United States from Islamic lands; it is to establish a new caliphate that ushers in God’s rule on earth. And the many enemies of that effort—non- Muslims, apostate Muslims, liberated female Muslims, gay and lesbian Muslims—would still blemish the Islamic world, representing jahiliyyah in its myriad sinful forms. ¶ Where those enemies have no army to defend them, the result has been terror. Where they do, the result has been endless war. It is a virtual axiom of international politics that salafists will try to seize control of any local conflict—from the Philippines to Chechnya to Kashmir to Iraq—that pits Sunni Muslims against their neighbors. And the more they succeed, the less likely it is that such a conflict will end. Many Muslims, including many non-s alafist Islamists, also support Muslim insurgencies around the world. In Iraq, they may support attacks on American troops. But since they see jihad as a means to some concrete goal, political compromise is possible. Salafists, however, who see jihad as a means to usher in a messianic age, will accept no outcome that leaves Muslims under non- Muslim rule, because such a compromise threatens the path to paradise.

**Terror is a real threat driven by forces the aff can’t resolve---we should reform the war on terror, not surrender---any terror attack turns the entire case**

Peter **Beinart 8**, associate professor of journalism and political science at CUNY, The Good Fight; Why Liberals – and only Liberals – Can Win the War on Terror and Make America Great Again, vii-viii

APPLYING THAT TRADITION today is not easy. Cold war liberals devel- oped their narrative of national greatness in the shadow of a totalitarian ¶ superpower. Today, the United States faces no such unified threat. Rather, it faces a web of dangers—from disease to environmental degradation to weapons of mass destruction—all fueled by globalization, which leaves America increasingly vulnerable to pathologies bred in distant corners of the world. And at the center of this nexis sits jihadist terrorism, a new totalitarian movement that lacks state power but harnesses the power of globalization instead. ¶ Recognizing that the United States again faces a totalitarian foe does not provide simple policy prescriptions, because today’s totalitarianism takes such radically different form. But it reminds us of something more basic, **that liberalism does not find its enemies only on the right**—a lesson sometimes forgotten in the age of George W. Bush. ¶ Indeed, it is because liberals so despise this president that they increasingly reject his trademark phrase, the “war on terror.” Were this just a semantic dispute, it would hardly matter; better alternatives to war on terror abound. But the rejection signifies something deeper: a turn away from the very idea that anti-totalitarianism should sit at the heart of the liberal project. For too many liberals today, George W. Bush’s war on terror is the only one they can imagine. This alienation may be understand- able, but that does not make it any less disastrous, for it is liberalism’s principles—even more than George W. Bush’s—that jihadism threatens. If today’s liberals cannot rouse as much passion for fighting a movement that flings acid at unveiled women as they do for taking back the Senate in 2006, they have strayed far from liberalism’s best traditions. And if they believe it is only George W. Bush who threatens America’s freedoms, they should ponder what will happen if the United States is hit with a nuclear or contagious biological attack. **No matter who is president**, Republican or Democrat, **the reaction will make John Ashcroft look like the head of the ACLU**.

#### Evaluate the specific scenarios our evidence outlines---their critiques are too reductive

Michael J. Boyle '8, School of International Relations, University of St. Andrews, and John Horgan, International Center for the Study of Terrorism, Department of Psychology, Pennsylvania State University, April 2008, “A Case Against Critical Terrorism Studies,” Critical Studies On Terrorism, Vol. 1, No. 1, p. 51-64

One of the tensions within CTS concerns the issue of ‘policy relevance’. At the most basic level, **there are some sweeping generalizations made by CTS scholars, often with little evidence**. For example, Jackson (2007c) describes ‘the core terrorism scholars’ (without explicitly saying who he is referring to) as ‘intimately connected – institutionally, financially, politically, and ideologically – with a state hegemonic project’ (p. 245). **Without giving any details of who these ‘core’ scholars are, where they are, what they do, and exactly who funds them, his arguments are tantamount to conjecture at best. We do not deny that governments fund terrorism research and terrorism researchers, and that this can influence the direction** (and even the findings) of the research. But **we are suspicious of over-generalizations of this count on two grounds: (1) accepting government funding or information does not necessarily obviate one’s independent scholarly judgment in a particular project; and (2) having policy relevance is not always a sin**. On the first point, we are in agreement with some CTS scholars. Gunning provides a sensitive analysis of this problem, and calls on CTS advocates to come to terms with how they can engage policy-makers without losing their critical distance. He recognizes that CTS can (and should) aim to be policy-relevant, but perhaps to a different audience, including non-governmental organizations (NGOs), civil society than just governments and security services. In other words, CTS aims to whisper into the ear of the prince, but it is just a different prince.

