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#### Restriction means prohibition of action

Jean Schiedler-Brown 12, Attorney, Jean Schiedler-Brown & Associates, Appellant Brief of Randall Kinchloe v. States Dept of Health, Washington, The Court of Appeals of the State of Washington, Division 1, http://www.courts.wa.gov/content/Briefs/A01/686429%20Appellant%20Randall%20Kincheloe%27s.pdf

3. The ordinary definition of the term "restrictions" also does not include the reporting and monitoring or supervising terms and conditions that are included in the 2001 Stipulation. Black's Law Dictionary, 'fifth edition,(1979) defines "restriction" as; A limitation often imposed in a deed or lease respecting the use to which the property may be put. The term "restrict' is also cross referenced with the term "restrain." Restrain is defined as; To limit, confine, abridge, narrow down, restrict, obstruct, impede, hinder, stay, destroy. To prohibit from action; to put compulsion on; to restrict; to hold or press back. To keep in check; to hold back from acting, proceeding, or advancing, either by physical or moral force, or by interposing obstacle, to repress or suppress, to curb. ¶ In contrast, the terms "supervise" and "supervisor" are defined as; To have general oversight over, to superintend or to inspect. See Supervisor. A surveyor or overseer. . . In a broad sense, one having authority over others, to superintend and direct. The term "supervisor" means an individual having authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but required the use of independent judgment. ¶ Comparing the above definitions, it is clear that the definition of "restriction" is very different from the definition of "supervision"-very few of the same words are used to explain or define the different terms. In his 2001 stipulation, Mr. Kincheloe essentially agreed to some supervision conditions, but he did not agree to restrict his license.

#### Authority is the power that an agent has been delegated

Kelly, 2003 (judge for the State of Michigan, JOSEPH ELEZOVIC, Plaintiff, and LULA ELEZOVIC, Plaintiff-Appellant/Cross-Appellee, v. FORD MOTOR COMPANY and DANIEL P. BENNETT, Defendants-Appellees/Cross-Appellants., No. 236749, COURT OF APPEALS OF MICHIGAN, 259 Mich. App. 187; 673 N.W.2d 776; 2003 Mich. App. LEXIS 2649; 93 Fair Empl. Prac. Cas. (BNA) 244; 92 Fair Empl. Prac. Cas. (BNA) 1557, lexis)

Applying agency principles, a principal is responsible for the acts of its agents done within the scope of the agent's authority, "even though acting contrary to instructions." [Dick Loehr's, Inc v Secretary of State, 180 Mich. App. 165, 168; 446 N.W.2d 624 (1989)](https://www.lexis.com/research/buttonTFLink?_m=6cbcd97524abff5644c0987b135f7517&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b259%20Mich.%20App.%20187%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_origin=TOASHLX&_butNum=115&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b180%20Mich.%20App.%20165%2cat%20168%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=136&_startdoc=101&wchp=dGLbVtb-zSkAk&_md5=708331d40466e4347936b73e103c82fb). This is because, in part, an agency relationship arises where the principal [\*\*\*36]  has the right to control the conduct of the agent. [St Clair Intermediate School Dist v Intermediate Ed Ass'n/Michigan Ed Ass'n, 458 Mich. 540, 558 n 18; 581 N.W.2d 707 (1998)](https://www.lexis.com/research/buttonTFLink?_m=6cbcd97524abff5644c0987b135f7517&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b259%20Mich.%20App.%20187%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_origin=TOASHLX&_butNum=116&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b458%20Mich.%20540%2cat%20558%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=136&_startdoc=101&wchp=dGLbVtb-zSkAk&_md5=c0a63a81a484a6ce53be229bc2290a07) (citations omitted). The employer is also liable for the torts of his employee if "'the servant purported to act or to speak on behalf of the principal and there was reliance upon apparent authority, or he was aided in accomplishing the tort by the existence of the agency relation,'" [McCann v Michigan, 398 Mich. 65, 71; 247 N.W.2d 521 (1976)](https://www.lexis.com/research/buttonTFLink?_m=6cbcd97524abff5644c0987b135f7517&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b259%20Mich.%20App.%20187%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_origin=TOASHLX&_butNum=117&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b398%20Mich.%2065%2cat%2071%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=136&_startdoc=101&wchp=dGLbVtb-zSkAk&_md5=5219d53b6a7119254f8041c911d87fd2), quoting [Restatement of Agency, 2d § 219(2)(d)](https://www.lexis.com/research/buttonTFLink?_m=6cbcd97524abff5644c0987b135f7517&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b259%20Mich.%20App.%20187%5d%5d%3e%3c%2fcite%3e&_butType=4&_butStat=0&_origin=TOASHLX&_butNum=118&_butInline=1&_butinfo=AGENCY%20SECOND%20219&_fmtstr=FULL&docnum=136&_startdoc=101&wchp=dGLbVtb-zSkAk&_md5=71c1bf8c001fe5ae1153be4268b8e9e9), p 481; see also [Champion v Nation Wide Security, Inc, 450 Mich. 702, 704, 712; 545 N.W.2d 596 (1996)](https://www.lexis.com/research/buttonTFLink?_m=6cbcd97524abff5644c0987b135f7517&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b259%20Mich.%20App.%20187%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_origin=TOASHLX&_butNum=119&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b450%20Mich.%20702%2cat%20704%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=136&_startdoc=101&wchp=dGLbVtb-zSkAk&_md5=3d1841dc7f4fb90804d8adb6349a6fae), citing [Restatement of Agency, 2d § 219(2)(d)](https://www.lexis.com/research/buttonTFLink?_m=6cbcd97524abff5644c0987b135f7517&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b259%20Mich.%20App.%20187%5d%5d%3e%3c%2fcite%3e&_butType=4&_butStat=0&_origin=TOASHLX&_butNum=120&_butInline=1&_butinfo=AGENCY%20SECOND%20219&_fmtstr=FULL&docnum=136&_startdoc=101&wchp=dGLbVtb-zSkAk&_md5=c1927abf5bf3954a85d211c044ada141), p 481 ("the master is liable for the tort of his servant if the servant 'was aided in accomplishing the tort by the existence of the agency relation'"). In [Backus v  [\*213]  Kauffman (On Rehearing), 238 Mich. App. 402, 409; 605 N.W.2d 690 (1999)](https://www.lexis.com/research/buttonTFLink?_m=6cbcd97524abff5644c0987b135f7517&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b259%20Mich.%20App.%20187%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_origin=TOASHLX&_butNum=121&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b238%20Mich.%20App.%20402%2cat%20409%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=136&_startdoc=101&wchp=dGLbVtb-zSkAk&_md5=d9947545fee151274d489cbc14123160), this Court stated: The term "authority" is defined by Black's Law Dictionary to include "the power delegated by a principal to an agent." Black's Law Dictionary (7th ed), p [\*\*\*37]  127. "Scope of authority" is defined in the following manner: "The reasonable power that an agent has been delegated or might foreseeably be delegated in carrying out the principal's business." Id. at 1348.

#### The AUMF only authorized force against those involved in the 9/11 attacks

Cronogue 12, JD Duke Law

(Graham, A NEW AUMF: DEFINING COMBATANTS IN THE WAR ON TERROR, scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1294&context=djcil)

The AUMF authorized the President to use “all necessary and appropriate force” against all actors that he determined were involved in the 9/11 attacks. The nexus requirement tethered military action to this specific event and those involved in the attacks. In 2001, this hastily passed statute adequately addressed America’s principal security concerns, namely al-Qaeda, the Taliban and Osama bin Laden. However, as time passes and the war on terror expands to new groups and regions, the connection to these attacks is becoming more and more tenuous. The United States faces threats not just from al-Qaeda, but also from its allies and cobelligerents, many of whom seemingly have no relation to 9/11. Moreover, the exact scope and appropriate use of this force remains undefined. Though the President has interpreted “force” to include detention and targeted killings and has applied it to American citizens at home and abroad, these actions are immensely controversial.88 The AUMF does little to help clear up these problems. America’s chief security threats used to come from the Taliban and al-Qaeda. The Taliban harbored the perpetrators of the 9/11 attacks, al-Qaeda, and fell squarely under the AUMF’s nexus requirement. Now, al-Qaeda has many allies and cobelligerents; these groups employ similar tactics, share comparable ideologies, and present significant threats to American lives.89 But does the AUMF authorize force against these groups? Are groups such as al-Shabaab,90 AQAP,91 and the Pakistani Taliban92 sufficiently tied to 9/11 or al-Qaeda? These groups are violent, dangerous, and opposed to the United States. In many ways, they are just as dangerous as al-Qaeda. However, many of these groups did not even exist on September 11, 2001, and the ones that did were not directly involved in the attacks. Thus, they could not possibly have a strong relationship to the attacks themselves, nor did they harbor those who did. Since the AUMF’s text only authorizes force against those actors the President deems were involved in the 9/11 attacks, these groups are necessarily outside of Congress’s authorization

#### The affirmative authorizes force against those who enjoy close and well established collaboration with Al-Qaeda or the Taliban, even if they were not involved in 9/11. This is an expansion of authority, not a restriction

Cronogue 12, JD Duke Law

(Graham, A NEW AUMF: DEFINING COMBATANTS IN THE WAR ON TERROR, scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1294&context=djcil)

My proposal for the new AUMF would appear as follows: AFFIRMATION OF ARMED CONFLICT WITH AL-QAEDA, THE TALIBAN, AND ASSOCIATED FORCES Congress affirms that— (1) the United States is engaged in an armed conflict with al-Qaeda, the Taliban, and associated forces and that those entities continue to pose a threat to the United States and its citizens, both domestically and abroad; a. for the purposes of this statute, an associated force is a nation, organization, or person who enjoys close and well established collaboration with al-Qaeda or the Taliban and as part of this relationship has either engaged in or has intentionally provided direct tactical or logistical support for armed conflict against the United States or coalition partners. (2) the President has the authority to use all necessary and appropriate force during the current armed conflict with al-Qaeda, the Taliban, and associated forces pursuant to the Authorization for Use of Military Force (Public Law 107-40; 50 U.S.C. 1541); (3) the current armed conflict includes nations, organization, and persons who— a. are part of al-Qaeda, the Taliban, or associated forces; or b. engaged in hostilities or have directly supported hostilities in aid of a nation, organization or person described in subparagraph (A); c. or harbored a nation, organization, or person described in subparagraph (A); and (4) the President’s authority pursuant to the Authorization for Use of Military Force includes the authority to detain belligerents, including persons described in paragraph (3), until the termination of hostilities. (5) Nothing in this authorization should be construed to limit the President’s ability to respond to new and emerging threats or engage in appropriate and calculated actions of self-defense. The definition of “associated forces” will add much needed clarity and provide congressional guidance in determining what groups actually fall under this provision. Rather than putting faith in the President not to abuse his discretion, Congress should simply clarify what it means and limit his discretion to acceptable amounts. The “close and well-established collaboration” ensures that only groups with very close and observable ties to al-Qaeda and the Taliban are designated as “associated forces.” While the requirement that part of their collaboration involve some kind of tactical or logistical support ensures that those classified as enemy combatants are actually engaged, or part of an organization that is engaged, in violence against the United States. Also, requiring that the associated force’s violence be directed at the United States or a coalition partner and that this violence is part of its relationship with al-Qaeda or the Taliban is another important limitation. First, requiring the associated force to engage in violence that is directed at these nations ensures that “associated force” does not include countries such as Iran that might have a relationship with al-Qaeda and give it financial support but are not actually in violent conflict with the United States. Second, requiring that this violence is made in furtherance of its relationship with al-Qaeda and the Taliban ensures that the violence that makes a group an “associated force” is actually related to its collaboration with al-Qaeda and the Taliban. Without this second provision, a group that supports al-Qaeda would be elevated to an “associated force” if it engaged in violence with, for instance, Australia over a completely unrelated issue. While some groups that work closely with and support al-Qaeda would not be considered associated forces, it is important to limit the scope of this term. This label effectively elevates the group to the same status as al-Qaeda and the Taliban and attaches authorization for force against any group that supports or harbors it. Furthermore, there is little real harm by narrowly defining associated forces because the groups that do support al- Qaeda will still be subject to the authorization under the “support” or “harbor” prongs. Narrowly defining “associated forces” simply prevents the problem of authorization spreading to supporters of those who are merely supporters of al-Qaeda. Compared to Representative McKeon’s proposal, these new provisions would narrow the scope of authorization. The President would not be able to use this authorization to attack new groups that both spring up outside our current theater and have no relation to al-Qaeda, the Taliban or the newly defined associated forces. However, part (5) of my authorization would ensure that the President is not unnecessarily restricted in responding to new and emergent threats from organizations that do not collaborate and support al-Qaeda. In this way, the proposal incorporates Robert Chesney’s suggestion, “[i]t may be that it [is] better to draw the statutory circle narrowly, with language making clear that the narrow framing does not signify an intent to try and restrict the President’s authority to act when necessary against other groups in the exercise of lawful self-defense.” The purpose of the new AUMF should not be to give the President a carte blanche to attack any terrorist or extremist group all over the world. The purpose of this authorization is to provide clear authorization for the use of force against al-Qaeda and its allies. Moreover, if a new group is created that has no relation to any of the relevant actors defined in this statute, Congress can pass another authorization that addresses this reality. The purpose of congressional authorization should not be to authorize the President to act against every conceivable threat to American interests. In fact, such an authorization would effectively strip Congress of its constitutional war making powers. Instead, the new proposal should provide clear domestic authorization for the use of force against those nations that present the greatest threat to the United States today. CONCLUSION The original AUMF was hastily passed during a time of crisis to address America’s most pressing security threats and concerns. Over time these threats and concerns have changed and grown. Our law on conflict should evolve with these changes. The best way to bring about this change is to update the AUMF. This update should reflect the present reality of the conflict by expanding the authorization to use force beyond simply those involved in 9/11. This authorization should expand to include groups such as AQAP who work closely with and fight alongside al-Qaeda. However, we should not expand the scope of the statute as far as Congress has proposed. Representative McKeon’s legislation would effectively give the President a carte blanche to decide who and what to attack and detain. Such a broad grant of authority would effectively allow the President to use force whenever and wherever he wanted. Instead, the new legislation should balance the need for decisive presidential action against the very real concern of adding too much gloss to the Executive power. My proposal attempts to find such a balance by clearly defining the groups of combatants, ensuring that the President has clear and significant authority to act against those organizations. It also limits his discretion in deciding what groups fit this description and prevents him from starting a global and perpetual war on terror, while ensuring that he is not completely barred from responding to new threats as they arise. Undoubtedly, my proposal has flaws and loopholes and cannot be used to authorize force against all future threats, but it does a better job than Representative McKeon’s of heeding President Lincoln’s warning.

