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**Boehner is showing a cautious willingness to allow a vote on immigration reform that facilitates passage**

**Sullivan, 10/24** (Sean, 10/24/2013, “John Boehner’s next big test: Immigration,” [http://www.washingtonpost.com/blogs/the-fix/wp/2013/10/24/john-boehners-next-big-test-immigration-reform/)](http://www.washingtonpost.com/blogs/the-fix/wp/2013/10/24/john-boehners-next-big-test-immigration-reform/%29))

President Obama delivered remarks Thursday morning to renew his call for Congress to pass sweeping immigration reform. **The prevailing sentiment in Washington is that it’s not going to happen this year, and may not even happen next year.**

**But because of the last few weeks, it just might get done by early next year. It’s all up to** House Speaker John A. **Boehner** (R-Ohio), **who by political necessity, must now at least consider leaning in more on immigration.**

“Let’s see if we can get this done. And let’s see if we can get it done this year,” Obama said at the White House.

Fresh off a decisive defeat in the budget and debt ceiling showdown that cost the GOP big and won the party no major policy concessions from Democrats, **Boehner was asked** Wednesday about **whether he plans to bring up immigration legislation during the limited time left on the 2013 legislative calendar. He didn’t rule it out.**

“I still think immigration reform is an important subject that needs to be addressed. And **I’m hopeful,” said Boehner**.

**The big question is whether the speaker’s hopefulness spurs him to press the matter legislatively or whether the cast-iron conservative members** who oppose even limited reforms **will dissuade him and extinguish his cautiously optimistic if noncommittal outlook.**

**Months ago, as House Republicans were slow-walking immigration after the Senate passed a broad bill, the latter possibility appeared the likelier bet. But times have changed. The position House Republicans adopted in the fiscal standoff badly damaged the party’s brand. The GOP is reeling**, searching desperately for a way to turn things around. That means **Boehner**, too, **must look for ways to repair the damage**.

And **that’s where immigration comes in**. Even before the government shutdown showdown, a vocal part of the GOP (think Sen. John McCain) had been talking up the urgent need to do immigration reform or risk further alienating Hispanic voters. **Now, amid hard times for the party driven by deeper skepticism from Democrats, independents and even some Republicans following the fiscal standoff, the political imperative is arguably even stronger.**

**The policy imperative already exists for some House Republicans — perhaps enough of them that if Boehner allowed a vote, reform of some type could pass with a majority of House Democrats and a minority of House Republicans, as did last week’s deal to end the government shutdown and raise the debt ceiling.** (What specifically could pass and whether Obama could accept it is another question.)

What’s not clear is whether Boehner would be willing to chart a path with less than majority GOP support again so soon after the last time and without his back against the wall as it was in the fiscal standoff.

This much we know: **The White House and Senate Democrats will keep applying pressure on Boehner to act on immigration. Obama’s remarks are the latest example of his plan. The speaker will be feeling external and internal pressure to move ahead on immigration.**

But he will also feel pressure from conservatives to oppose it. Here’s the thing, though: **Boehner listened to the right flank of his conference in the fiscal fight, and that path was politically destructive for his party. That’s enough to believe he will at least entertain the possibility of tuning the hard-liners out a bit more this time around.**

All of which is why **it’s too soon to cross immigration off the “maybe it will still get done” list just yet**.

**Boehner hates the aff**

**Weigel, 13** (2/6/2013, David --- Slate political reporter, “Boehner Backs Obama on Targeted Killing,” <http://www.slate.com/blogs/weigel/2013/02/06/boehner_backs_obama_on_targeted_killing.html>))

Here's one reason why drone warfare and targeted killing don't really get discussed in Washington unless there's a memo leak or a protest: There's bipartisan consensus to whistle awkwardly and let the system continue. **At** John **Boehner's weekly press conference**, PRI's Todd **Zwillich asked whether the most powerful Republican in the country**, a "constitutional officer," **had any concerns about targeted killing. After all, Congress could hold hearings. Congress could cut funding.**

**"[House Intelligence Committee] Chairman Mike Rogers put out a statement yesterday,"** said Boehner, **"and I agree with that statement."**

He didn't quote the statement, but **what Rogers said yesterday was that targeted killing of American citizens was a "lawful act of national self-defense."** Via the AP:

 When an individual has joined al-Qaida — the organization responsible for the murder of thousands of Americans — and actively plots future attacks against U.S. citizens, soldiers, and interests around the world, the U.S. government has both the authority and the obligation to defend the country against that threat.

In general, **Republicans agreed with the legal theories behind all this when** George W. **Bush was president. They agree with the theories now.** They might call for more transparency, as Sen. John Cornyn is doing, but they don't do so because they question the basis for the attacks.

**Kills CIR**

**The Record, 13** (“Immigration Progress,” 4/8/2013, Factiva))

SEEMINGLY, **AFTER years of theatrics, tough rhetoric and**, sometimes, **unproductive demagoging** of a complicated issue, **a window is opening on lasting immigration reform**.

Indeed, stakeholders from labor to business to the nation's capital seem as close as they have been in nearly a decade to closing ranks behind sensible immigration legislation that was first announced in January by the so-called Gang of Eight senators, including New Jersey's own Sen. Bob Menendez.

It was in the spirit of this hopeful end in sight that North Jersey immigrants and their supporters gathered over the weekend at Liberty State Park to lend a collective voice in support of "common- sense immigration reform" that includes a "tough but fair" path to citizenship for immigrants already in the country and protection for all workers. The working legislation would also increase border security, put in place a system that would crack down on employers who hire unauthorized immigrants and provide improved oversight on those here with visas.

The Liberty State Park rally was hosted by a coalition of organizations from around the state. It came in advance of what is expected to be an unveiling of the broad planks of the Gang of Eight legislative package that hopefully will carry bipartisan support in both the House and U.S. Senate.

"We are going to let everyone know that there is absolutely no one that is going to be left in the shadows, absolutely no one that can fall through the cracks," Lucia Gomez, executive director of La Fuente, a not-for-profit organization with offices in New York and New Jersey, said last week.

The "tough but fair" angle of the legislation has been a part of Menendez's push on immigration for years. The legislation calls for immigrants living illegally in the United States to go through a background check, pay back taxes, learn English and civics and demonstrate a work history in the United States in order to become permanent legal residents.

No one is talking about a free ride here. In this nation of immigrants, reforms announced so far merely provide a practical remedy to deal humanely with the more than 11 million undocumented immigrants living in this country. Let us not forget that those so- called illegals would not be here if they hadn't found opportunity through employment, often dangerous, off-the-books employment, from businesses and individuals willing to pay them.

The effort to make the immigration bill politically viable for all sides -- including business and labor groups -- picked up steam when apparent consensus was reached on a new visa program for low- skilled workers. In recent weeks, that logjam was broken, with AFL- CIO President Richard Trumka and Chamber of Commerce President Thomas J. Donahue issuing a joint statement saying they had "found common ground" on a plan that would let businesses bring in immigrants each year to work in year-round low-wage jobs, including custodial or construction jobs.