Gunning (2007a) also argues that **research should be assessed on its own merits, for ‘just because a piece of research comes from RAND does not invalidate it; conversely, a “critical” study is not inherently good’** (p. 240). We agree entirely with this. Not all sponsored or contract research is made to ‘toe a party line’, and **much of the work coming out of** official **government agencies** or affiliated government agencies **has little agenda and can be** analytically **useful. The task of the scholar is to retain one’s sense of critical judgment and integrity, and we believe that there is no prima facie reason to assume that this cannot be done in sponsored research projects**. What matters here are the details of the research – what is the purpose of the work, how will it be done, how might the work be used in policy – and for these questions the scholar must be self-critical and insistent on their intellectual autonomy. The scholar must also be mindful of the responsibility they bear for shaping a government’s response to the problem of terrorism. **Nothing – not the source of the funding, purpose of the research or prior empirical or theoretical commitment – obviates the need of the scholar to consider his or her own conscience carefully when engaging in work with any external actor. But simply engaging with governments on discrete projects does not make one an ‘embedded expert’ nor does it imply sanction to their actions**. But we also believe that the **study of political violence lends itself to policy relevance and** that **those who seek to produce research that might help policy-makers reduce the rates of terrorist attack are committing no sin**, provided that they retain their independent judgment and report their findings candidly and honestly. In the case of terrorism, we would go further to argue that being policy relevant is in some instances an entirely justifiable moral choice. For example, neither of us has any problem producing research with a morally defensible but policy relevant goal (for example, helping the British government to prevent suicide bombers from attacking the London Underground) and we do not believe that engaging in such work tarnishes one’s stature as an independent scholar. **Implicit in the CTS literature is a deep suspicion about the state** and those who engage with it. **Such a suspicion may blind some CTS scholars to good work** done by those associated with the state. But to assume that being ‘embedded’ in an institution linked to the ‘establishment’ consists of being captured by a state hegemonic project is too simple. We do not believe that scholars studying terrorism must all be policy-relevant, but equally we do not believe that being policy relevant should always be interpreted as writing a blank cheque for governments or as necessarily implicating the scholar in the behaviour of that government on issues unrelated to one’s work. Working for the US government, for instance, does not imply that the scholar sanctions or approves of the abuses at Abu Ghraib prison. **The assumption that those who do not practice CTS are all ‘embedded’ with the ‘establishment’ and that this somehow gives the green light for states to engage in illegal activity is in our view unwarranted, to say the very least.**

#### Their argument essentializes terror scholarship – it’s not a monolithic entity – defer to specific research

Michael J. Boyle '8, School of International Relations, University of St. Andrews, and John Horgan, International Center for the Study of Terrorism, Department of Psychology, Pennsylvania State University, April 2008, “A Case Against Critical Terrorism Studies,” Critical Studies On Terrorism, Vol. 1, No. 1, p. 51-64

Some CTS advocates have positioned the CTS project against something usually called ‘terrorism studies’, ‘Orthodox terrorism studies’ or, alternatively, ‘terrorology’. Whatever these bodies of literature are (or at least are imagined by those who have created them as such), they are recent intellectual constructions, the product of an over-generalization that has emerged from the identification of (1) the limitations associated with terrorism research to date, coupled with (2) a less than complete understanding of the nature of research on terrorism. **A cursory review of the terrorism literature reveals that attempts to generalize about something called Orthodox Terrorism Studies are deeply problematic. Among terrorism scholars, there are wide disagreements about, among others, the definition of terrorism, the causes of terrorism, the role and value of the concept of ‘radicalization’ and ‘extremism’, the role of state terror, the role that foreign policy plays in motivating or facilitating terrorism, the ethics of terrorism, and the proper way to conduct ‘counter-terrorism’**. A cursory examination of the contents of the two most well-known terrorism journals Terrorism and Political Violence and Studies in Conflict and Terrorism quickly reveals this. **These differences, and the concomitant disagreements that result in the literature, cut across disciplines** – principally political science and psychology, but also others, such as anthropology, sociology, theology, and philosophy – **and even within disciplines wide disagreements about methods** (for example, discourse analysis, rational choice, among others) **persist. To suggest that they can be lumped together as something called ‘terrorology’ or ‘Orthodox Terrorism Studies’ belies a narrow reading of the literature. This is, in short, a ‘straw man’ which helps position CTS in the field but is not based on a well-grounded critique of the current research on terrorism.**