#### Vote Neg

#### Limits – Their aff justifies any aff that has the judiciary or Congress clarify in ways that expand war powers - 1000s of ways to do that

#### Ground – Increasing restrictions is key to stable neg link and cp ground – clarifications to authority make all DA links non-unique – bidirectional affs are especially bad because they are reading neg ground on the aff

### K

#### **aff’s use of the law is a militaristic tactic that creates legal legitimacy to propel more frequent, more deadly violent interventions that ensure infrastructural violence that maims civilians – they actively displace moral questions in favor of a pathologically detached question of legality**

Smith 2 – prof of phil @ U of South Florida

(Thomas, *International Studies Quarterly* 46, The New Law of War: Legitimizing Hi-Tech and Infrastructural Violence)

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

#### **militarism is a fundamentally unsustainable system that is the root cause of all extinction threats and ensures mass structural violence – non-violence is the only possible response**

Kovel 2

(Joel, “The United States Military Machine”, http://www.joelkovel.org/americanmilitary.htm; Jacob)

I want to talk to you this evening about war - not the immediate threat of us war against Iraq, but about how this conflict is an instance of a larger tendency toward war-making endemic to our society. In other words, the phrase from the folksong, “I ain’t gonna study war no more,” should be rethought. I think we do have to study war. Not to make war but to understand more deeply how it is put together and about the awful choices that are now being thrust upon us. These remarks have been stimulated by recent events, which have ancient roots, but have taken on a new shape since the collapse of the Soviet Union, the rise of the second Bush administration, and the inception of the so-called “War on Terror.” The shape is that of permanent warfare- war-making that has no particular strategic goal except total us dominance over global society. Hence, a war without end and whose internal logic is to perpetuate itself. We are, in other words, well into World War III, which will go on whether or not any other state such as Iraq is involved. It is quite probable that this administration will go to war in Iraq, inasmuch as certain very powerful people crave it. But it is not necessarily the case, given the fact that the war against Iraq is such a lunatic proposal that many other people in high places are against it and too many people are marching against it. And while war against Iraq is a very serious matter that needs to be checked by massive popular resistance, equally serious are the structures now in place in the United States dictating that whether or not the war in Iraq takes place, there will be another war to replace it, and others after that, unless some very basic changes take place. America Has Become a War-Making Machine The United States has always been a bellicose and expansive country, built on violent conquest and expropriation of native peoples. Since the forming of the American republic, military interventions have occurred at the rate of about once a year. Consider the case of Nicaragua, a country utterly incapable of being any kind of a threat to its giant northern neighbor. Yet prior to the Sandinista revolution in 1979 (which was eventually crushed by us proxy forces a decade later), our country had invaded Nicaragua no fewer than 14 times in the pursuit of its imperial interests. A considerable number of contemporary states, such as Britain, South Africa, Russia, and Israel, have been formed in just such a way. But one of the special conditions of the formation of America, despite its aggressivity, was an inhibition against a military machine as such. If you remember, no less a figure than George Washington warned us against having a standing army, and indeed the great bulk of us interventions prior to World War II were done without very much in the way of fixed military institutions. However, after WWII a basic change set in. War-weary America longed for demobilization, yet after a brief beginning in this direction, the process was halted and the permanent warfare state started to take shape. In part, this was because policy planners knew quite well that massive wartime mobilization had been the one measure that finally lifted America out of the Great Depression of the 1930s. One of the lessons of that time was that propounded by the British economist John Maynard Keynes, to the effect that capitalist societies could ameliorate chronic [economic] crises by infusions of government spending. The Great War had certified this wisdom, and permanent military expenditure readily became the received wisdom. This was greatly reinforced by the drastic realignment of capitalist power as a result of the war. America was essentially the only capitalist power in 1945 that did not lay in ruins and/or have its empire shattered. The world had been realigned and the United States had assumed a global imperial role. Policy planners like George Kennan lucidly realized that this meant safeguarding extreme inequalities in wealth, which implied a permanent garrison to preserve the order of things. The notion was especially compelling given that one other state, the Soviet Union, had emerged a great power from the war and was the bellwether of those forces that sought to break down the prevailing distribution of wealth. The final foundation stone for the new military order was the emergence of frightful weapons of mass destruction, dominance over which became an essential element for world hegemony. The Iron Triangle These factors crystallized into the Cold War, the nuclear arms race, and, domestically, into those structures that gave institutional stability and permanence to the system: the military-industrial complex (mic). Previously the us had used militarism to secure economic advantage. Now, two developments greatly transformed our militarism: the exigencies of global hegemony and the fact that militarism became a direct source of economic advantage, through the triangular relations of the mic with the great armament industries comprising one leg, the military establishment another, and the state apparatus the third, profits, power, and personnel could flow through the system and from the system. Clearly, this arrangement had the potential to greatly undermine American democracy. It was a “national security state” within the state but also extended beyond it into the economy and society at large, virtually insulated from popular input, and had the power to direct events and generate threats. Another conservative war hero-become-president, Dwight Eisenhower, warned the nation in a speech in 1961 against the emerging permanent war machine, but this time, the admonitions were not heeded.\* The machine made a kind of war against the Soviet system for 35 years. Although actual guns were not fired between the two adversaries, as many as 10 million people died in its varied peripheral conflicts, from Korea to Vietnam, Angola, El Salvador, Nicaragua, and Guatemala. The Cold War divided the world into bipolar imperial camps, directed by gigantic superpowers that lived off each other’s hostility. It was a terrible war whose immense suffering took place largely outside the view of the American people, but it also brought about an uneasy kind of stability in the world order, in part through the standoff in nuclear weapons. During the Ford and Carter administrations, another great crisis seized the world capitalist economy. Having matured past the rebuilding that followed the world war, a period of stagnation set in, which still has the global economy in its grip despite episodic flashes of vigor. Predictably, a spate of militarism was central to the response. A “Second Cold War” took place under Reagan, featuring an accelerated nuclear arms race, which was deliberately waged so as to encourage Soviet countermeasures in the hope that this would cause breakdown in the much weaker, bloated, and corrupt Russian system. The plan worked splendidly: by 1989-91, the mighty Soviet empire collapsed, and the bipolar world order became unipolar, setting a stage for the current phase. The fall of the Soviet Union was widely expected to bring a ìpeace dividend.î This would have been the case according to the official us line, parroted throughout the media and academe, that our military apparatus was purely defensive (after all, we have no Department of War, only one of "Defense") and reactive to Soviet expansionism and military/nuclear threat. As this was no longer a factor, so the reasoning wentóindeed, as the us now stood bestride the world militarily as had no power since the Roman Empireóconventional logic predicted a general diminution in American militarism after 1991, with corresponding benefits to society. The last decade has at least settled this question, for the effect on us aggression, interventionism, and the militarization of society has been precisely the opposite. In other words, instead of braking, the machine accelerated. Removal of Soviet power did not diminish Americaís imperial appetite: it removed inhibitions on its internally driven expansiveness. As a result, enhanced war-making has replaced the peace dividend. The object of this machine has passed from dealing with Soviet Communism to a more complex and dispersed set of oil wars (Iraq I and now II), police actions against international miscreants (Kosovo), and now the ubiquitous War Against Terror, aimed variously at Islamic fundamentalists, Islam as a whole, or anybody irritated enough with the ruling order to take up some kind of arms against it. The comparison with the Roman Empire is here very exact. As the eminent economist and sociologist Joseph Schumpeter described Rome in 1919: “There was no corner of the known world where some interest was not alleged to be in danger or under actual attack. If the interests were not Roman, they were those of Rome’s allies. And if Rome had no allies existed, the allies would be invented. The fight was always invested with the order of legality. Rome was always being attacked by evil-minded neighbors.” The logic of constant threat meshes with that of ruthless expansion, which we see everywhere in this epoch of unipolar world dominion. Currently, the military budget of the us is 334 billion dollars. The budget for the next fiscal year is 379 billion dollars- an increase of more than 10 percent. By 2007, the projected military budget of the us is to be an astounding 451 billion dollars: almost half a trillion dollars, without the presence of anything resembling a conventional war. The present military budget is greater than the sum of all other military budgets. In fact, it is greater than the entire federal budget of Russia, once America's immortal adversary, and comprises more than half - 52 percent of all discretionary spending by the us government. (By comparison, education accounts for 8 percent of the federal budget.) A considerable portion of this is given over to "military Keynesianism," according to the well-established paths of the mic. Thus, although in the first years after the fall of the ussr certain firms like General Dynamics, which had played a large role in the nuclear arms race, suffered setbacks, that problem has been largely reversed for the entire class of firms fattening at the trough of militarism. It is fair to say, though, that the largesse is distributed over a wider scale, in accordance with the changing pattern of armaments. us Armies Taking Root Everywhere From having scarcely any standing army in 1940, American armies now stand everywhere. One feature of us military policy since WWII is to make war and then stay where war was made, rooting itself in foreign territory. Currently, the us has military bases in 113 countries, with 11 new ones formed since the beginning of the War Against Terror. The us now has bases in Kazakhstan, Uzbekistan, and Kurdistan, encircling China and creating new sources of military tension. On these bases, the us military has erected some 800,000 buildings. Imagine that: 800,000 buildings in foreign countries that are now occupied by us military establishments. And America still maintains large forces in Germany, Japan, and Korea, with tens of thousands of troops permanently on duty (and making mischief, as two us servicemen recently ran over and killed two Korean girls, provoking massive demonstrations). After the first Gulf War the us military became installed in Saudi Arabia and Kuwait, in which latter place it currently occupies one quarter of the country - 750 square miles devoted to military activity. This huge investment is no doubt determined by proximity to Iraq. Again, after going to war in Kosovo, the us left behind an enormous base in a place called Bondsteel. These self-expanding sites of militarism are permanent goads to terrorist organizations. Recall that one of Osama bin Laden's professed motivations for al-Qaeda's attacks on American facilities was the presence of us bases in his home country of Saudi Arabia. The bases are also permanent hazards to the environment - indeed, the us, with some 800,000 buildings on these military sites, is the world's largest polluter and the largest consumer of fossil fuels. With territorial expansion of the us military apparatus, there is a corresponding expansion of mission. For instance, in Colombia, where billions of us dollars are spent in the "War on Drugs," us troops are now being asked to take care of pipelines through which vital oil reserves are passing. In addition, the War on Drugs is now subsumed into the War Against Terror. The signifier of Terror has virtually unlimited elasticity, for once an apparatus reaches the size of the us military machine, threats can be seen anywhere. With the inauguration of the new hard-line president of Colombia, Alvaro Uribe, the us authorized the use of 1.7 billion dollars in military aid hitherto limited to anti-drug operations for direct attacks on deeply entrenched farc guerrillas. This redirection of aid came after Colombian officials and their American supporters in the Congress and Bush administration argued that the change was needed as part of the global campaign against terrorism. Within this overall picture, American armed forces are undergoing a qualitative shift of enormous proportion. In words read by President Bush: “Our forces in the next century must be agile, lethal, readily deployable, and must require a minimum of logistical support. We must be able to project our power over long distances in days or weeks rather than months. On land our heavy forces must be lighter, our light forces must be more lethal. All must be easier to deploy.” Crossing Weapons Boundaries - Both Nuclear and Conventional As a result, many boundaries and limits of the bipolar era have been breached. For example, the distinction between nuclear and conventional weapons had always constituted a radical barrier. The standoff between the us and the ussr was epitomized by mind-numbing hydrogen bomb-missiles facing each other in a scenario called “Mutual Assured Destruction.î”In short, a strategic condition of deterrence prevailed, which made nuclear weapons seem unthinkable. With the demise of the ussr, deterrence no longer inhibits us nuclear weaponry, and the weapons themselves have proliferated downward, becoming miniaturized and increasingly tactical rather than strategic. Meanwhile, the genie of the weapons industries has developed ever more destructive “conventional” weapons. These include non-explosive devices of awesome power, such as laser beams, microwaves, and large-scale climate manipulation, along with a new generation of super-powerful explosive devices. Thus the strongest non-nuclear weapons are now considerably more lethal than the least powerful nuclear weapons, making the latter thinkable and eliminating a major barrier against their employment. These so-called conventional bombs have already been used, for example, in Afghanistan, where the us employed a gigantic explosive weapon, called a “Bunker Buster” to root out al-Qaeda combatants in underground bunkers. They are based upon the “daisy cutter,” a giant bomb about the size of a Volkswagen Beetle and capable of destroying everything within a square kilometer. Significantly, the model used in Afghanistan, the B61-11, already employs nuclear technology, the infamous depleted uranium warhead, capable by virtue of its extreme density, of great penetrating power. Depleted uranium (du) is a by-product of the nuclear power industry (chiefly being U-238 created in the extraction of U-235 from naturally occurring uranium ore). Over 500,000 tons of deadly du have accumulated and 4-5,000 more tons are being produced every year. Like all products of the nuclear power industry, du poses immense challenges of disposal. It has this peculiar property of being almost twice as dense as lead and it is radioactive with a half-life of 4.5 billion years. Wherever depleted uranium is used, it has another peculiar property of exploding, vaporizing at 56 degrees centigrade, which is just like a little more than half the way to boiling water. So it is very volatile, it explodes, it forms dust and powders that are inhaled, disburses widely, and produces lethal cancers, birth defects, and so forth for 4.5 billion years. In the case of depleted uranium, the challenge of disposal was met by incorporating the refuse from the “peaceful” branch of nuclear technology into the war-making branch. Already used in anti-tank projectiles in the first Iraq war (approximately 300 tons worth) and again in Yugoslavia (approximately 10-15 tons were used in each of the various Yugoslav wars), it is presumed, although the defense department coyly denies it, that this material was also used in the Afghanistan war. Depleted uranium has spread a plague of radioactivity and further rationalized the use of nuclear weapons as such. Consequently, the B61-11 is about to be replaced with the BLU113, where the bunker buster will now be a small nuclear weapon, almost certainly spear-tipped with du. Pollutants to Earth and Space To the boundaries crossed between nuclear and non-nuclear weapons, and between the peaceful and militaristic uses of atomic technology, we need to add those between earth and its lower atmosphere on the one hand, and space on the other. The administration is poised to realize the crackpot and deadly schemes of the Reagan administration to militarize space and to draw the rest of the world into the scheme, as client and victim. In November 2002, Bush proposed that nato allies build missile defense systems, with components purchased, needless to add, from Boeing, Raytheon, etc, even as Congress was approving a fiscal 2003 defense budget containing $7.8 billion authorization for missile defense research and procurement, as part of the $238 billion set aside for Star Wars over the next 20 years. The administration now is poised to realize the crackpot and deadly schemes of the Reagan administration to militarize space and to draw the rest of the world into the scheme, as client and victim. A new missile defense system bureaucracy has risen. It is currently developing such wild items as something called ìbrilliant pebblesî which involves the release of endless numbers of mini satellites into outer space. All of this was to protect the world against the threat of rogue states such as North Korea. As the Seattle Times reported, the us expects the final declaration to, “express the need to examine options to protect allied forces, territories, and population centers against the full range of missile threats.” As an official put it, "This will establish the framework within which nato allies could work cooperatively toward fielding the required capabilities. With the us withdrawal this year from the anti-ballistic treaty with Russia, it is no longer a question of whether missile defenses will be deployed. The relevant questions are now what, how, and when. The train is about to pull out of the station; we invite our friends, allies, and the Russian Federation to climb on board." The destination of this train is defensive only in the Orwellian sense, as the missiles will be used to defend us troops in the field. In other words, they will be used to defend armies engaged in offensive activities. What is being “defended” by the Strategic Defense Initiative (sdi), therefore, is the initiative to make war everywhere. Space has now become the ultimate battlefield. And not just with use of these missiles. The High Frequency Active Aural Research Program (haarp) is also part of sdi. This amounts to weather warfare: deliberately manipulating climate to harm and destroy adversaries. A very dubious enterprise, to say the least, in an age when global warming and climate instability are already looming as two of the greatest problems facing civilization. The chief feature is a network of powerful antennas capable of creating controlled local modifications of the ionosphere and hence producing weather disturbances and so forth. All of these technical interventions are accompanied by many kinds of institutional and political changes. The National Aeronautics and Space Administration, nasa, for instance, is now a partner in the development of this strategic defense initiative. The very way in which the United Nations was drawn into the resolution in the war against Iraq is a breach and a violation of the original un Charter, which is to never make war, never to threaten to make war on any member state. The un was a peacemaking institution, but now the Super power has forced it into its orbit. The scrapping of the abm and other elements of the treaty structure (non- proliferation, test-ban) that had organized the world of the Cold War is one part of a process of shedding whatever might inhibit the cancerous growth of militarism. It also creates an atmosphere of general lawlessness in the world. This is felt at all levels, from the rise of an ultra-militarist clique in the White House to the formal renunciation of no-first-use nuclear strategy, the flouting of numerous un regulations, the doctrine of pre-emptive war, and, as the logical outcome of all these developments, the condition of Permanent War and its accompaniment of general lawlessness, media slavishness, and a wave of repression for whose parallel we have to go back to the Alien and Sedition acts of the 1790s, or Trumanís loyalty oaths of 1947. Militarism cannot be reduced to politics, economics, technology, culture, or psychology. All these are parts of the machine, make the machine go around, and are themselves produced by the actions of the machine. There is no doubt, in this regard, that the machine runs on natural resources (which have to be secured by economic, political, and military action), and that it is deeply embedded in the ruling corporate order. There is no contradiction here, but a set of meshing parts, driven by an insensate demand for fossil fuel energy. As a man from Amarillo, Texas put it when interviewed by npr as to the correctness of Bush’s plan to go to war in Iraq: “I agree with the president, because how else are we going to get the oil to fly the F-16s?” We go to war, in other words, to get the oil needed to go to war. A Who's Who List of MIC Beneficiaries The fact that our government is front-loaded with oil magnates is another part of the machine. It is of interest, therefore, that Unocal, for example, celebrated Condoleezza Riceís ascendancy to the post of National Security Advisor by naming an oil tanker after her. Or that Dick Cheney, originally a poor boy, became a rich man after the first Gulf War, when he switched from being Secretary of Defense, in charge of destroying the Kuwait oil fields, to ceo of a then-smallish company, Halliburton, in charge of rebuilding the same oil fields. Or that G.W. Bush himself, aside from his failed venture with Harken Oil, is scion of a family and a dynasty that controls the Carlyle Group, founded in 1987 by a former Carter administration official. Carlyle is now worth over $13 billion and its high officials include President Bush I, his Secretary of State (and fixer of the coup that put Bush II in power) James Baker, Reaganís Secretary of Defense Frank Carlucci, former British Prime Minister John Major, and former Phillipine President Fidel Ramos, among others. The Carlyle Group has its fingers everywhere, including ìdefenseî, where it controls firms making vertical missile launch systems currently in use on us Navy ships in the Arabian sea, as well as a range of other weapons delivery systems and combat vehicles. And as a final touch which the worldís people would be much better off for knowing, there are very definite connections between Carlyle and the family of Osama bin Laden - a Saudi power whose fortunes have been fused with those of the United States since the end of World War II. Thus the military-industrial complex lives, breathes, and takes on new dimensions. There is a deep structural reason for the present explosion of us militarism, most clearly traceable in the activities of Vice President Cheney, made clear in the energy report that he introduced with the generous assistance of Enron executives in May 2001. According to the report, American reliance on imported oil will rise by from about 52 percent of total consumption in 2001 to an estimated 66 percent in 2020. The reason for this is that world production, in general, and domestic production in particular are going to remain flat (and, although the report does not discuss this, begin dropping within the next 20 years). Meanwhile consumptionówhich is a direct function of the relentless drive of capitalism to expand commodity productionóis to grow by some two- thirds. Because the usage of oil must rise in the worldview of a Cheney, the us will actually have to import 60 percent more oil in 2020 to keep itself going than it does today. This means that imports will have to rise from their current rate of about 10.4 million barrels per day to about 16.7 million barrels per day. In the words of the report: “The only way to do this is persuade foreign suppliers to increase their production to sell more of their output to the us.” The meaning of these words depends of course on the interpretation of “persuade”, which in the us lexicon is to be read, I should think, as requiring a sufficient military machine to coerce foreign suppliers. At that point they might not even have to sell their output to the us, as it would already be possessed by the superpower. Here we locate the root material fact underlying recent us expansionism. This may seem an extravagant conclusion. However an explicit connection to militarismóand Iraqóhad been supplied the month before, in April 2001, in another report prepared by James Baker and submitted to the Bush cabinet. This document, called “Strategic Energy Policy Challenges for the 21st Century,” concludes with refreshing candor that ìthe us remains a prisoner of its energy dilemma, Iraq remains a destabilizing influence to the flow of oil to international markets from the Middle East, Saddam Hussein has also demonstrated a willingness to threaten to use the oil weapon and to use his own export program to manipulate oil markets, therefore the us should conduct an immediate policy review toward Iraq, including military, energy, economic, and political diplomatic assessments. Note the absence of reference to “weapons of mass destruction,” or aid to terrorism, convenient rationalizations that can be filled in later. Clearly, however things turn out with Iraq, the fundamental structural dilemma driving the military machine pertains to the contradictions of an empire that drives toward the invasion of all social space and the total control over nature. Since the former goal meets up with unending resistance and the latter crashes against the finitude of the material world, there is no recourse except the ever-widening resort to force. But this, the military monster itself, ever seeking threats to feed upon, becomes a fresh source of danger, whether of nuclear war, terror, or ecological breakdown. The situation is plainly unsustainable, a series of disasters waiting to happen. It can only be checked and brought to rationality by a global uprising of people who demand an end to the regime of endless war. This is the only possible path by which we can pull ourselves away from the abyss into which the military machine is about to plunge, dragging us all down with it.