Of course, **as with any high-profile negotiations in Washington, last-minute surprises could still derail the legislation. We all remember the shock** here in New Jersey **when** Republican House Speaker John **Boehner inexplicably blocked the superstorm Sandy relief package for no apparent reason other than political payback**.

**We hope that's not the case with immigration reform.** It's too important. This window, a chance of finally bringing common sense federal immigration regulations to fruition, will not be open long. This is a non-election year for Congress. President Obama is not on the ballot. There is no practical reason why this deal cannot get done.

Those who gathered at Liberty State Park on Saturday were speaking up for principles that are the bedrock of this nation, among those being the ability to live free and to work hard for an honest wage.

**Solves relations with India**

**Williams ‘12** [11/9/2012, Carol J. Williams. “Other countries eagerly await U.S. immigration reform,” <http://latimesblogs.latimes.com/world_now/2012/11/us-immigration-reform-eagerly-awaited-by-source-countries.html>]

**"Comprehensive immigration reform will see expansion of skilled labor visas," predicted** B. Lindsay **Lowell, director of policy studies for the Institute for the Study of International Migration at Georgetown** University. A former research chief for the congressionally appointed Commission on Immigration Reform, Lowell said **he expects to see at least a fivefold increase in the number of highly skilled labor visas that would provide "a significant shot in the arm for India and China."** **There is widespread consensus among economists and academics that skilled migration fosters new trade and business relationships between countries and enhances links to the global economy**, Lowell said. **"Countries like India and China weigh the opportunities of business abroad from their expats with the possibility of brain drain, and I think they still see the immigration opportunity as a bigger plus than not,"** he said.

**nuclear war**

**Schaffer ‘2** [Spring 2002, Teresita Schaffer is the Director of the South Asia Program at the Center for Strategic and International Security. Washington Quarterly, p. Lexis)

**Washington's increased interest in India since the late** 19**90s** **reflects India's economic expansion and position as Asia's newest rising power**. New Delhi, for its part, is adjusting to the end of the Cold War. As a result, **both giant democracies see that they can benefit by closer cooperation**. **For Washington, the advantages include** a wider network of friends in Asia at a time when the region is changing rapidly, as well as **a stronger position from which to help calm possible future nuclear tensions in the region**. **Enhanced trade and investment benefit both countries and are a prerequisite for improved U.S. relations with India**. **For India, the country's ambition to assume a stronger leadership role in the world and to maintain an economy that lifts its people out of poverty depends critically on good relations with the** **U**nited **S**tates.

**2**

**Obama’s Syria maneuver has maximized presidential war powers because it’s on his terms**

**Posner 9/3**, Law Prof at University of Chicago

(Eric, Obama Is Only Making His War Powers Mightier, www.slate.com/articles/news\_and\_politics/view\_from\_chicago/2013/09/obama\_going\_to\_congress\_on\_syria\_he\_s\_actually\_strengthening\_the\_war\_powers.html)

President **Obama’s** surprise **announcement that he will ask Congress for approval of a military attack on Syria is being hailed as a vindication of the rule of law and a revival of the central role of Congress in war-making**, even by critics. **But all of this is wrong. Far from breaking new legal ground, President Obama has reaffirmed the primacy of the executive in matters of war and peace. The war powers of the presidency remain as mighty as ever**. It would have been different if the president had announced that only Congress can authorize the use of military force, as dictated by the Constitution, which gives Congress alone the power to declare war. That would have been worthy of notice, a reversal of the ascendance of executive power over Congress. But the president said no such thing. He said: “I believe I have the authority to carry out this military action without specific congressional authorization.” Secretary of State John Kerry confirmed that the president “has the right to do that”—launch a military strike—“no matter what Congress does.” Thus, **the president believes that the law gives him the option to seek a congressional yes or to act on his own. He does not believe that he is bound to do the first. He has merely stated the law as countless other presidents and their lawyers have described it before him**. The president’s announcement should be understood as a political move, not a legal one. His motive is both self-serving and easy to understand, and it has been all but acknowledged by the administration. If Congress now approves the war, it must share blame with the president if what happens next in Syria goes badly. If Congress rejects the war, it must share blame with the president if Bashar al-Assad gases more Syrian children. The big problem for Obama arises if Congress says no and he decides he must go ahead anyway, and then the war goes badly. He won’t have broken the law as he understands it, but he will look bad. He would be the first president ever to ask Congress for the power to make war and then to go to war after Congress said no. (In the past, presidents who expected dissent did not ask Congress for permission.) **People who celebrate the president for humbly begging Congress for approval** also apparently **don’t realize that his understanding of the law—that it gives him the option to go to Congress**—**maximizes executive power vis-à-vis Congress**. If the president were required to act alone, without Congress, then he would have to take the blame for failing to use force when he should and using force when he shouldn’t. **If he were required to obtain congressional authorization, then Congress would be able to block him. But if he can have it either way, he can force Congress to share responsibility when he wants to and avoid it when he knows that it will stand in his way.**

Statutory restriction of Presidential War Powers makes warfighting impossible

**Yoo 12 – prof of law @ UC Berkeley**

**(John, War Powers Belong to the President, ABA Journal February 2012 Issue,** http://www.abajournal.com/magazine/article/war\_powers\_belong\_to\_the\_president) <we do not endorse the ableist language used in this card, but have left it in to preserve the author’s intent. we apologize for the author’s inappropriate use of the word “paralyze”>