## Solvency

#### Risk framing motivates new social movements and re-democratizes politics

Borraz, ‘7 [Olivier Borraz, Centre de Sociologie des Organisations, Sciences Po-CNRS, Paris, Risk and Public Problems, Journal of Risk Research Vol. 10, No. 7, 941–957, October 2007, p. 951]

These studies seem to suggest that risk is a way of framing a public problem in such a way as to politicize the search for solutions. This politicization entails, in particular, a widening of the range of stakeholders, a reference to broader political issues and debates, the search for new decision- making processes (either in terms of democratization, or renewed scientific expertise), and the explicit mobilization of non-scientific arguments in these processes. But if this is the case, then it could also be true that risk is simply one way of framing public problems. Studies in the 1990s, in particular, showed that a whole range of social problems (e.g., poverty, housing, unemployment) had been reframed as health issues, with the result that their management was transferred from social workers to health professionals, and in the process was described in neutral, depoliticized terms (Fassin, 1998). Studies of risk, on the contrary, seem to suggest that similar social problems could well be re-politicized, i.e., taken up by new social movements, producing and using alternative scientific data, calling for more deliberative decision-making procedures, and clearly intended to promote change in the manner in which the state protects the population against various risks (health and environment, but also social and economic). In other words, framing public problems as risks could afford an opportunity for a transformation in the political debate, from more traditional cleavages around social and economic issues, to rifts stemming from antagonistic views of science, democracy and the world order.

**Fear of extinction is a legitimate and productive response to the modern condition---working through it by validating our representations is the only way to create an authentic relationship to the world and death**

**Macy 2K**

Joanna Macy, adjunct professor at the California Institute of Integral Studies, 2000, Environmental Discourse and Practice: A Reader, p. 243

The move to a wider ecological sense of self is in large part a function of the dangers that are threatening to overwhelm us. **We are confronted by social breakdown, wars, nuclear proliferation, and the progressive destruction of our biosphere**. Polls show that people today are aware that the world, as they know it, may come to an end. This loss of certainty that there will be a future is the pivotal psychological reality of our time. ¶ Over the past twelve years **my colleagues and I have worked with tens of thousands of people** in North America, Europe, Asia, and Australia, **helping them confront and explore what they know and feel about what is happening to their world. The purpose of this work**, which was first known as “Despair and Empowerment Work,” **is to overcome the numbing and powerlessness that result from suppression of painful responses to massively painful realities. As** their grief and **fear for the world is** allowed to be **expressed** without apology or argument **and validated as a wholesome, life-preserving response, people break through their avoidance mechanisms, break through their sense of futility and isolation**. Generally what **they break through into** is **a larger sense of identity**. It is as if **the pressure of their acknowledged awareness of the suffering of our world stretches or collapses the culturally defined boundaries of the self**. ¶ It becomes clear, for example, that the **grief and fear experienced for our world and our common future are categorically different from similar sentiments relating to one’s personal welfare**. This pain cannot be equated with dread of one’s own individual demise. Its source lies less in concerns for personal survival than in apprehensions of collective suffering – of what looms for human life and other species and unborn generations to come. Its nature is akin to the original meaning of compassion – “suffering with.” **It is the distress we feel on behalf of the larger whole of which we are a part. And, when it is so defined, it serves as a trigger or getaway to a more encompassing sense of identity, inseparable from the web of life in which we are as intricately connected** as cells in a larger body. ¶ This shift in consciousness is an appropriate, adaptive response. For **the crisis that threatens our planet, be it seen in its military, ecological, or social aspects, derives from a dysfunctional and pathogenic notion of the self**. It is a mistake about our place in the order of things. It is the delusion that the self is so separate and fragile that we must delineate and defend its boundaries, that it is so small and needy that we must endlessly acquire and endlessly consume, that it is so aloof that we can – as individuals, corporations, nation-states, or as a species – be immune to what we do to other beings.