#### **the aff’s certain calculations about war are an impossibly arrogant form of mechanical, sterile analysis that eases the path towards war. their language is coopted to provide rhetorical ammunition for militarists. our alternative is not pure pacifism, but rather a pacifist analysis that injects moral and epistemic doubt into our decisionmaking about war – this is the only way to formulate better policies that address structural causes of war and avoids inevitable cycles of violence**

Neu 13 – prof @ U of Brighton

(Michael, International Relations 27(4), December, The Tragedy of Justified War)

Just war theory is not concerned with millions of starving people who could be saved from death and disease with a fraction of the astronomical amount of money that, every year, goes into the US defence budget alone (a budget that could no longer be justified if the United States ran out of enemies one day). It is not interested in exposing the operat- ing mechanisms of a global economic structure that is suppressive and exploitative and may be conducive to outbreaks of precisely the kind of violence that their theory is con- cerned with. As intellectually impressive as analytical just war accounts are, they do not convey any critical sense of Western moralism. It is as though just war theory were written for a different world than the one we occupy: a world of morally responsible, structurally unconstrained, roughly equal agents, who have non-complex and non-exploitative relationships, relationships that lend themselves to easy epistemic access and binary moral analysis. Theorists write with a degree of confidence that fails to appreciate the moral and epistemic fragility of justified war, the long-term genesis of violent conflict, structural causes of violence and the moralistic attitudes that politicians and the media are capable of adopting. To insist that, in the final analysis, the injustice of wars is completely absorbed by their being justified reflects a way of doing moral philosophy that is frighteningly mechanical and sterile. It does not do justice to individual persons,59 it is nonchalant about suffering of unimaginable proportions and it suffocates a nuanced moral world in a rigid binary structure designed to deliver unambiguous, action-guiding recommendations. According to the tragic conception defended here, justified warfare constitutes a moral evil, not just a physical one – whatever Coates’ aforementioned distinction is supposed to amount to. If we do not recognise the moral evil of justified warfare, we run the risk of speaking the following kind of language when talking to a tortured mother, who has witnessed her child being bombed into pieces, justifiably let us assume, in the course of a ‘just war’: See, we did not bomb your toddler into pieces intentionally. You should also consider that our war was justified and that, in performing this particular act of war, we pursued a valid moral goal of destroying the enemy’s ammunition factory. And be aware that killing your toddler was not instrumental to that pursuit. As you can see, there was nothing wrong with what we did. (OR: As you can see, we only infringed the right of your non-liable child not to be targeted, but we did not violate it.) Needless to say, we regret your loss. This would be a deeply pathological thing to say, but it is precisely what at least some contemporary just war theorists would seem to advise. The monstrosity of some accounts of contemporary just war theory seems to derive from a combination of the degree of certainty with which moral judgments are offered and the ability to regard the moral case as closed once the judgments have been made. One implication of my argument for just theorists is clear enough: they should critically reflect on the one-dimensionality of their dominant agenda of making binary moral judgments about war. If they did, they would become more sympathetic to the pacifist argument, not to the conclusion drawn by pacifists who are also caught in a binary mode of thinking (i.e. never wage war, regardless of the circumstances!) but to the timeless wisdom that forms the essence of the pacifist argument. It is wrong to knowingly kill and maim people, and it does not matter, at least not as much as the adherents of double effect claim, whether the killing is done intentionally or ‘merely’ with foresight. The difference would be psychological, too. Moral philosophers of war would no longer be forced to concede this moral truth; rather, they would be free to embrace it. There is no reason for them to disrespect the essence of pacifism. The just war theorist Larry May implicitly offers precisely such a tragic vision in his sympathetic discussion of ‘Grotius and Contingent Pacifism’. According to May, ‘war can sometimes be justified on the same grounds on which certain forms of pacifism are themselves grounded’.60 If this is correct, just war theorists have good reason to stop calling themselves by their name. They would no longer be just war theorists, but unjust war theorists, confronting politicians with a jus contra bellum, rather than offering them a jus ad bellum. Beyond being that, they would be much ‘humbler in [their] approach to considering the justness of war’ (or, rather, the justifiability), acknowledging that: notions of legitimate violence which appear so vivid and complete to the thinking individual are only moments and snapshots of a wider history concerning the different ways in which humans have ordered their arguments and practices of legitimate violence. Humility in this context does not mean weakness. It involves a concern with the implicit danger of adopting an arrogant approach to the problem of war.61 Binary thinking in just war theory is indeed arrogant, as is the failure to acknowledge the legitimacy of – and need for – ambiguity, agony and doubt in moral thinking about war. Humble philosophers of war, on the contrary, would acknowledge that any talk of justice is highly misleading in the context of war.62 It does not suffice here, in my view, to point out that ‘we’ have always understood what ‘they’ meant (assuming they meant what we think they meant). Fiction aside, there is no such thing as a just war. There is also no such thing as a morally justified war that comes without ambiguity and moral remainders. Any language of justified warfare must therefore be carefully drafted and constantly questioned. It should demonstrate an inherent, acute awareness of the fragility of moral thinking about war, rather than an eagerness to construct unbreakable chains of reasoning. Being uncertain about, and agonised by, the justifiability of waging war does not put a moral philosopher to shame. The uncertainty is not only moral, it is also epistemic. Contemporary just war theorists proceed as if certainty were the rule, and uncertainty the exception. The world to which just war theory applies is one of radical and unavoidable uncertainty though, where politicians, voters and combatants do not always know who their enemies are; whether or not they really exist (and if so, why they exist and how they have come into existence); what weapons the enemies have (if any); whether or not, when, and how they are willing to employ them; why exactly the enemies are fought and what the consequences of fighting or not fighting them will be. Philosophers of war should also become more sensitive to the problem of political moralism. The just war language is dangerous, particularly when spoken by eager, self- righteous, over-confident moralists trying to make a case. It would be a pity if philosophers of war, despite having the smartest of brains and the best of intentions, effectively ended up delivering rhetorical ammunition to political moralists. To avoid being inadvertently complicit in that sense, they could give public lectures on the dangers of political moralism, that is, on thinking about war in terms of black and white, good and evil and them and us. They could warn us against Euro-centrism, missionary zeal and the emperors’ moralistic clothes. They could also investigate the historical genesis and structural conditionality of large-scale aggressive behaviour in the global arena, deconstruct- ing how warriors who claim to be justified are potentially tied into histories and structures, asking them: Who are you to make that claim? A philosopher determined to go beyond the narrow discursive parameters provided by the contemporary just war paradigm would surely embrace something like Marcus’ ‘second-order regulative principle’, which could indeed lead to ‘“better” policy’.63 If justified wars are unjust and if it is true that not all tragedies of war are authentic, then political agents ought to prevent such tragedies from occurring. This demanding principle, however, may require a more fundamental reflection on how we ‘conduct our lives and arrange our institutions’ (Marcus) in this world. It is not enough to adopt a ‘wait and see’ policy, simply waiting for potential aggressions to occur and making sure that we do not go to war unless doing so is a ‘last resort’. Large-scale violence between human beings has causes that go beyond the individual moral failure of those who are potentially aggressing, and if it turns out that some of these causes can be removed ‘through more careful decision-making’ (Lebow), then this is what ought to be done by those who otherwise deprive themselves, today, of the possibility of not wronging tomorrow.