The framers realized the obvious. **Foreign affairs are unpredictable and involve the highest of stakes, making them unsuitable to regulation by** pre-existing **legislation.** Instead, **they** can **demand swift, decisive action—sometimes under pressured or even emergency circumstances—that is best carried out by a branch of government that does not suffer from multiple vetoes or is delayed by disagreements. Congress is too large and unwieldy to take the swift and decisive action required in wartime.** Our framers replaced the Articles of Confederation, which had failed in the management of foreign relations because they had no single executive, with the Constitution’s single president for precisely this reason. Even when it has access to the same intelligence as the executive branch, **Congress’ loose, decentralized structure would paralyze American policy while foreign threats grow**. **Congress has no political incentive to** mount and **see through its own wartime policy. Members of Congress, who are interested in keeping their seats at the next election, do not want to take stands on controversial issues where the future is uncertain. They will avoid** like the plague **any vote that will anger** large segments of **the electorate. They prefer that the president take the political risks and be held accountable for failure.** Congress’ track record when it has opposed presidential leadership has not been a happy one. Perhaps the most telling example was the Senate’s rejection of the Treaty of Versailles at the end of World War I. Congress’ isolationist urge kept the United States out of Europe at a time when democracies fell and fascism grew in their place. Even as Europe and Asia plunged into war, Congress passed the Neutrality Acts designed to keep the United States out of the conflict. President Franklin Roosevelt violated those laws to help the Allies and draw the nation into war against the Axis. **While** pro-Congress **critics worry about** a president’s **foreign adventurism, the real threat to our national security may come from inaction and isolationism.** Many point to the Vietnam War as an example of the faults of the “imperial presidency.” Vietnam, however, could not have continued without the consistent support of Congress in raising a large military and paying for hostilities. And Vietnam ushered in a period of congressional dominance that witnessed American setbacks in the Cold War and the passage of the ineffectual War Powers Resolution. Congress passed the resolution in 1973 over President Richard Nixon’s veto, and no president, Republican or Democrat, George W. Bush or Obama, has ever accepted the constitutionality of its 60-day limit on the use of troops abroad. No federal court has ever upheld the resolution. Even Congress has never enforced it. Despite the record of practice and the Constitution’s institutional design, critics nevertheless argue for a radical remaking of the American way of war. They typically base their claim on Article I, Section 8, of the Constitution, which gives Congress the power to “declare war.” But these observers read the 18th century constitutional text through a modern lens by interpreting “declare war” to mean “start war.” When the Constitution was written, however, a declaration of war served diplomatic notice about a change in legal relations between nations. It had little to do with launching hostilities. In the century before the Constitution, for example, Great Britain—where the framers got the idea of the declare-war power—fought numerous major conflicts but declared war only once beforehand. Our Constitution sets out specific procedures for passing laws, appointing officers and making treaties. There are none for waging war because the framers expected the president and Congress to struggle over war through the national political process. In fact, other parts of the Constitution, properly read, support this reading. Article I, Section 10, for example, declares that the states shall not “engage” in war “without the consent of Congress” unless “actually invaded, or in such imminent danger as will not admit of delay.” This provision creates exactly the limits desired by anti-war critics, complete with an exception for self-defense. If the framers had wanted to require congressional permission before the president could wage war, they simply could have repeated this provision and applied it to the executive. **Presidents, of course, do not have complete freedom** to take the nation to war. **Congress has ample powers to control presidential policy, if it wants to.** **Only Congress can raise the military**, which gives it the power to block, delay or modify war plans. Before 1945, for example, the United States had such a small peacetime military that presidents who started a war would have to go hat in hand to Congress to build an army to fight it. Since World War II, it has been Congress that has authorized and funded our large standing military, one primarily designed to conduct offensive, not defensive, operations (as we learned all too tragically on 9/11) and to swiftly project power worldwide. **If Congress wanted to discourage presidential initiative in war, it could build a smaller**, less offensive-minded **military**. **Congress**’ check on the presidency lies not just in the long-term raising of the military. It **can** also **block** any immediate armed **conflict through the power of the purse**. If Congress feels it has been misled in authorizing war, or it disagrees with the president’s decisions, all it need do is cut off funds, either all at once or gradually. It can reduce the size of the military, shrink or eliminate units, or freeze supplies. Using the power of the purse does not even require affirmative congressional action. Congress can just sit on its hands and refuse to pass a law funding the latest presidential adventure, and the war will end quickly. Even the Kosovo war, which lasted little more than two months and involved no ground troops, required special funding legislation. The framers expected Congress’ power of the purse to serve as the primary check on presidential war. During the 1788 Virginia ratifying convention, Patrick Henry attacked the Constitution for failing to limit executive militarism. James Madison responded: “The sword is in the hands of the British king; the purse is in the hands of the Parliament. It is so in America, as far as any analogy can exist.” Congress ended America’s involvement in Vietnam by cutting off all funds for the war. **Our Constitution has succeeded because it favors swift presidential action in war, later checked by Congress’ funding power.** If a president continues to wage war without congressional authorization, as in Libya, Kosovo or Korea, it is only because Congress has chosen not to exercise its easy check. We should not confuse a desire to escape political responsibility for a defect in the Constitution. **A radical change in the system for making war** might appease critics of presidential power. But it **could** also **seriously threaten** **American national security. In order to forestall another 9/11** attack, **or** to **take advantage of a window of opportunity to strike terrorists or rogue nations, the executive branch needs flexibility. It is not hard to think of situations where congressional consent cannot be obtained in time to act**. Time for **congressional deliberation**, which **leads only to passivity and isolation and not smarter decisions**, will come at the price of speed and secrecy. **The Constitution creates a presidency that can respond forcefully to prevent serious threats to our national security**. Presidents can take the initiative and Congress can use its funding power to check them. Instead of demanding a legalistic process to begin war, the framers left war to politics. **As we confront the new challenges of terrorism, rogue nations** and **WMD proliferation, now is not the time to introduce sweeping, untested changes in the way we make war.**

**The plan spills over to broader Congressional decisionmaking**

**Paul 2008** - Senior Social Scientist; Professor, Pardee RAND Graduate School Pittsburgh Office Education Ph.D., M.A., and B.A. in sociology, University of California, Los Angeles (September,Christopher, “US Presidential War Powers: Legacy Chains in Military Intervention Decisionmaking\* ,” Journal of Peace Research, Vol. 45, No. 5 (Sep., 2008), pp. 665-679)

Legacy Chains

Finegold & Skocpol (1995: 222) describe policy legacies: Past and present policies are connected in at least three different ways. First, **past policies give rise to analogies that affect how public officials think about contemporary policy issues**. Second, **past policies suggest lessons that help us to understand the processes by which contemporary policies are formulated and implemented** and by which the conse quences of contemporary policies will be determined. Third, **past policies impose limi tations that reduce the range of policy choices available** as responses to contemporary problems. All three of the ways in which they connect past policy to present policy can be viewed as changes in the institutional context in which policy is made. **These legacies are institutionalized** in two different ways: first, **through changes in formal rules or procedures, and** second, **in the 'taken for granteds', 'schemas', and accepted wisdom of policy makers and ordinary citizens alike** (Sewell, 1992: 1-29). **While a policy** or event can leave multiple legacies, it **often leaves a single major legacy**. For example, the War Powers Resolution for mally changed the relationship between the president and the congress with regard to war-making and the deployment of troops. Subsequent military interventions were influenced by this change and have, in turn, left their own legacy (legal scholars might call it precedent) as a link in that chain. **Legacy chains can be modified, trans formed, or reinforced as they step through each 'link' in the chain**. As another example, US involvement in Vietnam left a legacy in the sphere of press/military relations which affected the intervention in Grenada in 1983 (the press was completely excluded for the first 48 hours of the operation). The press legacy chain begun in Vietnam also affected the Panama invasion of 1989 (a press pool was activated, in country, but excluded from the action), but the legacy had been trans formed slightly by the Grenada invasion (the press pool system itself grew out of complaint regarding press exclusion in Grenada) (Paul & Kim, 2004). Because of the different ways in which policy legacies are institutionalized, some **legacies have unintended institutional conse quences**. The War Powers Resolution was intended to curtail presidential war-making powers and return some authority to the con gress. **In practice, the joint resolution failed to force presidents to include congressional participation in their intervention decision making, but it had the unintended conse quence of forcing them to change the way they planned interventions to comply with the letter of the law** (see the extended ex ample presented later in the article).1