### 2NC Political Will

#### Plan gets circumvented – there’s no political will to enforce it – congressional members want to avoid political risks AND the public won’t hold Congress accountable – that’s Druck

#### Political partisanship guarantees there’s no enforcement

Cohen ‘12

(Michael A. Cohen is a senior fellow at the American Security Project and is author of "Live From the Campaign Trail: The Greatest Presidential Campaign Speeches of the 20th Century and How They Shaped Modern America" (Walker Books: 2008). Previously, Michael served in the U.S. Department of State as chief speechwriter for U.S. Representative to the United Nations Bill Richardson and Undersecretary of State Stuart Eizenstat. “The Imperial Presidency: Drone Power and Congressional Oversight” 24 Jul 2012 <http://www.worldpoliticsreview.com/articles/12194/the-imperial-presidency-drone-power-and-congressional-oversight>, TSW)

In a sense we are witnessing a perfect storm of executive branch power-grabbing: a broad authorization of military force giving the president wide-ranging discretion to act, combined with a set of tools -- drones, special forces and cyber technology -- that allows him to do so in unprecedented ways. And since few troops are put in harm’s way, there is barely any public scrutiny.¶ ¶ Congress has the ability to stop these excesses. On Libya, it possessed the power to turn off the financial spigot and cut off funding, and indeed, there was a tepid effort in the House of Representatives to do so. On the AUMF, Congress could simply repeal it or more realistically modify it to take into account the new battlefields in the war on terror. Finally, it could conduct greater oversight, in particular public hearings, of how the executive branch is utilizing military force. But not only has Congress not taken these steps, in deliberations over the National Defense Authorization Act earlier this year, it tried to expand the AUMF. On the use of drones and targeted killings, Congress has made little effort to demand greater information from the White House and has not held any public hearings on either of these issues. As Micah Zenko recently noted, claims “that congressional oversight of targeted killings exclusively by the intelligence committees in closed sessions is adequate” are “indefensible.”¶ The reasons for congressional abdication are legion. Partisanship plays an important role. For example, from 2001 to 2006, Republicans largely abstained from overseeing a Republican White House’s wars in Iraq and Afghanistan.¶ Since a Democrat became president, however, congressional oversight and scrutiny of the administration in terms of foreign policy has remained underwhelming, if not nearly as bad. Meanwhile, the White House has treated Congress dismissively and even with contempt. Historically, strong institutional prerogatives have been a check on such parochialism -- think William Fulbright and the Senate Foreign Relations Committee’s apostasy on Vietnam or even the bipartisan Iran-Contra hearings in the 1980s. Today, however, few in Congress have shown much interest in upholding even its most basic foreign policy responsibilities. Quite simply, there are no Frank Churches or even Russ Feingolds in Congress anymore.

# 1NR

### 2NC Overview

#### This allows for unquestioned political imperialism and mass death

SCHLAG, PROFESSOR OF LAW@ UNIV. COLORADO, 1990 (PIERRE, STANFORD LAW REVIEW, NOVEMBER, PAGE LEXIS)