#### The 1AC is a flawed research project—terrorism studies centered around the state function ideologically and ex

Jackson 9 [2009, Richard Jackson is a Reader in the Department of International Politics, Aberystwyth University, and a Senior Researcher at the Centre for the Study of Radicalisation and Contemporary Political Violence (CSRV), “Knowledge, power and politics in the study of politsical terrorism” in Critical Terrorism Studies: A New Research Agenda, pp. 66-84]

In the first place, it can be argued that terrorism studies fulfills an obvious¶ ideological function because, as Jeroen Gunning (2007a) has convincingly¶ shown, the dominant ‘knowledge’ of the field is an ideal type of ‘problem solving¶ theory’. According to Robert Cox, problem-solving theory ‘takes the¶ world as it finds it, with the prevailing social and power relationships and the¶ institutions into which they are organised, as the given framework for action’,¶ and then works to ‘make these relationships and institutions work smoothly by¶ dealing effectively with particular sources of trouble’ (Cox, 1981: 128–129). In¶ this instance, problem-solving theories of terrorism do not question the extent to¶ which the status quo and the dominant actors within it – the hierarchies and operation¶ of power and the inequalities and injustices thus generated – could be implicated¶ in the very ‘problem’ of terrorism itself or the many other forms of violence¶ which it is inextricably bound up with.¶ The problem-solving character of the field is illustrated most prosaically by¶ the ubiquitous efforts of virtually every terrorism studies scholar to provide¶ research that is ‘policy relevant’ and which will assist the state in its efforts to¶ defeat terrorism, and by the widespread tendency to uncritically accept the¶ state’s categorisations, definitions, dichotomies, and demonisations (see Toros and Gunning, this volume). Andrew Silke’s study concluded that a great deal¶ of the field’s output is driven by policy concerns and is limited to addressing¶ government agendas (Silke, 2004d: 58). This characteristic is not at all¶ surprising given that terrorism studies’ origins lie in counter-insurgency studies,¶ security studies, and neo-realist approaches to international relations at the¶ height of the cold war (Burnett and Whyte, 2005: 11–13). In fact, the first major¶ review of the field concluded that much of its early output appeared to be ‘counterinsurgency¶ masquerading as political science’ (Schmid and Jongman, 1988:¶ 182). More recently, the events of 11 September 2001 galvanised a whole new¶ generation of scholars who were understandably eager to offer their skills in the¶ cause of preventing further such attacks and ‘solving’ the terrorism ‘problem’.¶ They therefore had little reason to question the dominant orientation of the field¶ towards assisting state security or the underlying assumptions this necessarily¶ entails.¶ The desire to assist governments in their efforts to control the destructive¶ effects of non-state terrorism is not necessarily problematic in and of itself; nor¶ does it imply any bad faith on the part of individual scholars (Horgan and Boyle,¶ 2008). In fact, the prevention of violence against civilians is a highly laudable¶ aspiration. However, when virtually the entire academic field collectively adopts¶ state priorities and aims, and when it tailors its research towards assisting state¶ agencies in fighting terrorism (as defined by state institutions), it means that¶ terrorism studies functions ideologically as an intellectual arm of the state and is¶ aligned with its broader hegemonic project.¶ The field’s problem-solving, state-oriented and therefore ideological character¶ is also illustrated by the way in which the field’s ‘knowledge’ functions to delegitimise¶ any kind of non-state violence while simultaneously reifying and legitimising¶ the state’s employment of violence; and the way it constructs terrorism as¶ a social problem to be solved by the state but never as a problem of state violence¶ itself. From this viewpoint, the silence regarding state terrorism within the discourse¶ (Jackson, 2008b), and in particular the argument of many terrorism studies¶ scholars that state actions should not be defined as ‘terrorism’, actually functions¶ to furnish states with an authoritative academic justification for using what may¶ actually be terroristic forms of violence against their opponents and citizens. In¶ effect, it provides them with greater leeway when applying terror-based forms of¶ violence against civilians, a leeway exploited by a great many states who intimidate¶ groups and individuals with the application of massive and disproportionate¶ state violence. In other words, by occluding and obscuring the very possibility of¶ state terrorism, and as a field with academic and political authority, the discourse¶ of terrorism studies can be considered part of the conditions that actually make¶ state terrorism possible.¶ Furthermore, the discourse is deeply ideological in the way in which its core¶ assumptions, narratives, and knowledge-producing practices function to legitimise¶ existing power structures and particular hegemonic political practices in¶ society. For instance, the primary focus on the ‘problem’ of non-state terrorism¶ functions to distract from and deny the long history of Western involvement in¶ terrorism (see Blakeley, forthcoming), thereby constructing Western foreign¶ policy as essentially benign – rather than aimed primarily at reifying existing¶ structures of power and domination in the international system, for example.¶ That is, by deflecting criticism of particular Western policies, the discourse¶ works to maintain the potentially dangerous myth – the accepted common sense¶ among Western scholars and Western publics – of Western exceptionalism.This¶ sense of exceptionalismin turn permits Western states and their allies to pursue¶ a range of discrete and often illiberal political projects and partisan interests¶ aimed at maintaining dominance in a hegemonic liberal international order.¶ Specifically, by reinforcing the dominant ‘knowledge’ that non-state terrorism is¶ a much greater security threat than state terrorism and by obscuring the ways in¶ which counterterrorism itself can morph into state terrorism (see Jackson,¶ forthcoming), the discourse functions to legitimise the current global war on¶ terror and its associated policies of military intervention and regime change,¶ extraordinary rendition, military expansion to new regions, military assistance¶programmes (often to repressive regimes), the imposition of sanctions, the¶ isolation of oppositional political movements, and the like (see, among many¶ others, Stokes and Raphael, forthcoming; El Fadl, 2002; Mahajan, 2002, 2003;¶Callinicos, 2003). More directly, the discourse provides legitimacy to broader¶ counter-insurgency or counterterrorism programmes in strategic regions where¶ the actual underlying aims clearly reside in the maintenance of a particular¶ political-economic order – such as is occurring in Colombia at the present time¶ (see Stokes, 2006).¶ At the domestic level, the dominant terrorism discourse can and has been used¶ by political elites to justify and promote a whole range of political projects, such as:¶ expanding and strengthening the institutions of national security and the militaryindustrial¶ complex; the construction of extensive surveillance and social control¶ systems; the normalisation of security procedures across all areas of social life;¶ expanding the powers and jurisdiction of state security agencies and the executive¶ branch, in large part by normalising a state of exception;controlling wider social¶ and political dissent, restricting human rights, and setting the parameters for acceptable¶ public debate; and altering the legal system – among others (see, among many¶ others, Mueller, 2006; Lustick, 2006; Cole, 2007, 2003; Jackson, 2007c; Scraton,¶ 2002).¶ Lastly, we must note that powerful economic interests – particularly those¶ linked to the security sector, such as private security firms, defence industries,¶ and pharmaceutical companies, among others – all benefit materially and politically¶ from the primary narratives of the terrorism studies discourse. For example,¶the accepted ‘knowledge’ that non-state terrorism poses a catastrophic threat to¶ Western society has in part resulted in contracts worth many millions of dollars¶ to private security companies for site security at airports and government buildings,¶while pharmaceutical companies have been contracted to provide millions¶ of vaccines and decontamination material in case of bioterrorism (see Mueller,¶ 2006). In other words, there are a clear set of identifiable political-economic and¶ elite interests that are served by the discourse. In sum, it seems clear that the discourse functions to encourage the reification¶ and extension of state hegemony both internationally and domestically, and¶directly serves a range of political and economic interests. Perhaps more importantly,¶ the discourse reinforces the widely accepted belief in the instrumental¶ rationality of violence as an effective tool of politics (Burke, 2008), particularly¶ as it relates to counterterrorism. As such, it can be argued that the discourse and¶ knowledge practices of terrorism studies function as a kind of disciplinary and¶ hegemonic truth regime designed to reify existing structures of power and dominance.¶ Despite the intentions of individual terrorism scholars therefore, who may¶ believe that they are engaged in objective academic analysis of a clearly defined¶ phenomenon, the broader discourse which they reproduce and legitimise actually¶ serves distinctly political purposes and has clear ideological consequences for¶ society.

#### **Everything we do, everything we read forms us as subjects as the world – social change cannot be effected in the world unless there is a vocabulary to construct subjects that engage in a way of knowing that is compatible with a new way of knowing – the alt is a formation of new ethical subjects – the affirmative solidifies dominant structures and knowledges that actively prevent ethics**

-necessary to create a new social vocabulary around issues to effect real change

-we are constantly being constructed as subjects by the experiences we have

-on an individual level, ethics is a processing of attuning your ways of knowing the world and relating to the world to be more compassionate and open

-the way our self exists is inseparable from our relationship to the world

-this breaks processes of solidifying existing ways of knowing and mainstream institutions – the affirmative is a step in a long, long process of normalization to make the self complicit with and accepting of violence and inequality – the act of criticism in our alternative is an act of interruption that ethically attunes the self to the hidden violence of dominant knowledges

Scott 9 – prof of philosophy @ Vanderbilt

(Charles, Journal of Medicine and Philosophy, 34: 350–367, Foucault, Genealogy, Ethics)