**Executive control of warmaking is key to avoiding nuclear war and terrorism**

**Li 2009** - J.D. candidate, Georgetown University Law Center, 2009; B.A., political science and history, Yale University (Zheyao, “War Powers for the Fourth Generation: Constitutional Interpretation in the Age of Asymmetric Warfare,” 7 Geo. J.L. & Pub. Pol'y 373 2009 WAR POWERS IN THE FOURTH GENERATION OF WARFARE)

A. The Emergence of Non-State Actors

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

**3**

**Liberal norm setting is a strategy to grant legitimacy to the global neoliberal order – marginalizes vulnerable populations and prevents true democracy**

**Glinavos 2008** - Lecturer in Law, University of Reading (July 16, Ioannis, “Neoliberal Law: unintended consequences of market-friendly law reforms” Third World Quarterly Volume 29, Issue 6, google scholar)

Ugo Mattei has claimed that the **discursive practices branded ‘democracy and the rule of law’ form a reactive legal philosophy that outlaws a redistribution of wealth based on social solidarity**.28 As has been noted above, the institutional variant of plans for development/transition drawn by the International Financial Institutions for the new century aims to safeguard the gains of the market-friendly reform process by limiting the right of political processes to affect economic conditions. Especially **through the marketing of ‘independent’ courts and institutions, the sanctity of property and contract is put before social justice and equality**. **The current deregulatory trend observed in the subcontracting of government functions** to associated agencies beyond the control of democratic politics **is an extension of the idea of private government inherent in the concept of sacred property rights**. As Robert Hale has observed,29 **legal rights to the possession, use and exchange value of property are best described as delegations of public authority to private individuals and unofficial minorities. Because of the legally constituted coercive power of the state embodied in property rights, individuals are as subject to coercive power in non-regulatory laissez faire regimes as in controlled state-managed ones**. **The only difference is in the source of coercion**: private power in the first instance and state power in the latter case. This led Hale to conclude that the public–private and state–market dichotomies that characterised theoretical analysis at the end of the 19th and the start of the 20th century need to be abandoned.30 Of course, instead of being surpassed, these dichotomies have made it well into the 21st century and continue to determine policy responses to the challenges of development. **Armed with the belief (reflected in the law) that markets are natural and that ‘market democracy’ is a system capable of legitimating the property structure, the courts are entrusted with the function of settling competing claims** and advancing social welfare **without the need to refer to direct political processes**. The idea that all political questions will ultimately be decided by the courts was already observed by Alexis De Tocqueville,31 and was proved by the handing of the US presidency to George Bush by the Supreme Court in 2000. In addition, **the transformation of international law from a decentralised system to a progressively more centralised legal system governed by professional elites is** a more-or-less **conscious reproduction of the reactive philosophy of a model of ‘government through courts’**.32 As such, **this model is promoting on a global scale a professional legal ideology of neutrality, democracy and rule of law which grants legitimacy to the neoliberal world order and assists in the entrenchment of class and property structures** (such as those created in the former USSR via privatisation). Of course, it is evident that **the promotion of democracy requires tempering the power of the state** (especially where power is accumulated in bureaucracies tainted with corruption) **where corporatist structures of governance often collude with corrupt elites to favour undemocratic processes**. However: **The favour granted by neoliberal policies to market mechanisms** of production and distribution **pushes vast sectors of the population to the margins of participation** over issues that one would expect to be resolved within the sphere of democratic politics**. The reduction of the size and scope of state functions and other non-market arenas of civic participation along neoliberal lines threatens to further exclude sectors of the poor and middle classes from influencing the direction of society**.33

**The impact is extinction – the environmental byproducts of neoliberalism create gaps in ecosystem services, creating multiple, mutually reinforcing feedback effects – causes climate change, resource collapse, disease spread, and biodiversity collapse**

**Ehrenfeld ‘5,**

(David, Dept. of Ecology, Evolution, and Natural Resources @ Rutgers University, “The Environmental Limits to Globalization”, *Conservation Biology* Vol. 19 No. 2 April 2005)