All of this can seem very funny. That's because it is very funny. It is also deadly serious. It is deadly serious, because all this **normative legal thought**, as Robert Cover explained, **takes place in a field of pain and death**. n56 And in a very real sense Cover was right. Yet as it takes place, **normative legal thought is playing language games -- utterly oblivious to the character of the language games it plays, and thus, utterly uninterested in considering its own rhetorical and political contributions (or lack thereof) to the field of pain and death.** **To be sure, normative legal thinkers are often genuinely concerned with reducing the pain and the death**. However, the problem is not what normative legal thinkers do with normative legal thought, but what normative legal thought does with normative legal thinkers. **What is missing in normative legal thought is any serious questioning, let alone tracing, of the relations that the practice, the rhetoric, the routine of normative legal thought have** (or do not have) **to the field of pain and death.** And there is a reason for that: Normative legal thought misunderstands its own situation. Typically, normative legal thought understands itself to be outside the field of pain and death and in charge of organizing and policing that field. It is as if the action of normative legal thought could be separated from the background field of pain and death. This theatrical distinction is what allows normative legal thought its own self-important, self-righteous, self-image -- its congratulatory sense of its own accomplishments and effectiveness. All this self-congratulation works very nicely so long as normative legal [\*188] thought continues to imagine itself as outside the field of pain and death and as having effects within that field. n57 Yet it is doubtful this image can be maintained. It is not so much the case that normative legal thought has effects on the field of pain and death -- at least not in the direct, originary way it imagines. Rather, it is more the case that **normative legal thought is the pattern, is the operation of the bureaucratic distribution and the institutional allocation of the pain and the death.** n58 And apart from the leftover ego-centered rationalist rhetoric of the eighteenth century (and our routine), there is nothing at this point to suggest that we, as legal thinkers, are in control of normative legal thought. The problem for us, as legal thinkers, is that **the normative appeal of normative legal thought systematically turns us away from recognizing that normative legal thought is grounded on an utterly unbelievable re-presentation of the field it claims to describe and regulate. The problem for us is that normative legal thought, rather than assisting in the understanding of present political and moral situations, stands in the way. It systematically reinscribes its own aesthetic -- its own fantastic understanding of the political and moral scene.** n59Until normative legal thought begins to deal with its own paradoxical postmodern rhetorical situation, **it will remain something of an irresponsible enterprise. In its rhetorical structure, it will continue to populate the legal academic world with individual humanist subjects who think themselves empowered Cartesian egos, but who are largely the manipulated constructions of bureaucratic practices** -- academic and otherwise.

### 2NC AT: Perm - Do Both

#### 3.) Doesn’t solve- only a radical and complete cut from bad representations solves

Athansiou, 2003 (Athena, Social Anthropologist at U of Thessaly,"Technologies of Humanness"; MUSE)

In this struggle over political representation and its discursive practices, claims, imagery, desires, and counterdesires, the task is to perform a radical gesture toward an alternative vision of representation, for want of a better term. The task is to move toward the anarchic difference that cuts loose from and exceeds the carceral logic of referential representation, in other words, the inappropriable and unforeseeable other of presence, presentation, and re-presentation: the language of the Other. No guarantee of normative intelligibility can be evoked here. Does this imply the possibility of novel representational spaces beyond the presentist premises of the ontopological logic of representation? 5 The question, a question of the possibility of interrupting the force of representation, or the representation’s being in force, must be left in suspense.

### 2NC AT: Redeployment

#### Redeployment fails – effective communication requires recognizing that the framing of an issue requires recognition of previous social understandings

Bales, President of the FrameWorks Institute, 2001

(Susan Nall, “A conversation with Susan Nall Bales,” [The Evaluation Exchange](http://gseweb.harvard.edu/~hfrp/eval.html) Volume VII, No. 1, Winter, http://gseweb.harvard.edu/~hfrp/eval/issue16/bales.html)

I think doing communication strategically means recognizing that you come into an environment where people already have ways of understanding an issue, whether as a result of the way media framed it, from personal communication, or from cultural models that developed over time. You don't just walk out the door one day and say, “I have an issue that I want people to consider.” It's important to understand that the way people already perceive an issue is part of what you may be up against. And so, step number one is to identify what people already bring to the conversation that you want to have with them; and secondly, to consider the implications of the way they understand an issue for their policy preferences. The other important part of strategic communications is to bring a little bit more social science into the art of communications. And that means understanding that strategic communications is about three principles: agenda-setting, framing and priming. It's about whether your issue is on the public agenda and how the media participates in putting it on or off the public agenda; how the nature of the way the issue is framed by the media either contributes to or impedes your getting it on the public agenda; and finally, whether your issue becomes a lens through which people evaluate candidates for public office or how other issues can serve as a useful lens on your issue. I think that those three principles—agenda-setting, framing and priming—that come out of the social science literature are absolutely pivotal for advocates to understand as they approach communication. We teach them in our trainings so that advocates have a vocabulary for, and a sensibility to, the processes of communication.