In Foucault’s analysis of the May 1968 uprising in France, he said that even though “things were coming apart” there did not “exist any vocabulary capable of expressing that process” (Foucault, 2000, 271). We could say on Foucault’s terms that there did not exist a way of knowing (a subject of knowledge) and the language and concepts suited for the complex event of France’s transformation. A momentous event happened without adequate “tools” for its recognition, analysis, and appropriation. Consequently, in the following dispersion of quarreling groups and political factions, the 1968 crisis did not at first become an effective discursive event that opened up a full range of apparent problems and transformations for formal knowledge. That would require a knowing subject that was turned away from the strongest discursive options, such as those of the current Humanists, Marxists, Maoists, French colonialists, and French cultural supremacists. So much was falling apart in France at the time that a subject of knowledge was needed that formed in the interconnecting French crises, a subject informed by marginal experiences in comparison to the experiences recognized by the dominant discourses, marginalized experiences like those of Algerian soldiers, French prisoners, people oppressed by French colonialism, people hammered down by Stalin’s communism or the Proletarian Cultural Revolution in China, and people in highly energized, non-French cultures: a subject that developed with the voices and experiences that were on the margins of the older and authoritative French way of life.¶ In spite of the stammering and stumbling in its aftermath, however, May, 1968 opened an opportunity for a new “vocabulary,” a new discourse, and a new ethos for recognizing and knowing. Its event made possible a transitional and transformative knowing subject whose relative freedom and lack of establishment constituted a major, constructive epistemic difference from the accepted discourses. Much more could be said on this issue, but my present, limited points are that in the context of Foucault’s thought, transformation of the knowing subject constitutes an ethical event; and ethics on an individual level takes place as people work on themselves to be able to change themselves enough to know differently and to transform what is evident about others (Foucault, 2000, 241–2).14 These two kinds of transformation take place in genealogical knowing as Foucault conceives and practices it.¶ Two different senses for ethics are at work here. One sense refers to ways of life that are constituted by discourses, institutions, and practices—by all manner of power formations that are not authored by singular individuals and that are ingrained in people’s lives inclusive of their judgment, knowledge, and codes of behavior. A society, of course, can have a variety of overlapping or competing ways of life, a variety of ethical environments, and changes in these environments would compose ethical changes in this broad sense of “ethical.” The knowledge that genealogy generates comprises a different discourse from many established ones and puts in question many aspects of Western society, especially around the topics of madness, sex, crime, normalcy, social/political suppression of people, and mechanisms of regulation and control. It challenges significant parts of our social environment, encourages deliberation and critique, and intends to make a differential impact on contemporary ways of life. In addition to his writing, Foucault was active in many causes designed to change political and social formations and to have a broad social impact. He played a leading role, for example, in support of Vietnamese boat people who were fleeing from persecution and being ignored by Western governments. He was active in prison reform movements. He spoke out against what he found to be unacceptable injustices in Poland and equally unacceptable silence in their regard in the West, against a Realpolitik that ignores suppression of people and their liberties in countries other than one’s own. He showed in multiple ways that passionate support of institutional transformation and of suppressed and suffering people can be carried out without Humanism or other forms of universalizing or totalizing discourse.¶ A second sense of ethics for Foucault means a work on the self by the self.15 He understood, for example, his writing (and his interviews) as processes of self-formation: “I haven’t written a single book that was not inspired, at least in part, by a direct personal experience,” an experience that he wants to understand better by finding a different vocabulary, changed combinations of concepts, and the mutations they bring by connecting with aspects of experience that are barely emerging at the borders of his awareness (Foucault, 2000, 244). His books, he says, compose experiences inclusive of his own “metamorphosis” as he writes them and comes to a transformed connection with their topics. He would also like for his books to provide readers with something akin to his experience, to bring us to our limits of sense where transformations can occur (Foucault, 2000, 244). The sense of ethics in this case is focused by individual experiences and the care they exercise in connecting with them. In care for themselves, they work at maintaining or altering their behavior and attitudes to appropriate themselves to their experiences.16 Foucault says that his books are “like invitations and public gestures” to join in the book’s process, a process that he finds transformative of aspects of contemporary life and potentially, should individuals join in, transformative of the way they understand and connect with themselves (Foucault, 2000, 245–6).¶ Care for self has a very long lineage that Foucault spent his last years investigating. Indeed, understanding himself without metaphysical help or universalized solutions was one aspect of his caring self-relation. He carried out a project, deeply rooted in a Western tradition that makes caring for oneself inseparable from the ways one knows oneself, the world, and others. In his own process, he finds repeated instances of change in his self-world relation as he experiences the impact of what he is coming to know at the borders of his knowledge and identity. When these boundary-experiences (he calls them limit-experiences) occur, he says, the clarity of some aspects of his identity dies in the impact of what he is coming to find. His affections and behavior often change. As an author he attempts to write into his books these very processes for the reader’s possible engagement.¶ If I find through one of his books, for example, a way of knowing that makes clear some of the dangers inherent in a well-established body of knowledge or a mainstream institution, I have an opportunity for assessing those dangers and choosing how I will connect with them and my experience of them. I might find that what I know and the way I know are violated by what Foucault’s work shows. I might find his approach and the knowledge that it offers highly questionable or irrelevant for my life. I might experience new questions, a need for change, an unexpected dissatisfaction with what I have been accepting as true and good. If Foucault’s works carry out their intention and if I read them carefully, I am engaged in an experience that he found transformative and that will make room for choices and problems that I can experience and that might bring me to an edge where what I know meets a limit and the possibility for an altered discourse and subjectivity. Coming in this way to an edge, a limit of the way I know and who I am in such knowing brings together the epistemic and personal aspects of ethical experience. The very act of caring for myself in this instance interrupts the subliminal processes of normalization and sets in motion another kind of dynamics as I come to the limits of my “authorized” experience and the emergence of a different kind of experience. I am caring for myself, impacting my own affections, values, and way of knowing. The dynamics of what Foucault calls biopower (the powerful complex of social forces that regulate human behavior by means of, for example, health care delivery, education, and moral legislation in both broad and “corpuscular” ways) are interrupted by a different dynamics that builds individual autonomy. Self-caring instead of the anonymous dynamics of normalization begins to form my self’s relation to itself. How will I appropriate the experience of limits and their transgression by emerging “voices”, realities, and intensities? Who shall I be in their impact? How will I present myself to myself and my environment should I affirm what is happening in the margins of my established identity?

### Solvency

#### Executive will circumvent the plan --- has institutional incentives and public support to expand its powers

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

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

VII. Conclusion

Powers once claimed by the Executive are not easily relinquished. One sees from our narrative how, in a very real sense, the constitutional law of presidential power is often made through accretion. A current administration eagerly seizes upon the loose claims of its predecessors, and applies them in ways perhaps never intended or at least not foreseen or contemplated at the time they were first uttered. The unreflective notion that the "conduct of campaigns" is for the President alone to determine has slowly insinuated itself into the consciousness of the political departments (and, at times, into public debate), and has gradually been invoked in order to question all manner [\*1112] of regulations, from requirements to purchase airplanes, to limitations on deployments in advance of the outbreak of hostilities, to criminal prohibitions against the use of torture and cruel treatment. In this regard, the claims of the current Administration represent as clear an example of living constitutionalism in practice as one is likely to encounter. There is a radical disjuncture between the approach to constitutional war powers the current President has asserted and the one that prevailed at the moment of ratification and for much of our history that followed.

But that dramatic deviation did not come from nowhere. Rarely does our constitutional framework admit of such sudden creations. Instead, the new claims have drawn upon those elements in prior presidential practice most favorable to them. That does not mean our constitutional tradition is foreordained to develop so as to embrace unchecked executive authority over the conduct of military campaigns. At the same time, it would be wrong to assume, as some have suggested, that the emergence of such claims will be necessarily self-defeating, inevitably inspiring a popular and legislative reaction that will leave the presidency especially weakened. In light of the unique public fears that terrorism engenders, the more substantial concern is an opposite one. It is entirely possible that the emergence of these claims of preclusive power will subtly but increasingly influence future Executives to eschew the harder work of accepting legislative constraints as legitimate and actively working to make them tolerable by building public support for modifications. The temptation to argue that the President has an obligation to protect the prerogatives of the office asserted by his or her predecessors will be great. Congress's capacity to effectively check such defiance will be comparatively weak. After all, the President can veto any effort to legislatively respond to defiant actions, and impeachment is neither an easy nor an attractive remedy.

The prior practice we describe, therefore, could over time become a faint memory, recalled only for the proposition that it is anachronistic, unsuited for what are thought to be the unique perils of the contemporary world. Were this to happen it would represent an unfortunate development in the constitutional law of war powers. Thus, it is incumbent upon legislators to challenge efforts to bring about such a change. Moreover, executive branch actors, particularly those attorneys helping to assure that the President takes care the law is faithfully executed, should not abandon two hundred years of historical practice too hastily. At the very least, they should resist the urge to continue to press the new and troubling claim that the President is entitled to unfettered discretion in the conduct of war.

#### Even if there’s no statutory wiggle room, Obama will change definitions to create it

Hafetz, 11/5 --- law professor at Seton Hall

(11/5/2013, Jonathan, “Outrage Fatigue: The Danger of Getting Used to Gitmo,” http://www.worldpoliticsreview.com/articles/13311/outrage-fatigue-the-danger-of-getting-used-to-gitmo))

The Obama administration has shown no shortage of creative lawyering in justifying U.S. military involvement in Libya and Syria as well as in expanding America’s use of targeted drone strikes. In those instances, the administration has interpreted presidential authority robustly, while narrowly construing congressional attempts to cabin that authority, as in the War Powers Resolution. Yet, when it comes to releasing Guantanamo detainees, the administration remains sheepish. It has failed to apply the same interpretive approach to congressional transfer restrictions despite what the president has described as the clear national security interests in closing the prison. Only external events, such as the hunger strike, now seem to prompt any action. And even there, the urgency tends to dissipate once the public pressure and media attention fades.

### Self Defense

#### Co-belligerency can’t solve the case – it won’t apply to terrorist organizations outside of Al Qaeda

Chesney 13, Law Prof at UT

(November, Robert, BEYOND THE BATTLEFIELD, BEYOND AL QAEDA: THE DESTABILIZING LEGAL ARCHITECTURE OF COUNTERTERRORISM, 112 Mich. L. Rev. 163)

There are two legal dimensions to the problem of increasing organizational uncertainty: disagreement as to the boundaries of al Qaeda as such and disagreement as to whether the use of force or detention in any event should extend to other groups. The NDAA FY12 did nothing to address the first issue, as it made no attempt to define al Qaeda. As for the second issue, the NDAA FY12 did formally recognize a category of "associated forces," but it did not actually define that phrase and hence did nothing to advance understanding of its content. The Obama Administration, for its part, has indicated that we may flesh out the "associated force" concept by reference to the international law concept of cobelligerency. Unfortunately, this approach on close inspection does not actually yield particularly helpful yardsticks when mapped onto the context of clandestine nonstate actors. Nor does it speak at all to the initial question of how to determine whether a particular group is part of al Qaeda to begin with, bearing in mind the fragmentation trend. And it also will be of little use if and when we reach the point that al Qaeda itself is effectively destroyed, thus removing the predicate for a cobelligerency type of analysis.

#### And, the plan doesn’t solve --- it is far narrower than what Barnes is calling for

Barnes, 12 --- J.D. at Boston University and M.A. in Law and Diplomacy at The Fletcher School of Law and Diplomacy at Tufts University (Spring 2012, Beau D., Military Law Review, “REAUTHORIZING THE “WAR ON TERROR”: THE LEGAL AND POLICY IMPLICATIONS OF THE AUMF’S COMING OBSOLESCENCE,” 211 Mil. L. Rev. 57))

Part V outlines specific policy proposals for a reauthorization of military force against terrorist groups that reflects the current contours of the armed conflict against terrorist groups. It begins by analyzing Congress's recent efforts to reaffirm the AUMF in the 2012 National Defense Authorization Act, which ultimately failed to address the AUMF's fragile legal foundation. This section ends by arguing for a new AUMF that includes time limits, a regular review procedure, a more clearly defined geographic scope, and unambiguous target definitions, thereby avoiding excessive deference to executive branch determinations in the critical arena of targeted killing. Prolonged and systematic military action, perhaps the most consequential activity a state can undertake, should be supported by the Congress. The AUMF, passed in the uncertain days immediately following the attacks of September 11, was sufficient for its immediate purpose: preventing further attacks by those who perpetrated 9/11. The now antiquated statute, however, must be updated for the dramatically different world we face today, or else it will surely fall short of properly guaranteeing the security of the United States.

### Terrorism

#### 1) War on terror succeeding against Al Qaeda affiliates now

#### a) Al-Shabaab in Somalia

The Star 9/23

(Al Shabab attack in Kenya betrays weakness, not strength: Editorial, www.thestar.com/opinion/editorials/2013/09/23/al\_shabab\_attack\_in\_kenya\_betrays\_weakness\_not\_strength\_editorial.html)

Two years ago Al Shabab militants strutted through the streets of Somalia’s capital, Mogadishu, and the port city of Kismayo enforcing their Islamist zealotry at gunpoint. Today, driven into the hinterland by African Union troops tasked with bringing peace to the troubled country, the Al Qaeda-linked terror group has taken to slaughtering shoppers in a neighbouring country’s biggest city. There is no denying the shock effect of attacking a site such as the upscale Westgate Mall in Nairobi, Kenya. The Shabab killed at least 62 innocents and wounded 175. Canadians grieve the loss of diplomat Annemarie Desloges and businessman Naguib Damji, and even Kenya’s President Uhuru Kenyatta lost loved ones. Images of the carnage are hard to bear. So are reports of Shabab executing people who failed a religion test. But in the final analysis the attack points to the terrorists’ weakness, not strength. Like other savage attacks by Al Qaeda and its ilk this latest outrage seems likely to prove senselessly self-defeating because it will galvanize sympathy and support for the new Somali government and its partners, including Kenya, as the international community mobilizes resources to help Somalia’s people. Decades of anarchic rule-by-warlord all but made Somalia a terror-friendly failed state. That’s a point President Kenyatta made after he denounced the attackers as “a criminal bunch of cowards.” “We went … into Somalia to help stabilize the country and most importantly to fight terror that had been unleashed on Kenya and the world,” he said. “We shall not relent on the war on terror.” Countries such as Canada can help by providing political support and aid, as Prime Minister Stephen Harper has done, and by bringing homegrown Shabab members to justice. Today 10 million Somalis have their first elected government and functioning parliament in decades, “huge plus signs” in the words of European Union envoy Alex Randos. President Hassan Sheikh Mohamud’s fledgling regime, a year old, has the support of the United Nations and 18,000 African Union troops from Burundi, Uganda, Kenya and elsewhere. That provides a stability the country hasn’t seen in a generation. And foreign aid is flowing in again, unlike the crisis during the drought in 2011 when the Shabab prevented food supplies from reaching areas it controlled. Somalia remains a dangerous, contested place. But the Shabab have lost turf, lost revenues and lost direction, with some wanting to fight a wide African regional jihad and others a local war. The group still has several thousand fighters and controls many rural areas. But it hasn’t been able to dislodge the new government and has been reducing to suicide bombings and hitting soft targets, hoping to destabilize the new regime and scare off its support. Killing children in a mall is a strategy of desperation, not strength.