The known effects of globalization on the environment are numerous and highly significant. Many others are undoubtedly unknown. Given these circumstances, the first question that suggests itself is: Will globalization, as we see it now, remain a permanent state of affairs (Rees 2002; Ehrenfeld 2003a)? The principal environmental side effects of globalization—climate change, resource exhaustion (particularly cheap energy), damage to agroecosystems, and the spread of exotic species, including pathogens (plant, animal, and human)—are sufficient to make this economic system unstable and short-lived. The socioeconomic consequences of globalization are likely to do the same. In my book *The Arrogance of Humanism* (1981), I claimed that our ability to manage global systems, which depends on our being able to predict the results of the things we do, or even to understand the systems we have created, has been greatly exaggerated. Much of our alleged control is science fiction; it doesn’t work because of theoretical limits that we ignore at our peril. We live in a dream world in which reality testing is something we must never, never do, lest we awake. In 1984 Charles Perrow explored the reasons why we have trouble predicting what so many of our own created systems will do, and why they surprise us so unpleasantly while we think we are managing them. In his book *Normal Accidents*, which does not concern globalization, he listed the critical characteristics of some of today’s complex systems. They are highly interlinked, so a change in one part can affect many others, even those that seem quite distant. Results of some processes feed back on themselves in unexpected ways. The controls of the system often interact with each other unpredictably. We have only indirect ways of finding out what is happening inside the system. And we have an incomplete understanding of some of the system’s processes. His example of such a system is a nuclear power plant, and this, he explained, is why system-wide accidents in nuclear plants cannot be predicted or eliminated by system design. I would argue that globalization is a similar system, also subject to catastrophic accidents, many of them environmental—events that we cannot define until after they have occurred, and perhaps not even then. The comparatively few commentators who have predicted the collapse of globalization have generally given social reasons to support their arguments. These deserve some consideration here, if only because the environmental and social consequences of globalization interact so strongly with each other. In 1998, the British political economist John Gray, giving scant attention to environmental factors, nevertheless came to the conclusion that globalization is unstable and will be short-lived. He said, “There is nothing in today’s global market that buffers it against the social strains arising from highly uneven economic development within and between the world’s diverse societies.” The result, Gray states, is that “The combination of [an] unceasing stream of new technologies, unfettered market competition and weak or fractured social institutions” has weakened both sovereign states and multinational corporations in their ability to control important events. Note that Gray claims that not only nations but also multinational corporations, which are widely touted as controlling the world, are being weakened by globalization. This idea may come as a surprise, considering the growth of multinationals in the past few decades, but I believe it is true. Neither governments nor giant corporations are even remotely capable of controlling the environmental or social forces released by globalization, without first controlling globalization itself. Two of the social critics of globalization with the most dire predictions about its doom are themselves masters of the process. The late Sir James Goldsmith, billionaire financier, wrote in 1994, It must surely be a mistake to adopt an economic policy which makes you rich if you eliminate your national workforce and transfer production abroad, and which bankrupts you if you continue to employ your own people.... It is the poor in the rich countries who will subsidize the rich in the poor countries. This will have a serious impact on the social cohesion of nations. Another free-trade billionaire, George Soros, said much the same thing in 1995: “The collapse of the global marketplace would be a traumatic event with unimaginable consequences. Yet I find it easier to imagine than the continuation of the present regime.” How much more powerful these statements are if we factor in the environment! As globalization collapses, what will happen to people, biodiversity, and ecosystems? With respect to people, the gift of prophecy is not required to answer this question. What will happen depends on where you are and how you live. Many citizens of the Third World are still comparatively self-sufficient; an unknown number of these will survive the breakdown of globalization and its attendant chaos. In the developed world, there are also people with resources of self-sufficiency and a growing understanding of the nature of our social and environmental problems, which may help them bridge the years of crisis. Some species are adaptable; some are not. For the non- human residents of Earth, not all news will be bad. Who would have predicted that wild turkeys (Meleagris gallopavo), one of the wiliest and most evasive of woodland birds, extinct in New Jersey 50 years ago, would now be found in every county of this the most densely populated state, and even, occasionally, in adjacent Manhattan? Who would have predicted that black bears (Ursus americanus), also virtually extinct in the state in the mid-twentieth century, would now number in the thousands (Ehrenfeld 2001)? Of course these recoveries are unusual—rare bright spots in a darker landscape. Finally, a few ecological systems may survive in a comparatively undamaged state; most will be stressed to the breaking point, directly or indirectly, by many environmental and social factors interacting unpredictably. Lady Luck, as always, will have much to say. In his book *The Collapse of Complex Societies,* the archaeologist Joseph Tainter (1988) notes that collapse, which has happened to all past empires, inevitably results in human systems of lower complexity and less specialization, less centralized control, lower economic activity, less information flow, lower population levels, less trade, and less redistribution of resources. All of these changes are inimical to globalization. This less-complex, less-globalized condition is probably what human societies will be like when the dust settles. I do not think, however, that we can make such specific predictions about the ultimate state of the environment after globalization, because we have never experienced anything like this exceptionally rapid, global environmental damage before. History and science have little to tell us in this situation. The end of the current economic system and the transition to a postglobalized state is and will be accompanied by a desperate last raid on resources and a chaotic flurry of environmental destruction whose results cannot possibly be told in advance. All one can say is that the surviving species, ecosystems, and resources will be greatly impoverished compared with what we have now, and our descendants will not thank us for having adopted, however briefly, an economic system that consumed their inheritance and damaged their planet so wantonly. Environment is a true bottom line—concern for its condition must trump all purely economic growth strategies if both the developed and developing nations are to survive and prosper. Awareness of the environmental limits that globalized industrial society denies or ignores should not, however, bring us to an extreme position of environmental determinism. Those whose preoccupations with modern civilization’s very real social problems cause them to reject or minimize the environmental constraints discussed here ( Hollander 2003) are guilty of seeing only half the picture. Environmental scientists sometimes fall into the same error. It is tempting to see the salvation of civilization and environment solely in terms of technological improvements in efficiency of energy extraction and use, control of pollution, conservation of water, and regulation of environmentally harmful activities. But such needed developments will not be sufficient—or may not even occur— without corresponding social change, including an end to human population growth and the glorification of consumption, along with the elimination of economic mechanisms that increase the gap between rich and poor. The environmental and social problems inherent in globalization are completely interrelated—any attempt to treat them as separate entities is unlikely to succeed in easing the transition to a postglobalized world. Integrated change that combines environmental awareness, technological innovation, and an altered world view is the only answer to the life-threatening problems exacerbated by globalization (Ehrenfeld 2003b). If such integrated change occurs in time, it will likely happen partly by our own design and partly as an unplanned response to the constraints imposed by social unrest, disease, and the economics of scarcity. With respect to the planned component of change, we are facing, as eloquently described by Rees (2002), “the ultimate challenge to human intelligence and self-awareness, those vital qualities we humans claim as uniquely our own. *Homo sapiens* will either. . .become fully human or wink out ignominiously, a guttering candle in a violent storm of our own making.” If change does not come quickly, our global civilization will join Tainter’s (1988) list as the latest and most dramatic example of collapsed complex societies. Is there anything that could slow globalization quickly, before it collapses disastrously of its own environmental and social weight? It is still not too late to curtail the use of energy, reinvigorate local and regional communities while restoring a culture of concern for each other, reduce nonessential global trade and especially global finance (Daly & Cobb 1989), do more to control introductions of exotic species (including pathogens), and accelerate the growth of sustainable agriculture. Many of the needed technologies are already in place. It is true that some of the damage to our environment—species extinctions, loss of crop and domestic animal varieties, many exotic species introductions, and some climatic change— will be beyond repair. Nevertheless, the opportunity to help our society move past globalization in an orderly way, while there is time, is worth our most creative and passionate efforts. The citizens of the United States and other nations have to understand that our global economic system has placed both our environment and our society in peril, a peril as great as that posed by any war of the twentieth century. This understanding, and the actions that follow, must come not only from enlightened leadership, but also from grassroots consciousness raising. It is still possible to reclaim the planet from a self-destructive economic system that is bringing us all down together, and this can be a task that bridges the divide between conservatives and liberals. The crisis is here, now. What we have to do has become obvious. Globalization can be scaled back to manageable proportions only in the context of an altered world view that rejects materialism even as it restores a sense of communal obligation. In this way, alone, can we achieve real homeland security, not just in the United States, but also in other nations, whose fates have become so thoroughly entwined with ours within the global environment we share.

**The alt develops an alternative ethical orientation towards economics, grounding it in an ethical empathy towards the other – re-orienting our methodological approach to the economy produces a new system of democratic institution and unites transnational movements**

**Choi, Murphy, and Caro 4**

Jung Min, John W, Manuel J, Professor of Sociology SDSU, Professor of Sociology University of Miami, Professor of Sociology Barry University, Globalization with a Human Face, pg. 6-9