### 2NC AT: Words Don’t Matter

#### Our argument isn’t that words alone matter, but that words in the context of the plan are bad

Schwartzman, 2002 (Lisa H., “Hate speech, Illocution, and Social context: a critique of Judith Butler,” Journal of Social Philosophy, Vol. 33, No. 3, Fall)

According to Butler, the view that hate speech is illocutionary is the view that "speech is the immediate and necessary exercise of injurious effects";21 she argues that this view is problematic because it collapses speech into conduct' and it suggests that the speech immediately does what it says. At a number of points in her work, Butler claims that the illocutionary model of speech offered by Austin and employed by Langton, MacKinnon, and Matsuda focuses on the words that are spoken, rather than on the act that is constituted by any particular uttering of those words. For instance, Butler notes that the very title of Austin's book, How to Do Things with Words, raises the question of how it is that things might be done with words, which she suggests involves a "question of transitivity." She asks, "What does it mean for a word not only to name, but also in some sense to perform and, in par‑ ticular, to perform what it names?"' In considering this question, Butler offers one answer in the case of perlocutionary speech and another—far more prob‑ lematic—answer in the case of illocution: "According to the perlocutionary view, words are instrumental to the accomplishment of actions, but they are not themselves the actions which they help to accomplish . . . the words and the things done are in no sense the same. But according to his [Austin's] view of the illocutionary speech act, the name performs itself, and in the course of that performing becomes a thing done."' Noting that the distinction that Austin draws between perlocution and illocution is "tricky" and "not always stable, "25 Butler suggests that it makes more sense to understand words as accomplishing things in the manner of perlocution than in the manner of illo‑ cution. She suggests that a dangerous view of speech—and the power of speech—arises out of the view that words themselves have the power to do things. According to this view, "the doing is less instrumental than it is tran‑ sitive. Indeed, what would it mean for a thing to be 'done by' a word . . ? When and where, in such a case, would such a thing become disentangled from the word by which it is done . . . ?"26 Thus, Butler worries that viewing hate speech—or any speech for that matter—as illocutionary entails the prob‑ lematic view that words themselves have the power to "do things" and that this occurs in a way that is immediate and transitive. Although there is a sense in which illocutionary speech is immediate, Butler mischaracterizes Austin's account when she suggests that it is the word or the "speech" itself—and not the "speech act" which constitutes the injury. In discussing how to do things with words, Austin takes care to distinguish the words that are spoken from the speech act that is constituted by any particular use of these words. In a performative, "the uttering of the sentence is, or is a part of, the doing of an action."' It is significant that Austin claims that it is the "uttering" of the statement, not the words them‑ selves, which constitutes the performative. The speech act is not merely the words that are spoken, but is instead the act, or "action" in Austin's terms, that the speaking of the words constitutes.' While a speech act may be illo‑ cutionary—and may be injurious (following the suggestion of Langton, MacKinnon, and Matsuda) words themselves do not have the power to cause injury. According to Austin's account, a performative utterance is never reducible to the words themselves; the words must be said in a particular context, or accompanied by other actions, and it is essential that they secure "uptake." He explains: The uttering of the words . . . is far from being usually, even if it is ever, the sole thing necessary if the act is to be deemed to have been performed. Speaking generally, it is always necessary that the circumstances in which the words are uttered should be in some way, or ways, appropriate, and it is very commonly necessary that either the speaker himself or other persons should also perform certain other actions, whether 'physical' or 'mental' actions or even acts of uttering further words.29 Thus, Austin emphasizes the importance of circumstances and other actions—even subsequent actions—in successfully accomplishing a perfor‑ mative. This seems to call into question Butler's focus on the "immediacy" and on the "transitive" nature of illocution. An illocution is a performative, and it is thus subject to the conditions described above by Austin. It cannot be the case that illocutionary performatives always work, or that they are transitive or immediate in any simple sense, because it is necessary that they succeed in securing uptake—that is, in "bringing about the understanding of the meaning and of the force of the locution."' Austin is very clear about the importance of this: "Unless a certain effect is achieved, the illocutionary act will not have been happily, successfully performed . . . the performance of an illocutionary act involves the securing of uptake."' How can one know whether or not such uptake will be secured? On what is uptake dependent? Austin answers this by making reference to the context and to conventions. Although, at one point, Butler does note that illocutionary acts are considered by Austin to be a matter of convention,32 she does not discuss extensively what Austin might mean by this, or why the conventional nature of illocu‑ tion is important to Austin. And yet this is crucial to understanding how illo‑ cutionary speech acts work. An illocutionary act is a "conventional act: an act done as conforming to a convention."' Thus, if a person is mistaken about the conventions of her society, or if the conventions have somehow changed without her having realized it, her attempt to "do" something through an illo‑ cutionary speech act likely will fail.