#### 4) Can’t steal, build, or buy a bomb- experts agree

Peter Bergen- fellow @ the New America Foundation and NYU’s Center on Law and Security- Sept 2010, Reevaluating Al-Qa`ida’s Weapons of Mass Destruction Capabilities, Combating Terrorism Center @ West Point, CTC Sentinel, Vol 3 Issue 9, http://www.isn.ethz.ch/isn/Digital-Library/Publications/Detail/?ots591=0c54e3b3-1e9c-be1e-2c24-a6a8c7060233&lng=en&id=122242

Bin Ladin’s and al-Zawahiri’s portrayal of al-Qa`ida’s nuclear and chemical weapons capabilities in their post-9/11 statements to Hamid Mir was not based in any reality, and it was instead meant to serve as psychological warfare against the West. There is no evidence that al-Qa`ida’s quest for nuclear weapons ever went beyond the talking stage. Moreover, al-Zawahiri’s comment about “missing” Russian nuclear suitcase bombs floating around for sale on the black market is a Hollywood construct that is greeted with great skepticism by nuclear proliferation experts. This article reviews al-Qa`ida’s WMD efforts, and then explains why it is unlikely the group will ever acquire a nuclear weapon. Al-Qa`ida’s WMD Efforts In 2002, former UN weapons inspector David Albright examined all the available evidence about al-Qa`ida’s nuclear weapons research program and concluded that it was virtually impossible for al-Qa`ida to have acquired any type of nuclear weapon.8 U.S. government analysts reached the same conclusion in 2002.9 There is evidence, however, that al-Qa`ida experimented with crude chemical weapons, explored the use of biological weapons such as botulinum, salmonella and anthrax, and also made multiple attempts to acquire radioactive materials suitable for a dirty bomb.10 After the group moved from Sudan to Afghanistan in 1996, al-Qa`ida members escalated their chemical and biological weapons program, innocuously code-naming it the “Yogurt Project,” but only earmarking a meager $2,000-4,000 for its budget.11 An al-Qa`ida videotape from this period, for example, shows a small white dog tied up inside a glass cage as a milky gas slowly filters in. An Arabic-speaking man with an Egyptian accent says: “Start counting the time.” Nervous, the dog barks and then moans. After struggling and flailing for a few minutes, it succumbs to the poisonous gas and stops moving. This experiment almost certainly occurred at the Darunta training camp near the eastern Afghan city of Jalalabad, conducted by the Egyptian Abu Khabab.12 Not only has al-Qa`ida’s research into WMD been strictly an amateur affair, but plots to use these types of weapons have been ineffective. One example is the 2003 “ricin” case in the United Kingdom. It was widely advertised as a serious WMD plot, yet the subsequent investigation showed otherwise. The case appeared in the months before the U.S.-led invasion of Iraq, when media in the United States and the United Kingdom were awash in stories about a group of men arrested in London who possessed highly toxic ricin to be used in future terrorist attacks. Two years later, however, at the trial of the men accused of the ricin plot, a government scientist testified that the men never had ricin in their possession, a charge that had been first triggered by a false positive on a test. The men were cleared of the poison conspiracy except for an Algerian named Kamal Bourgass, who was convicted of conspiring to commit a public nuisance by using poisons or explosives.13 It is still not clear whether al-Qa`ida had any connection to the plot.14 In fact, the only post-9/11 cases where al-Qa`ida or any of its affiliates actually used a type of WMD was in Iraq, where al-Qa`ida’s Iraqi affiliate, al-Qa`ida in Iraq (AQI), laced more than a dozen of its bombs with the chemical chlorine in 2007. Those attacks sickened hundreds of Iraqis, but the victims who died in these assaults did so largely from the blast of the bombs, not because of inhaling chlorine. AQI stopped using chlorine in its bombs in Iraq in mid-2007, partly because the insurgents never understood how to make the chlorine attacks especially deadly and also because the Central Intelligence Agency and U.S. military hunted down the bomb makers responsible for the campaign, while simultaneously clamping down on the availability of chlorine.15 Indeed, a survey of the 172 individuals indicted or convicted in Islamist terrorism cases in the United States since 9/11 compiled by the Maxwell School at Syracuse University and the New America Foundation found that none of the cases involved the use of WMD of any kind. In the one case where a radiological plot was initially alleged—that of the Hispanic-American al-Qa`ida recruit Jose Padilla—that allegation was dropped when the case went to trial.16 Unlikely Al-Qa`ida Will Acquire a Nuclear Weapon Despite the difficulties associated with terrorist groups acquiring or deploying WMD and al-Qa`ida’s poor record in the matter, there was a great deal of hysterical discussion about this issue after 9/11. Clouding the discussion was the semantic problem of the ominous term “weapons of mass destruction,” which is really a misnomer as it suggests that chemical, biological, and nuclear devices are all equally lethal. In fact, there is only one realistic weapon of mass destruction that can kill tens or hundreds of thousands of people in a single attack: a nuclear bomb.17 The congressionally authorized Commission on the Prevention of Weapons of Mass Destruction Proliferation and Terrorism issued a report in 2008 that typified the muddled thinking about WMD when it concluded: “It is more likely than not that a weapon of mass destruction will be used in a terrorist attack somewhere in the world by the end of 2013.”18 The report’s conclusion that WMD terrorism was likely to happen somewhere in the world in the next five years was simultaneously true but also somewhat trivial because terrorist groups and cults have already engaged in crude chemical and biological weapons attacks.19 Yet the prospects of al-Qa`ida or indeed any other group having access to a true WMD—a nuclear device—is near zero for the foreseeable future. If any organization should have developed a serious WMD capability it was the bizarre Japanese terrorist cult Aum Shinrikyo, which not only recruited 300 scientists—including chemists and molecular biologists—but also had hundreds of millions of dollars at its disposal.20 Aum embarked on a large-scale WMD research program in the early 1990s because members of the cult believed that Armageddon was fast-approaching and that they would need powerful weapons to survive. Aum acolytes experimented with anthrax and botulinum toxin and even hoped to mine uranium in Australia. Aum researchers also hacked into classified networks to find information about nuclear facilities in Russia, South Korea and Taiwan.21 Sensing an opportunity following the collapse of the Soviet Union, Aum recruited thousands of followers in Russia and sent multiple delegations to meet with leading Russian politicians and scientists in the early 1990s. The cult even tried to recruit staff from inside the Kurchatov Institute, a leading nuclear research center in Moscow. One of Aum’s leaders, Hayakawa Kiyohide, made eight trips to Russia in 1994, and in his diary he made a notation that Aum was willing to pay up to $15 million for a nuclear device.22 Despite its open checkbook, Aum was never able to acquire nuclear material or technology from Russia even in the chaotic circumstances following the implosion of the communist regime.23 In the end, Aum abandoned its investigations of nuclear and biological weapons after finding them too difficult to acquire and settled instead on a chemical weapons operation, which climaxed in the group releasing sarin gas in the Tokyo subway in 1995. It is hard to imagine an environment better suited to killing large numbers of people than the Tokyo subway, yet only a dozen died in the attack.24 Although Aum’s WMD program was much further advanced than anything al-Qa`ida developed, even they could not acquire a true WMD. It is also worth recalling that Iran, which has had an aggressive and well-funded nuclear program for almost two decades, is still some way from developing a functioning nuclear bomb. Terrorist groups simply do not have the resources of states. Even with access to nuclear technology, it is next to impossible for terrorist groups to acquire sufficient amounts of highly enriched uranium (HEU) to make a nuclear bomb. The total of all the known thefts of HEU around the world tracked by the International Atomic Energy Agency between 1993 and 2006 was just less than eight kilograms, well short of the 25 kilograms needed for the simplest bomb;25 moreover, none of the HEU thieves during this period were linked to al-Qa`ida. Therefore, even building, let alone detonating, the simple, gun-type nuclear device of the kind that was dropped on Hiroshima during World War II would be extraordinarily difficult for a terrorist group because of the problem of accumulating sufficient quantities of HEU. Building a radiological device, or “dirty bomb,” is far more plausible for a terrorist group because acquiring radioactive materials suitable for such a weapon is not as difficult, while the construction of such a device is orders of magnitude less complex than building a nuclear bomb. Detonating a radiological device, however, would likely result in a relatively small number of casualties and should not be considered a true WMD. There is also the concern that a state may covertly provide a nuclear device to a terrorist group. This was one of the underlying rationales to topple Saddam Hussein’s government in Iraq in 2003. Yet governments are not willing to give their “crown jewels” to organizations that they do not control, and giving a terrorist group a nuclear weapon would expose the state sponsor to large-scale retaliation.26 The United States destroyed Saddam’s regime on the mere suspicion that he might have an active nuclear weapons program and that he might give some kind of WMD capacity to terrorists. Also, nuclear states are well-aware that their nuclear devices leave distinctive signatures after they are detonated, which means that even in the unlikely event that a government gave a nuclear weapon to terrorists, their role in the plot would likely be discovered.27 Just as states will not give nuclear weapons to terrorists, they are unlikely to sell them either. This leaves the option of stealing one, but nuclear-armed states, including Pakistan, are quite careful about the security measures they place around the most strategic components of their arsenals. After 9/11, the United States gave Pakistan approximately $100 million in aid to help secure its nuclear weapons.28 The U.S. Department of Defense has assessed that “Islamabad’s nuclear weapons are probably stored in component form,”29 meaning that the weapons are stored unassembled with the fissile core separated from the non-nuclear explosive.30 Such disassembling is just one layer of protection against potential theft by jihadists.31 A further layer of protection is Permissive Action Links (PAL), essentially electronic locks and keys designed to prevent unauthorized access to nuclear weapons; Pakistan asserts that it has the “functional equivalent” of these.32 As a result of these measures, Michael Maples, the head of the U.S. Defense Intelligence Agency at the time, told the Senate Armed Services Committee in March 2009 that “Pakistan has taken important steps to safeguard its nuclear weapons.”33

#### 3) No bioweapon could kill off humanity – natural resistance and technology check a superbug

Easterbrook (Gregg, The New Republic Editor) 2003 [Wired, "We're All Gonna Die!" 11/7, http://www.wired.com/wired/archive/11.07/doomsday.html]

3. Germ warfare! Like chemical agents, biological weapons have never lived up to their billing in popular culture. Consider the 1995 medical thriller Outbreak, in which a highly contagious virus takes out entire towns. The reality is quite different. Weaponized smallpox escaped from a Soviet laboratory in Aralsk, Kazakhstan, in 1971; three people died, no epidemic followed. In 1979, weapons-grade anthrax got out of a Soviet facility in Sverdlovsk (now called Ekaterinburg); 68 died, no epidemic. The loss of life was tragic, but no greater than could have been caused by a single conventional bomb. In 1989, workers at a US government facility near Washington were accidentally exposed to Ebola virus. They walked around the community and hung out with family and friends for several days before the mistake was discovered. No one died. The fact is, evolution has spent millions of years conditioning mammals to resist germs. Consider the Black Plague. It was the worst known pathogen in history, loose in a Middle Ages society of poor public health, awful sanitation, and no antibiotics. Yet it didn't kill off humanity. Most people who were caught in the epidemic survived. Any superbug introduced into today's Western world would encounter top-notch public health, excellent sanitation, and an array of medicines specifically engineered to kill bioagents. Perhaps one day some aspiring Dr. Evil will invent a bug that bypasses the immune system. Because it is possible some novel superdisease could be invented, or that existing pathogens like smallpox could be genetically altered to make them more virulent (two-thirds of those who contract natural smallpox survive), biological agents are a legitimate concern. They may turn increasingly troublesome as time passes and knowledge of biotechnology becomes harder to control, allowing individuals or small groups to cook up nasty germs as readily as they can buy guns today. But no superplague has ever come close to wiping out humanity before, and it seems unlikely to happen in the future.

## 2NC

### FW

#### The role of the teacher is to guide students toward ethically constructing advocacies – this means debate should focus on how we think about problems and not just the particular policy, so you should look at systems of militarism versus pacifism and not the singular event of their impact scenarios – and deprioritize issues of link uniqueness and transition wars – our link arguments prove there’s a larger set of social relations the plan creates and the standpoints we take in relation to that are important.

#### The alt is a technique for creating a new social vocabulary surrounding war – if our vocabulary is good, you should endorse and adopt it as a way of reading future policy research.

#### **Subject formation is what we are trying to accomplish in debate on an everyday level, we form better subjects by attuning our ethical sensibilities to the violence of militarism – comparatively more effective than a hubristic fantasy that we can change the world**

Chandler, Professor of IR at Westminster, 13

(The World of Attachment? The Post-humanist Challenge to Freedom and Necessity, Millenium: Journal of International Studies, 41(3), 516– 534)

The world of becoming thereby is an ontologically flat world without the traditional hierarchies of existence and a more shared conception of agency. For Bennett, therefore, ‘to begin to experience the relationship between persons and other materialities more horizontally, is to take a step toward a more ecological sensibility’.78 Here there is room for human agency but this agency involves a deeper understanding of and receptivity to the world of objects and object relations. Rather than the hubristic focus on transforming the external world, the ethico-political tasks are those of work on the self to erase hubristic liberal traces of subject-centric understandings, understood to merely create the dangers of existential resentment. Work on the self is the only route to changing the world. As Connolly states: ‘To embrace without deep resentment a world of becoming is to work to “become who you are”, so that the word “become” now modifies “are” more than the other way around.’ Becoming who you are involves the ‘microtactics of the self’, and work on the self can then extend into ‘micropolitics’ of more conscious and reflective choices and decisions and lifestyle choices leading to potentially higher levels of ethical self-reflectivity and responsibility. Bennett argues that against the ‘narcissism’ of anthropomorphic understandings of domination of the external world, we need ‘some tactics for cultivating the experience of our selves as vibrant matter’. Rather than hubristically imagining that we can shape the world we live in, Bennett argues that: ‘Perhaps the ethical responsibility of an individual human now resides in one’s response to the assemblages in which one finds oneself participating. Such ethical tactics include reflecting more on our relationship to what we eat and considering the agentic powers of what we consume and enter into an assemblage with. In doing so, if ‘an image of inert matter helps animate our current practice of aggressively wasteful and planet-endangering consumption, then a materiality experienced as a lively force with agentic capacity could animate a more ecologically sustainable public’. For new materialists, the object to be changed or transformed is the human – the human mindset. By changing the way we think about the world and the way we relate to it by including broader, more non-human or inorganic matter in our considerations, we will have overcome our modernist ‘attachment disorders’ and have more ethically aware approaches to our planet. In cultivating these new ethical sensibilities, the human can be remade with a new self and a ‘new self-interest’.

### Impact

#### **Prefer this impact – structural violence is invisible and exponential – ethics**

Nixon 11

(Rob, Rachel Carson Professor of English, University of Wisconsin-Madison, Slow Violence and the Environmentalism of the Poor, pgs. 2-3)

Three primary concerns animate this book, chief among them my conviction that we urgently need to rethink-politically, imaginatively, and theoretically-what I call "slow violence." By slow violence I mean a violence that occurs gradually and out of sight, a violence of delayed destruction that is dispersed across time and space, an attritional violence that is typically not viewed as violence at all. Violence is customarily conceived as an event or action that is immediate in time, explosive and spectacular in space, and as erupting into instant sensational visibility. We need, I believe, to engage a different kind of violence, a violence that is neither spectacular nor instantaneous, but rather incremental and accretive, its calamitous repercussions playing out across a range of temporal scales. In so doing, we also need to engage the representational, narrative, and strategic challenges posed by the relative invisibility of slow violence. Climate change, the thawing cryosphere, toxic drift, biomagnification, deforestation, the radioactive aftermaths of wars, acidifying oceans, and a host of other slowly unfolding environmental catastrophes present formidable representational obstacles that can hinder our efforts to mobilize and act decisively. The long dyings-the staggered and staggeringly discounted casualties, both human and ecological that result from war's toxic aftermaths or climate change-are underrepresented in strategic planning as well as in human memory. Had Summers advocated invading Africa with weapons of mass destruction, his proposal would have fallen under conventional definitions of violence and been perceived as a military or even an imperial invasion. Advocating invading countries with mass forms of slow-motion toxicity, however, requires rethinking our accepted assumptions of violence to include slow violence. Such a rethinking requires that we complicate conventional assumptions about violence as a highly visible act that is newsworthy because it is event focused, time bound, and body bound. We need to account for how the temporal dispersion of slow violence affects the way we perceive and respond to a variety of social afflictions-from domestic abuse to posttraumatic stress and, in particular, environmental calamities. A major challenge is representational: how to devise arresting stories, images, and symbols adequate to the pervasive but elusive violence of delayed effects. Crucially, slow violence is often not just attritional but also exponential, operating as a major threat multiplier; it can fuel long-term, proliferating conflicts in situations where the conditions for sustaining life become increasingly but gradually degraded.