Many critics have begun to wonder why hamburgers and jeans can be globalized, but the spread of themes such as peace or justice is thought by many politicians to be impossible to generalize. What many persons are calling for, especially in the Third World, is an alternative approach to globalization. Along with justice, they want to globalize resistance to current historical trends. They want to call a halt, for example, to the economic hardships and rape of the environment that have accompanied the rise of neoliberalism. This new strategy is referred to in many circles as "globalization from below." The point is that current policies have been driven from above from the capitalist centers around the world—and reflect the economic and cultural interests of these powerful classes. Most other persons, accordingly, are viewed as simply a cheap source of labor or a possible market for cheap goods. And because of this role in the world capitalist system, their opportunities are severely restricted. Even if they conform to the cultural mandates of the market, the likelihood of economic advancement is not very great. This sort of mobility is simply not a part of the role persons play on the economic periphery. What actually occurs, indeed, is that the system of controls, which are found in the economic centers, are reproduced on the periphery, but with more immediate devastation. The imposition of consumerism and materialism, for example, undermine the local economy and community supports, thereby increasing strife and reinforcing local elites and their ties to foreign investors. The old oligarchies are thus strengthened, while local institutions become more dependent on outside intervention. The resulting hierarchy, accordingly, is more powerful than ever before. As might be imagined, globalization from below has a very different agenda. Different values guide economic development, in short, while new ways of organizing society are sought. Instead of profit, for example, the general improvement of a community may be of prime importance. Likewise, emphasis may be placed on strengthening civil society, and thus ,advancing democracy, rather than identifying markets and potential investors. In general, globalization from below is driven by local concerns and the masses of persons who have little influence in corporate boardrooms. These are the people--the majority of the world's inhabitants--who are ignored unless their labor is suddenly profitable. At the core of this new globalization is often the call for a postcapitalist logic. Novel ways of looking at, for example, production and consumption are regularly a part of this project, in addition to new definitions of work and personal and group identity. Central to this scenario is that persons can remake themselves entirely, and nothing is exempt from revision. What proponents of globalization from below have done, in effect, is to seize control of their history and invent a new future. They have decided that history can be made, rather than merely experienced, and that there is no inherent *telos* to this process. The past is nothing, therefore, other than a point of departure of a new course of action. In the truest sense of the term, these activists are utopian thinkers. They are not enamored by reality and are convinced that new social arrangements, which have never existed and may be very difficult to create, are possible. As many students chanted during the 1960s, they are demanding the impossible and do not want to settle for more pragmatic substitutes. They are simply asking that persons strive to fulfill their dreams. But these demands are not based on fantasy. Instead, proponents of globalization from below are trying to emphasize an idea advanced by Marx: that is, nothing that humans imagine is foreign to them. Consequently, utopian ideals or practices are simply inventions that have not , yet been realized. Through effort and determination, and the absence foreign subversion, an economic system that is founded on justice might eventually be enacted. Merely because this vision has not been actualized, does not necessarily signal that such an aim contravenes human nature or is hopelessly flawed. The problem may simply be that persons have been unwilling or unable to purge themselves of certain biases or predispositions, and thus have never embarked on the creation of a new reality. Those who champion globalization from below, however, are not politically naive. They understand that powerful interests that benefit from injustice and inequality have intervened in the past to undermine various utopian projects. The proper dream is important, but so is the ability to implement this vision. These new utopians are thus trying to convince the public to restrain those who want to destroy these projects. What they are saying, in short, is that justice should be given the opportunity to thrive. THE RESTORATION OF COMMUNITY Various critics are saying that only the restoration of a strong sense of community can guarantee the success of globalization. What is meant by community, however, is in dispute. After all, even neoliberals lament the current loss of community that has ensued in the world economy. From their perspective, a community of effective traders would strengthen everyone's position at the marketplace. Advocates of globalization from below, as might be expected, have something very different in mind. They are not calling for the general assimilation of persons to a cosmopolitan ideal, which is thought to instill civility and enforce rationality. Persons who want to join the world market, as was noted earlier, are thought to need a good dose of these traits. Nonetheless, there is a high price for entry into this community—cultural or personal uniqueness must be sacrificed to promote effective economic discourse. Such reductionism, however, is simply unacceptable in a large part of

 the globe that is beginning to appreciate local customs and the resulting diversity. What these new activists want, therefore, is a community predicated on human solidarity. This sort of community, as Emmanuel Levinas describes, is focused on ethics rather than metaphysics." His point is that establishing order does not require the internalization of a single ideal by all persons, but simply their mutual recognition. The recognition of others as different, but connected to a common fate, is a powerful and unifying principle. Persons are basically united through the recognition and appreciation of their uniqueness. As should be noted, this image is encompassing but not abstract. Uniformity, in other words, is replaced by the juxtaposition of diversity as the cement that binds a community together. Like a montage, a community based on human solidarity is engendered at the boundaries of its various and diverse elements. The genius of this rendition of community is that no one is by nature an outsider, and thus deserving of special treatment. Many of the problems that exist today, in fact, result from persons sitting idly while their neighbors are singled out as different and discriminated against or exploited. When persons view themselves to be fundamentally united, on the other hand, such mistreatment is unlikely, because community members protect and encourage one another. Indeed, this sort of obligation is neither selective nor optional among those who belong to a true community. Basically the idea is that if no one is an outsider, there are no persons or groups to exploit. Such a community, moreover, does not require extraordinary actions on the part of its members to end racism, sexism, or economic exploitation. All that is required is persons refuse to turn away and say nothing when such discrimination is witnessed. By refusing to go along with these practices, any system that survives because of discrimination or exploitation will eventually grind to a halt. Clearly, there is an implicit threat behind current trends of globalization. Because globalization as it is currently defined is inevitable, anyone who expects to be treated as rational and civilized must accept some temporary pain. Old cultural ways will simply have to be abandoned, and a transition to the new economic realities. Those who cannot tolerate the mistreatment of fellow community members any longer appear to be a part of this change, however, they are obligated to bare witness to these abuses. And by refusing to be complicit these actions, business as usual cannot continue. A globalization of can be mounted, therefore, that might be able to create a more humane world. In the face of mounting darkness—increasing economic hardship and degradation—why not seriously entertain the possibility that social life can be organized in less alienating ways? With little left to why not pursue alternative visions?

**Bottom-up approaches are uniquely key to democratic development – cast your ballot in solidarity with the global resistance to the universalizing, falsely apolitical ‘norms’ of the 1AC**

**Mattei 9 – prof of law @ Hastings**

(Ugo, written with Marco de Morpurgo, M.Sc. Candidate, International University College of Turin, BOCCONI SCHOOL OF LAW, GLOBAL LAW & PLUNDER: THE DARK SIDE OF THE RULE OF LAW)