You mischaracterize the K – the question isn’t about words themselves, but the social and historical context of those words

Schwartzman, 2002 (Lisa H., “Hate speech, Illocution, and Social context: a critique of Judith Butler,” Journal of Social Philosophy, Vol. 33, No. 3, Fall)

Contrary to Butler's contention, Matsuda, Langton, and MacKinnon do not claim that the words that are uttered—or the images that are depicted in pornography—are "efficacious" or "transitive" in the sense that they neces‑ sarily succeed. For instance, in Matsuda's discussion of racist hate speech, she explicitly notes that it is not the words themselves that constitute racist hate speech, but it is the words used in a particular way, or spoken in a particular context, that make them racist.' Matsuda suggests that racist hate speech, which should be subject to legal regulation, must be defined according to the following three characteristics: (1) it contains a message of racial inferiority, (2) it is directed against a historically oppressed group, and (3) it is persecu‑ tory, hateful, and degrading.' According to these criteria, racist speech is harmful not because the words all by themselves cause harm and pain, but because of the social, historical, and political context in which they are uttered. Racist hate speech is harmful "because it is a mechanism of subor‑ dination, reinforcing a historical vertical relationship,' not because the words have some special power to magically cause injury. Matsuda specifi‑ cally notes that there are a number of cases in which words that might be racist—or that would clearly constitute racist hate speech if uttered in a dif‑ ferent context—would fail to meet her standard. For example, she notes that "arguing that particular groups are genetically superior in a context free of hatefulness and without the endorsement of persecution is permissible," as is Is'afire and stereotyping that avoids persecutory language."' A similar point can be made about the sexist nature of pornographic depictions and the link that pornography has to women's subordination. Neither Langton nor MacKinnon thinks that all depictions of sexual abuse necessarily subordinate women. MacKinnon clearly states that her definition of pornography "does not include all sexually explicit depictions of the sub‑ ordination of women."4° For instance, depictions of rape or domestic violence could be said not to be pornographic if they were done in such a way that the abuse was not eroticized and if it were clear that the abuse was not being endorsed. Similarly, Langton argues that the claim that pornography "sub‑ ordinates" is not a statement about what the pornographic text accomplishes all by itself. She notes that the courts sometimes view the claim that pornog‑ raphy subordinates "as a description of pornography's content"; this view is mistaken, however, since it is not the content of the material itself that is capable of subordinating.' She explains: Utterances whose locutions depict subordination do not always subor‑ dinate. Locutions that depict subordination could in principle be used to perform speech acts that are a far cry from pornography: documentaries, for example, or police reports, or government studies, or books that protest against sexual violence, or perhaps even legal definitions of pornography. It all depends, as Austin might have said, on the use to which the locution is put.42 Furthermore, Langton points out that even if we follow MacKinnon in using the term "pornography" to refer only to sexually explicit materials that do subordinate, this still does not dictate that any particular text or image is pornography: "If, however, one follows MacKinnon in saying that as a matter of definition pornography subordinates, then it will no longer be a contin‑ gent matter whether pornography subordinates: it then becomes part of the meaning of the word that pornography subordinates. However, the question about illocutionary force will return as an empirical question, not this time in the form `Does pornography subordinate?' but in the form 'Is there any pornography, so defined?" '43 In other words, the fact that MacKinnon defines pornography as that which subordinates does not mean that any par‑ ticular text or image necessarily does this. Thus, for Matsuda, Langton, and MacKinnon, in order to tell what the particular locution is doing/////—in order to tell what its illocutionary force is—one must look beyond the mere text itself. Questions about the social context and about the power of the speech (and the speaker) within that context must be examined.