### mountain indict

#### author is a militarist hack

Berhane 10, Editor-in-chief at SETIT Pivate Ltd.

(Aaron, Shame on Thomas C. Mountain, www.asmarino.com/articles/637-shame-on-thomas-c-mountain)

I didn’t think I would respond to Thomas C. Mr. Mountain’s article entitled, “Sweden’s Cause Celebre Dawit Issack: Hero or Zero?” published in Eritreacompass.com, a sister website of shabait.com(a website of the Ministry of Information). Mr. Mountain is an unofficial spokesperson of the Eritrean government and he was actually hired by the People’s Front for Democracy and Justice (PFDJ) to misinform the international community. I didn’t intend to raise this issue because most people know the truth anyway, but I decided to do so just in case Mr. Mountain’s article influences 0.00001% members of the international community. Those people deserve to know the truth if they are not aware of it yet. Thomas C. Mountain, the so called “independent journalist,” acts as an expert on Eritrea. He has tried to discredit Eritrean journalists and organizations that advocate press freedom. Mr. Mountain criticised the World Association of Newspapers (WAN) and Reporters Without Borders (RSF) for placing Dawit Issack’s name on the list of arrested journalists in the fall of 2000. He said, “The Eritrean government claimed that Dawit Issak, along with a number of others listed in the RSF press release, were detained for going absent without leave (AWOL) from their military units and were not in prison but had been returned to their military commands.” There is no truth in his statement at all. First of all, neither RSF nor WAN listed Dawit Issack’s name with the eight journalists who were arrested on October 14, 2000. As a matter of fact, Dawit Issack was not in Eritrea; he was in Sweden from May 2000 to April 2001. I was one of the editors who passed the name of the arrested journalists to the international community. I remember back then that what Thomas C. Mountain wrote about the arrested journalists was not true. I was so anxious to meet this so called “independent journalist” and challenge him in person. I wanted to know his motive for lying so blatantly. And so I contacted one of my sources who used to work in one of the biggest hotels in Asmara. She told me that she knew him and she confirmed that he was not in Asmara but was actually living in the USA. That shocked me. He denied that the journalists had been arrested and he had pretended that he was in Asmara while the incident of arrest took place. It is then that I learned that he had been hired by the PFDJ not only to gather historical information about the border conflict between Eritrea and Ethiopia, but also to become involved in the propaganda’s activities of PFDJ. And gradually, he became an unofficial spokesperson of the Eritrean government. He has given several interviews. And of course, he has been trained to lie.

### self-defense adv

#### **Their depiction of anarchy in the international system without the plan is epistemologically suspect, relying on a racist ideology – it describes the developing world as “chaos”**

#### **Henderson 7**

 (Errol A., assoc. prof. poli sci at Penn St., “Navigating the Muddy Waters of the Mainstream: Tracing the Mystification of Racism in International Relations,” African American Perspectives on Political Science, ed. by Wilbur C. Rich, p. 326-30)

One of the key idealists of the twentieth century, who is also regarded as one of the progenitors of the field of international relations, was a former professor, Woodrow Wilson, who became President of the United Siates on the eve of World War 1. Confronting the issue of the United States’ involvement in what was then called the Great War, Wilson articulated and at the war’s end attempted to institutionalize these idealist premises in the postwar order established at Vers ailles in 1919. Some analysts, such as Ray argue that “Wilson can be seen as the founder of idealism and, in a way, as the founder of the field itself’ (1995, 7). But the view that Wilson established the scholarly field of International Relations is more accepted wisdom than actual fact; it actually obfuscates less salutary but more significant factors that contributed to the emergence of world politics. Clearly, IR at its birth was concerned with anarchy and power; however, this anarchy was largely assumed to result from the lack of cohesion in the primitive polities of the inferior races—especially those in the tropical domains of what we would now consider the third world. At the same time, the power that was wielded by the “civilized” white races through their “modem” states and the mechanism of “efficient” and “rational” colonial administration could insure that “anarchy” did not spread to the modern world and contribute to violence among the major (white) powers. These notions, while informed to some extent by Woodrow Wilson’s (1887) work, emerged more directly from such scholars of world politics as Paul Reinsch, whose World Politics at the End of the Nineteenth Century (1900) is considered the first work in the intellectual field of world politics. Reinsch’s Colonial Government (1902) and Colonial Administration (1905) placed him among the leading experts on colonial administration. Olson and Groom (1991, 47) note that Reinsch’s work “suggests that the discipline of international relations had its real beginnings in studies of imperialism, not in world order, as has so often been suggested.” Reinsch (1900, 14) argued that the emergent force of “national imperialism” was transforming the landscape of international relations as European states sought “to control as large a portion of the earth’s surface as their energy and opportunities will permit.” For him, national imperialism was the attempt “to increase the resources of the national state through the absorption or exploitation of undeveloped regions and inferior races” without attempting to “impose political control upon highly civilized nations.” Reinsch attempted to reconcile the interests of colonizer and colonized in his conceptualization of effective colonial administration, which led him to criticize United States policy in the Philippines following the Spanish-American War. Reinsch, however, also justified expansion in the name of the “white man’s burden” (Schmidt 1998, 72). Some scholars, such as Philip Kerr in his An Introduction to the Study of international Relations (1916), argued that “one of the most fundamental facts in human history” is that “mankind is divided into a graduated scale” ranging from the civilized to the barbarian, which necessitated colonization of the latter by the former (163). Still others, such as Giddings, invoked “survival of the fittest” logic to rationalize the subjugation or “governing” of “the inferior races of mankind” as the duty of the civilized. These scholars drew on Kidd’s The Control of the Tropics, which stated that the tropical regions were “existing [in] a state either of anarchy, or of primitive savagery. . . in which no attempt is made or can he made to develop the natural resources lying ready to hand” (1898, 15). For Kidd, the superior races had a responsibility to overcome the anarchy of the tropics so that the riches of the “third world” could be cultivated. The competition for these resources might engender conflict among the civilized states, as Hobson, Angell, Du Bois, Lippmann, and subsequently, Lenin, would more famously argue. It follows that world politics as a field of inquiry in political science emerges from the comparative study of colonial administration in the context of concerns with anarchy, power, and race. So the discussions of anarchy among both realists and idealists are grounded in a discourse concerned with the obligations of superior peoples to impose order on the anarchic domains of “inferior peoples” in order to prevent the chaos endemic in the tropics from spilling over into the superior peoples’ territories, possessions, or spheres of interest. Similarly, both realist and idealist concerns with power are grounded in a racist discourse concerned largely with the power of whites to subjugate the tropics and then put themselves in charge of the administration of the societies of the colonized “others.” Therefore, the roots of realism— the dominant paradigm in **world politics**—are grounded in a rationalization for constructing a hierarchical racial order to be imposed upon the anarchy alleged to arise from the “tropics,” an anarchy that begs for rational administration from whites. That is, realism is little more than an intellectual justification for colonialism and imperialism in the guise of the “white man’s burden.” In addition, the roots of idealism are found less in idealized versions of classical liberal precepts regarding the perfectibility of humanity; the primacy of “God-given” individual rights; and the institutionalization of democracy, free trade, and the rule of law (which in actuality were never intended for the nonwhite peoples of the world) than with the imposition of a racist order on indigenous peoples throughout Africa and Asia and the administration of that racist order for the benefit of white people. Thus realism and idealism have common roots in their shared racist conception of anarchy as a condition inherent in the societies of the “inferior races” and the corresponding necessity for whites to use power to impose “order” on the anarchical societies. This order would be imposed to prevent the anarchy from spilling over into the lands of the civilized whites and threatening their security.

### Terror episto

#### Be highly skeptical of the affirmative—the cult of terrorism expertise and dominant research methods vary from incompetence to outright deceptoin

Ranstorp 9 [2009, Magnus Ranstorp is the Research Director of the Centre for Asymmetric Threat Studies at the Swedish National Defence College. “Mapping terrorism studies after 9/11: An academic ﬁeld of old problems and new prospects”, Critical Terrorism Studies: A New Research Agenda, pp. 13-33]

The art of masquerading evidence in terrorism research¶ As Bruce Hoffman poignantly pointed out in a Foreign Affairs article, criticism¶ about the field of terrorism studies is ‘neither new nor unjustified’ (B. Hoffman, 2008). In particular, Hoffman invoked the damning critique made thirty years¶ ago by Professor Michael Howard, who charged that terrorism studies had ‘been¶ responsible for more incompetent and unnecessary books than any other outside .. .¶ofsociology. It attracts phoneys and amateurs as a candle attracts moths’ (ibid.).¶Howard’s assessment can be considered as true today as it was thirty¶ years ago. A major global strategic surprise event like 9/11 is bound to attract¶unscrupulous characters, pseudo-academics alongside outright fraudsters, often¶masquerading behind a thin facade of privileged access to secret sources, often¶ unverifiable in contravention to standard academic praxis. In most cases, this¶ type of rumor intelligence (RUMINT) masquerading as scientific evidence lacks¶ any acceptable academic rigor. Additionally, journalistic speculation or even¶inaccuracies in reporting events as they unfold,move effortlessly from fiction¶ to becoming established facts. Rarely are these empirical facts investigated or¶ challenged with enough effort. Even rarer are those instances when these well established¶ facts are investigated to further develop a greater degree of granularity¶ in both detail and context. This becomes especially troublesome as these¶ established ‘empirical’ facts become continuously reused in other academic contexts¶ to fit ready-made assumptions and arguments. Blurring boundaries between¶ journalism and academic expertise, facts or fiction obfuscate the reliability of¶ data and erode serious terrorism research based on rigorous theory-building¶ and the use of sound methodologies. Good journalism and interesting reporting¶ should not be confused with academic rigor or scientific standards.¶Within terrorism studies, there are sometimes no bounds to the ingenuity of¶ experts, and at times, outright deception and fraud. Perhaps the most celebrated¶ and outrageous case is that of the Frenchman, Alexis Debat, who managed to rise¶ from being a journalist reporter to the position of Director of the Terrorism and¶ National Security Program at the Nixon Center in Washington DC, as well as¶ contributing editor to The National Interest. In an extensive exposé by the French¶ news media Rue 89 in June 2007, it was revealed that Debat had made up several¶ bogus interviews with former US President Bill Clinton, former US Secretary of¶ State Colin Powell, New York Mayor Michael Bloomberg, Microsoft founder¶ Bill Gates, former Federal Reserve Chairman Alan Greenspan, and former UN¶ Secretary-General Kofi Annan, for the French magazine, Politiqueinternationale¶ (B. Ross, 2007).¶ After resigning from ABC News as a terrorism consultant, after it was discovered¶ he did not hold a PhD from Sorbonne University as he had claimed on his¶ résumé, a series of other claims also proved fraudulent, such as: being a former¶ advisor to the French Ministry of Defence on Transatlantic Affairs; having been¶ Director of the Scientific Committee for the Institut Montaigne (Paris); ‘working¶ on the largest manuscript ever written on the history of the Central Intelligence¶ Agency’; and working with RAND, among many other cases (Bourcier and¶Lesnes, 2007).¶This ‘mythomaniac analyst’ case, as dubbed by Rue 89, casts a dark shadow¶ over the terrorism studies field.The fact that Alexis Debat went unchallenged for¶ over five years in terms of faking interviews and rising to prestigious academic positions without postgraduate research qualifications illustrates the case that there¶ is a real absence of critical rigor in questioning expertise and the way in which¶ work is conducted and verified in a scientifically acceptable fashion. It would be¶ easy to disregard the Debat case as the exception rather than a trend that negatively¶ exposes terrorism studies to criticism. Unfortunately, he is far from alone

### 2nc epistemic unc

#### causal linear IR predictions are inherently incomplete – epistemic uncertainty is the defining principle of international politics

Hendrick 9 – PhD from Bradford U, contributor to Oxford University Press

(Diane, “Complexity Theory and Conflict Transformation: An Exploration of Potential and Implications”, http://www.brad.ac.uk/acad/confres/papers/pdfs/CCR17.pdf)