**In the complex spectrum of global law**, both throughout the era of colonialism and neo-liberal US-led Western imperialism within a pattern of continuity, **the rule of law, together with the theory of ‘lack’ and other powerful rhetorical arguments, has been used in order to legitimize political interventions and plunder in the ‘emerging’ economies.** **The sacred concept of rule of law, whose positive connotations are ‘naturally’ assumed, has been portrayed as the embodiment of a** professional and **neutral technology, thus being capable of substituting the lack of democratic legitimacy** of the institutions that are protagonist **in the creation of global law. But its dark side has never been shown or discussed.** An imperial rule of law is now a dominant layer for the worldwide legal systems. It is produced, in the interest of international capital, by a variety of institutions, both public and private, all sharing a gap in political legitimacy sometimes referred to as ‘democratic deficit’.31 At the same time, **law has been constructively turned into a technology and a mere component of an economic system of capitalism, thus hiding its intrinsic political nature**, and annulling the relevance of local political systems, now impotent in front of the dynamics of global law. **The ‘dry technology’ of the rule of law penetrates worldwide legal systems** without any political discussion at the local level, **attempting to create the conditions for the development of market economies, often without success, and causing serious consequences** for the less powerful.¶ Under the technology of the rule of law, in its imperial version capable of producing plunder, the essence of the United States’ law hides. In the aftermath of World War II, there was a dramatic change in the pattern of Western legal development. Leading legal ideas once produced in continental Europe and exported through the colonized world are now, for the first time, produced in a common law jurisdiction: the United States. Clearly, the present world dominance of the United States has been economic, military and political first, and only recently legal, so that a ready explanation of legal hegemony can be found within a simple conception of law as a product of the economy.32 Furthermore, US law has been capable of expanding worldwide thanks to its prestige, the high level of professionalization of its attorneys and a series of procedural institutions, that benefit plaintiffs, that allow US courts to have a certain capacity to attract jurisdiction, while showing themselves as courts for universal justice.33¶ **The** general **attitude of the United States has been** a **very ethnocentric** one, and **precisely that of showing itself as the guardian of a universal legality, which it is legitimized to export through its courts** of law, **scholarly production, military and political intervention, and through a set of US-centric international institutions.** In recent times, **in particular after** September 11th 2001 and **the declaration of the ‘war on terror’, the US rule of law has come under attack**, so that once admiring crowds of lawyers and intellectuals worldwide are now beginning to look upon the United States as an uncivilized old West from the perspective of legal culture, despite the professional prestige still enjoyed by the giant New York law firms and by the US academy.¶ **Notwithstanding, there has been no decline in the rhetoric of the rule of law when it comes to foreign relations.** Bringing **democracy and the rule of law is still used as a justification to keep intruding in foreign affairs.** The same can be said for the international financial institutions and their innumerable ‘development’ projects that come packaged with the prestigious wrapping of the rule of law.¶ **A rethinking of the very idea of global law is necessary and it must derive from a revaluation of the local dimension, which is currently ignored by the neo-liberal model of development. The production of global law should change its direction, and follow a bottom-up approach, rather than a top-down one, thus being sensitive to the local particularities and complexities.**¶ **Western spectacular ideas of democracy and the rule of law should be rethought.** On this planet, resources are scarce, but there would be more than enough for all to live well. Nobody would admire and respect someone who, at a lunch buffet for seven, ate 90 percent of the food, leaving the other guests to share an amount insufficient for one. In a world history of capitalism in which the rule of law has reproduced this precise ‘buffet’ arrangement on the large scale, admiring the instruments used to secure such an unfair arrangement seems indeed paradoxical. **People have to be free to build their own economies.**¶ **There is nothing inevitable about the present arrangements and their** dominant and **taken-for- granted certainties.** Indeed, it may be that the present legal and political hegemonies suffer from lack: the lack of world culture and of global political realism.

**4**

**The President of the United States of America should seek the legal advice of the United States Department of Justice’s Office of Legal Counsel in the area of UAV targeted killing. The OLC should publically disclose a written legal opinion that the executive branch of the United States federal government should not exercise the authority to use UAV targeted killing as a first resort outside zones of active hostilities and the President should issue an executive order complying with that advice. Other executive branch legal personnel, including the Attorney General, will defer to the advice of the OLC on this issue.**

**That solves**

**Bradley and Morrison, 13** --- Professor of Law at Duke, AND \*\*Professor of Law at Colombia (May 2013, Columbia Law Review, “ESSAY: PRESIDENTIAL POWER, HISTORICAL PRACTICE, AND LEGAL CONSTRAINT,” 113 Colum. L. Rev. 1097))

III. Possible Mechanisms of Constraint

Having specified in the previous Part what counts as legal constraint in our view, this Part considers how legal constraints might work with respect to the presidency. It first examines two familiar potential mechanisms of constraint: the internalization of legal norms by relevant actors within the executive branch and the threat of external sanctions for violating those norms. This Part then discusses the implications of an obvious but less-discussed phenomenon - the fact that executive officials frequently engage in public dialogue about the President's constitutional authority, including his practice-based authority. It concludes by analyzing the debate over the military intervention in Libya, mentioned earlier, in order to highlight some of the challenges associated with empirically studying the ways in which the presidency may be constrained by law.

A. Norm Internalization

**Perhaps the most obvious way that law can have a constraining effect is if the relevant actors have internalized the legal norms, whether those norms are embodied in** authoritative text, judicial decisions, or **institutional practice**. As a general matter, the internalization of legal norms is a phenomenon that can potentially take place wherever the law is thought to operate, in both the private and public sectors. But precisely how that internalization operates, including how it affects actual conduct, depends heavily on institutional context. **When speaking of legal norm internalization as it relates to the presidency**, it is important first to note that **Presidents act through a wide array of agencies and departments, and that presidential decisions are informed - and often made, for all practical purposes - by officials other than the President. In most instances involving presidential power, therefore, the relevant question is whether there has been an internalization of legal norms by the executive branch.**

**The executive branch contains thousands of lawyers.** n124 The President and other executive officials are regularly advised by these lawyers, and sometimes they themselves are lawyers. Although lawyers serve in a wide variety of roles throughout the executive branch, their [\*1133] experience of attending law school means that they have all had a common socialization - a socialization that typically entails taking law seriously on its own terms. n125 Moreover, the law schools attended by virtually all U.S. government lawyers are American law schools, which means that the lawyers are socialized in an ethos associated with the American polity and the American style of law and government. n126 These lawyers are also part of a professional community (including the state bars to which they are admitted) with at least a loosely shared set of norms of argumentative plausibility.

**Certain legal offices within the executive branch have developed their own distinctive law-internalizing practices.** This is particularly true in places like OLC, which, as noted above, provides legal advice based on its best view of the law. **OLC has developed a range of practices and traditions - including a strong norm of adhering to its own precedents even across administrations - that help give it some distance and relative independence from the immediate political and policy preferences of its clients across the executive branch, and that make it easier for OLC to act on its own internalization of legal norms.** n127 Another example is the State Department Legal Adviser's Office, which often takes the lead within the executive branch on matters of international law and which has developed its own set of traditions and practices that help protect it from undue pressure from its clients. n128

More broadly, government legal offices may internalize legal norms even if they do not regularly focus on identifying the best view of the law. For example, an office committed not to seeking the best view of the law but to providing professionally responsible legal defenses of certain already-determined policy positions could still operate under legal constraints if it took the limits of professional responsibility seriously. [\*1134] That may well describe the typical posture of agency general counsel offices across the executive branch. As noted above, although it can be difficult to identify with consistent precision the outer boundaries of legal plausibility, a commitment to remaining within those boundaries is a commitment to a type of legal constraint.

If executive branch legal offices operate on the basis of certain internalized norms that treat law as a constraint, the next question is whether those offices have any effect on the actual conduct of the executive branch. In the case of OLC, there are two key points. First, **although OLC possesses virtually no "mandatory" jurisdiction, there is a general expectation that, outside the litigation context, legal questions of special complexity, controversy, or importance will be put to OLC to address**. n129 Second, **established traditions treat OLC's legal conclusions as presumptively binding within the executive branch, unless overruled by the Attorney General or the President (which happens extremely rarely).** n130 Combined, **these practices make OLC the most significant source of centralized legal advice within the Executive Branch**.