In international relations Neil E. Harrison makes the case for the value of complexity theory given the unpredictability of events in world politics that has confounded expectations based on existing theories. While there are various explanations proffered for this situation, Harrison sees the tendency of current theories of world politics to work with models of the social world that present it, for analytical purposes, as a simple system as fundamentally misleading. In contrast to realism, that sees political behaviour being driven by essential human characteristics within fixed structures, complexity theory sees world politics as a self- organising complex system in which macroproperties emerge from microinteractions. It is precisely the interactions among interdependent but individual agents within the system that account for the surprising events that defy prediction through the simple models used at the moment. Harrison thus takes the state as a system that is not closed but open to other natural and social systems: “defined as a political system, it is open to technological, cultural and economic systems that influence political choices and processes.” (Harrison, 2006 p. 8) The state is also influenced by other states and by numerous transboundary interactions between major corporations, NGOs, terrorist groups, etc. In such complex systems it is not possible to trace linear causal links: “Despite occasional attempts to bring in domestic politics the state is usually modelled as a unit with exogenous identity and objective interests. This greatly reduces the range of possible causal explanations for any perceived social event, simplifying causal analysis and hypothesis generation and testing.” (Harrison, 2006 p. 11) It is a disconcerting fact that outcomes may have multiple causes and that in different contexts, historically or spatially, the same cause may lead to different outcomes. This cannot be captured by the over-simplified models of international systems. Given the multiple, mutually influencing interactions within social systems it is necessary to look to the evolution of the system rather than to individual events when seeking the causes of observed effects. Complexity theory focuses on processes and relations between components, or in the case of social systems, agents, rather than the components themselves. In a similar criticism to that of Walby, Harrison points to the tendency of theories in international relations to focus on one level of analysis and to present competing theories based on these. Where systems are theorised, they are limited by being presented as nested. Harrison notes that the impact of positive feedback in systems has been acknowledged: “ ‘(I)ntra-national and inter-national events all impinge on one another in a cyclical and ongoing process within which the self-aggravating propensities frequently exceed the self-correcting ones by an unacceptably large amount’ (Singer 1970, 165) thus national elites use rhetoric for domestic political consumption that can incite potential enemies, the public and military desire the psychological comfort of discernible superiority, media amplify inter-nation conflicts, and the benefits of participation in the ideological mainstream preserve the distribution of power and inhibit changes in the historic patterns that transform inevitable conflicts into costly rivalries.” (Harrison, 2006 p. 28) While Walby refers to examples of the importance of the notion of path dependence with reference to differences in development between countries, Harrison sees its relevance at the level of the international state system. Thus development through time is not wholly random and there are limits or constraints created by the prior development of the system that restrict the possible options for change. In this way the international system may change its structure without becoming another system and here Harrison brings the example of the Cold War. While it is true that the Cold War was produced by historical interactions, it is still not possible to claim that it was an inevitable effect of historical causes. The myriad microinteractions that occurred introduce unpredictability into development, especially given the above-mentioned possibility of positive feedback. Harrison is optimistic with regard to the gains from the application of complexity theory to world politics in theoretical but also in policy terms: “This ontological shift from simple to complex systems opens new paths to knowledge and understanding yet incorporates much current knowledge; it validates novel research methods; and theories founded in this approach will generate radically different solutions to policy problems.” (Harrison, 2006 p. 2)

### **AT: Everything [All-Purpose]\*\***

#### **All your answers are wrongggg**

-nonviolence doesn’t always work, violence doesn’t always work

-history is on the side of nonviolence

-nonviolence is better in the long run in terms of working towards a cooperative society

-violence can temporarily impose conditions of negative peace, but it can never lead to positive peace – only alt solves that

-refining the means of violence (through restrictions on the executive) is meaningless

Cady 10 (Duane L., prof of phil @ hamline university, From Warism to Pacifism: A Moral Continuum, pp. 100-102)

It would be foolish to claim that nonviolent action always succeeds against any opponent, just as it would be foolish to claim that ¶ violence always succeeds against any enemy. We must look to the evidence of history. It should be clear that the widespread belief that ¶ nonviolence “doesn’t work” is a misconception grounded in ignorance ¶ or neglect of when and where nonviolent direct action has succeeded. ¶ Similarly, the widespread confidence in violent means of struggle ¶ rests on neglect of its many failures. A review of post– World War II ¶ military interventions is beyond the scope of this book, but we can ¶ take a broad look at the historical record by reflecting briefly on important military actions of the past few decades. Vietnam, Lebanon, ¶ Somalia, Chechnya, Bosnia, Afghanistan, and Iraq all come to mind. ¶ How well has violence “worked”? Did the outcome of the war in Vietnam outweigh the evils in death, injuries, destruction, dislocation, ¶ and influence of the war on the region, namely, Pol Pot’s reign of terror? The Vietnam war is widely considered a tragic mistake. What ¶ about the first and second wars in Iraq? When the full outcome is ¶ weighed, will justice be served by such thorough destruction of a nation’s infrastructure, deaths and injuries of tens (some say hundreds) ¶ of thousands, dislocation of millions of refugees, and a very uncertain future for the region? Beyond Vietnam and Iraq, can we honestly say ¶ that the outcomes of war are better for Lebanon, Somalia, Chechnya, ¶ and Bosnia, not to mention the prospects for the ongoing war in Afghanistan? It seems not. In every case the intentions and expectations ¶ widely missed the outcomes. So, history shows that nonviolence has ¶ succeeded with little preparation and virtually no public confidence ¶ while violence is systematically planned, of the highest priority when ¶ investing public resources, and widely supported, yet it frequently ¶ fails to be an effective means of achieving the peaceful ends desired. ¶ Critics say pacifists should “be realistic.” Pacifists ask the same of warists, and history— certainly since the end of World War II— seems to ¶ favor nonviolence. Pragmatic objections to pacifism, once examined, ¶ are not decisive refutations at all. It must be acknowledged that pacifism may or may not succeed at ¶ defeating unrestrained evil. At the same time we must admit that war, ¶ by its nature, is a test of might; as such, it can never settle questions of ¶ right.18 Rather, in war one side prevails and domination replaces the ¶ cooperation of genuine peace. And it is exactly at this point that the ¶ positive peace side of pacifism makes its strongest case: only nonviolence can create the internal order characteristic of genuine peace, so ¶ violence always fails in the long run. Violence can satisfy the urge to do ¶ something in the face of injustice, violence can satisfy the desire for ¶ revenge against evil, and sometimes violence can impose a short-term ¶ negative peace. But violence cannot create and sustain the conditions ¶ of genuine positive peace because these conditions come from within ¶ individuals and groups by agreement and cooperation, not from the ¶ outside by force or threat. The historical record of the last century— ¶ the carnage of the twentieth century which began with most victims ¶ of war being combatants and ended with most victims of war being ¶ innocent civilians— should awaken us to the need for fundamental ¶ change, as should successes of largely nonviolent revolution in much of ¶ Eastern Europe after the collapse of the Soviet Union, in the nonviolent dismantling of apartheid in South Africa, and in the unarmed ¶ forces of the Philippines removing a dictator through nonviolent revolution. We are a sorry species if the best we can do is multiply and refine our means of violence while escalating our military threats and ¶ actions, carrying out increasingly devastating violence against one an-¶ other. But history shows not only the failure of violence but also the successes of nonviolence; here we find hope that we may learn from ¶ the past and reduce violence while expanding nonviolence.

## 1NR

### AT “He Determines”

#### Authority is only the reasonable power that an agent has been delegated, that’s our 1NC Kelly evidence. “He determines” does not mean that the AUMF gave Obama unlimited authorization. Obama has gone rogue - Congress has not authorized the President to make determinations outside of the nexus requirement - the plan restricts illegitimate presidential action not war powers authority

Cronogue 12, JD Duke Law

(Graham, A NEW AUMF: DEFINING COMBATANTS IN THE WAR ON TERROR, scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1294&context=djcil)

Removing the 9/11 nexus to reflect the current reality of war without writing a carte blanche is the most important form of congressional guidance regarding target authorization. In order for the President to operate under the current AUMF, he must find a strong nexus between the target and the attacks on September 11. As I have shown in this paper, this nexus is simply non-existent for many groups fighting the United States today. Yet, the President should want to operate pursuant to congressional authorization, Justice Jackson’s strongest zone of presidential authority. In order to achieve this goal, the administration has begun to stretch the statutory language to include groups whose connection to the 9/11 attacks, if any, is extraordinarily limited. The current presidential practice only nominally follows the AUMF, a practice Congress has seemingly consented to by failing to amend the statute for over ten years. This “stretching” is dangerous as Congress is no longer truly behind the authorization and has simply acquiesced to the President’s exercise of broad authority.

#### Obama’s AUMF determinations are wrong – congress has not authorized force outside of 9/11 connections

Barnes 12, JD Boston University

(Beau, REAUTHORIZING THE “WAR ON TERROR”: THE LEGAL AND POLICY IMPLICATIONS OF THE AUMF’S COMING OBSOLESCENCE, Military Law Review, Vol. 211)

This article, prompted by Congress’s recent failed efforts to revisit and refine the September 18, 2001, Authorization for Use of Military Force (AUMF), argues for a “middle ground” approach to the statute’s reauthorization. It makes the case that a new authorization is needed because, contrary to the Obama Administration’s suggestions, the current statute is rapidly approaching obsolescence. Despite the intense media focus on the most recent legislative cycle, Congress has left the 2001 authorization legally unaltered and still anchored to the September 11, 2001, attacks. Confronting this reality presents three options: foregoing military operations against non-Al Qaeda terrorist organizations, accepting the AUMF’s obsolescence and relying on alternative legal authority, or refashioning a new domestic statutory authority for the U.S. military’s global anti-terrorist operations.

#### Even if they win that they limit AUMF authorization, they still don’t meet our restrict means to prohibit definition from the 1NC Scheidler-Brown evidence

#### a) Limitations on authorization are not prohibitions – the President can site other means to claim authority

Goldsmith 13, Law Prof at Harvard

(9/3, Jack, It is Hard to Write an AUMF, www.lawfareblog.com/2013/09/it-is-hard-to-write-an-aumf/

First, Congress needs to pay attention to the distinction between an authorization and a prohibition. Authorizing strikes for sixty days, and only for sixty days, will not by itself prohibit the President from using force beyond sixty days. The reason: the President thinks he has independent, inherent Article II authority to engage in the strikes. If Congress wants to limit the President, it must do so through authorizations combined with prohibitions. The President can in theory disregard a prohibition as a violation of his Commander in Chief power. But in this context, where the constitutional arguments for inherent power are already weak, the arguments for an exclusive presidential power are much weaker yet (and the political costs of defying a congressional restriction in this context would be enormous). Second, limiting the purposes of the attack to avoid toppling Assad’s government won’t by itself stop the President from acting to topple Assad’s government if he can do so pursuant to some more benign purpose, such as deterring use of WMDs. Recall that the administration had no overt authorization from the Security Council to topple Gaddafi. But ultimately it read the Security Council authorization “to take all necessary measures . . . to protect civilians and civilian populated areas under threat of attack in the Libyan Arab Jamahiriya” as sanction to pursue and attack Gaddafi. Writing an AUMF that adequately empowers and constraints the President is hard.

#### b) That’s especially true in the context of the AUMF – the President will just site Article II instead

Chesney et al 13, Law Prof at Texas

(Robert, A Statutory Framework for Next-Generation Terrorist Threats, media.hoover.org/sites/default/files/documents/Statutory-Framework-for-Next-Generation-Terrorist-Threats.pdf)

Consider first the option of Congress doing nothing. This is, at bottom, a choice to address extra-AUMF threats through a combination of increasingly strained executive branch interpretations of the AUMF, law enforcement and intelligence measures, and whatever supplemental military force the president can and will assert based on his Article II authorities. It is our contention that at some point even strained interpretations of the AUMF will not be possible, and that even before we reach that point, the strained interpretations will call into question the legitimacy of congressional and democratic backing for the president’s uses of force. That leaves law enforcement measures and Article II powers, which in combination are far from ideal.

#### 5) The aff is extra-topical – the AUMF applies to things outside the resolution like wiretapping

Justice.gov 2006 (January 27, “THE NSA PROGRAM TO DETECT AND PREVENT TERRORIST ATTACKS

MYTH V. REALITY” <http://www.justice.gov/opa/documents/nsa_myth_v_reality.pdf>)

Myth: The NSA program is illegal. Reality: The President’s authority to authorize the terrorist surveillance program is firmly based both in his constitutional authority as Commander-in-Chief, and in the Authorization for Use of Military Force (AUMF) passed by Congress after the September 11 attacks. • As Commander-in-Chief and Chief Executive, the President has legal authority under the Constitution to authorize the NSA terrorist surveillance program. ¾ The Constitution makes protecting our Nation from foreign attack the President’s most solemn duty and provides him with the legal authority to keep America safe. ¾ It has long been recognized that the President has inherent authority to conduct warrantless surveillance to gather foreign intelligence even in peacetime. Every federal appellate court to rule on the question has concluded that the President has this authority and that it is consistent with the Constitution. ¾ Since the Civil War, wiretaps aimed at collecting foreign intelligence have been authorized by Presidents, and the authority to conduct warrantless surveillance for foreign intelligence purposes has been consistently cited and used when necessary. • Congress confirmed and supplemented the President's constitutional authority to authorize this program when it passed the AUMF. ¾ The AUMF authorized the President to use “all necessary and appropriate military force against those nations, organizations, or persons he determines planned, authorized, committed, or aided in the terrorist attacks that occurred on September 11, 2001.” ¾ In its Hamdi decision, the Supreme Court ruled that the AUMF also authorizes the “fundamental incident[s] of waging war.” The history of warfare makes clear that electronic surveillance of the enemy is a fundamental incident to the use of military force.

### AT Retail Approach

#### The plan is not a retail approach because it doesn’t specify terrorist groups, countries or geographic areas outside of Al Qaeda and the Taliban

Chesney et al 13, Law Prof at Texas

(Robert, A Statutory Framework for Next-Generation Terrorist Threats, media.hoover.org/sites/default/files/documents/Statutory-Framework-for-Next-Generation-Terrorist-Threats.pdf)

Congress could instead authorize the president to use force against specified terrorist groups and/or in specified countries or geographic areas. This would resemble the more traditional approach by which Congress authorizes force against state adversaries or for particular operations within foreign countries. Recent news reports have suggested that some in the administration and the military are deliberating about whether to ask Congress for just such a statute to address Islamist terrorist threats in some North African countries. This “retail” approach—in contrast to the “wholesale” approach laid out in the previous section—is the one that, among our three options, most restricts presidential discretion. In theory, the retail approach is advantageous because Congress would specifically define the enemy (recognizing, however, the difficulties associated with the AUMF in drawing clear boundaries around transnational terrorism groups). Congress must under this approach stay engaged politically and legally as threats evolve and emerge; it must debate and approve any significant expansions of the conflict.