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**AT: Legitimacy/Norms**

**The plan isn’t just codifying current policy – current policy is a norm which preserves flexibility**

Geoffrey **Corn 13**, Professor of Law and Presidential Research Professor, South Texas College of Law, 2013, “Geography of Armed Conflict: Why it is a Mistake to Fish for the Red Herring,” International Legal Studies, 89 INT’L L. STUD. 77 (2013)

Ironically, **when** Professor Gabrielle **Blum proposed such a limitation in her article** The Dispensable Lives of Soldiers,76 **I was** quite **skeptical**. However, my skepticism focused primarily on two considerations. First, her proposal extended to “hot zones”. I remain opposed to such an extension, as I believe it would inject a dangerous dilution of tactical initiative into the ex-ecution of combat operations.77 Second, **it was unclear whether Professor Blum was proposing a legal norm, or a policy constraint on permissible legal authorit**y. Once it was clear that we shared opposition to modifying the existing legal authority to attack even an inoffensive enemy belligerent operative (such as an enemy soldier sleeping in a barracks or assembly area or attempting to retreat from an ongoing attack), and that **she was** in fact proposing **consideration of policy limits on that authority, we were much more closely aligned in our views.**78

**This latter aspect of the “capture or kill” debate is critical, and in my opinion, if such a limitation on targeting authority is justified, it must be framed as a policy limit on otherwise lawful authority: a rule of engagement**.79 This is because **there may be situations**, even where these conditions are satisfied, **when an attack is justified because of the influence it will produce on enemy leadership** and other belligerent operatives. **It is this corporate, as opposed to individualized, approach to attack justification that distinguishes targeting belligerent operatives from targeting civilians taking a direct part in hostilities. It** therefore **requires strictly limiting any “capture or kill” obligation to a policy applique restricting underlying legal authority**. In short, **even when capture is a completely feasible option** to incapacitate an enemy belligerent operative, **there still are times when attack is preferred because of the shock effect it will produce on the corporate enemy capability**.80

**Long timeframe – their author**

**Zenko 2013** (Micah Zenko is the Douglas Dillon fellow in the Center for Preventive Action (CPA) at the Council on Foreign Relations (CFR). Previously, he worked for five years at the Harvard Kennedy School and in Washington, DC, at the Brookings Institution, Congressional Research Service, and State Department's Office of Policy Planning, Council Special Report No. 65, January 2013, “U.S. Drone Strike Policies”, i.cfr.org/content/publications/attachments/Drones\_CSR65.pdf‎)

**Much like policies governing the use of nuclear weapons, offensive cyber capabilities, and space, developing rules and frameworks for innovative weapons systems, much less reaching a consensus** within the U.S. government, **is a long and arduous process**. In its second term, the Obama administration has a narrow policy window of opportunity to pursue reforms of the targeted killings program. The Obama administration can proactively shape U.S. and international use of armed drones in nonbattlefield settings through transparency, self-restraint, and engagement, or it can continue with its current policies and risk the consequences. To better secure the ability to conduct drone strikes, and potentially influence how others will use armed drones in the future, the United States should undertake the following specific policy recommendations.

**Surveill**

**No solvency – the aff doesn’t deal with surveillance**

**Alley 2013** - Senior Fellow at Victoria University of Wellington’s Centre for Strategic Studies (Roderic, “The Drone Debate: Sudden Bullet or Slow Boomerang?” google)

**Drone surveillance and intelligence gathering functions will expand**, some of them sea-based, others primarily designed for domestic security purposes. **Without adequate legal or confidence building restraints and supports, these non-weaponised systems will generate security and political difficulties within and between states**. Militarised drones will gradually find their level as war fighting tools suitable for some missions but not others. A realisation already current will grow: namely, the weaponry itself is less the problem, than the policy assumptions guiding its use with their combustible social and communal consequences. Here covert operations could be judged more trouble than they are worth.

**No Impact**

**No impact to global drone prolif and it’s impossible to solve**

Alejandro **Sueldo 12**, J.D. candidate and Dean’s Fellow at the University of California, Berkeley, School of Law and a PhD candidate at the Department of War Studies at King’s College London of the University of London, 4/11/12, “The coming drone arms race,” <http://dyn.politico.com/printstory.cfm?uuid=70B6B991-ECA7-4E5F-BE80-FD8F8A1B5E90>

Of particular concern are the legal and policy challenges posed if other states imitate the U.S. targeted killing program. For Washington is setting a precedent whereby states can send drones, often over sovereign borders, to kill foreigners or their own citizens, who are deemed threats.

Other states may also follow Washington’s example and develop their own criteria to define imminent threats and use drones to counter them.

Washington will find it increasingly difficult to protest other nations’ targeted killing programs — particularly when the United States has helped define this lethal practice. U.S. opposition will prove especially difficult when other states justify targeted killings as a matter of domestic affairs.

Should enough states follow the U.S. example, the practice of preemptively targeting and killing suspected threats may develop into customary international law.

Such a norm, however, which requires consistent state practice arising out of a sense of legal obligation, now looks unlikely. While targeted killing policies are arguably executed by states citing a legal obligation to protect themselves from imminent threats, widespread state practice is still uncommon.

But international law does not forbid drones. And given the lack of an international regime to control drones, state and non-state actors are free to determine their future use.

This lack of international consensus about how to control drones stems from a serious contradiction in incentives. Though drones pose grave challenges, they also offer states lethal and non-lethal capabilities that are of great appeal. Because the potential for drone technology is virtually limitless, states are now unwilling to control how drones evolve.

**US norms mean nothing**

**Anderson 11** [Kenneth, 10/9/2011, “What Kind of Drones Arms Race Is Coming?” http://opiniojuris.org/2011/10/09/what-kind-of-drones-arms-race-is-coming/]

By asserting that “we’re” creating it, this is a claim that there is an arms race among states over military drones, and that it is a consequence of the US creating the technology and deploying it — and then, beyond the technology, changing the normative legal and moral rules in the international community about using it across borders. In effect, the combination of those two, technological and normative, forces other countries in strategic competition with the US to follow suit. It sounds like it must be true. But is it? There are a number of reasons to doubt that moves by other countries are an arms race in the sense that the US “created” it or could have stopped it, or that something different would have happened had the US not pursued the technology or not used it in the ways it has against non-state terrorist actors. Here are a couple of quick reasons why I don’t find this thesis very persuasive, and what I think the real “arms race” surrounding drones will be. Unmanned aerial vehicles have clearly got a big push from the US military in the way of research, development, and deployment. But the reality today is that the technology will transform civil aviation, in many of the same ways and for the same reasons that another robotic technology, driverless cars (which Google is busily plying up and down the streets of San Francisco, but which started as a DARPA project), will eventually have an important place in ordinary ground transport. UAVs will eventually move into many roles in ordinary aviation, because it is cheaper, relatively safer, more reliable — and it will eventually include cargo planes, crop dusting, border patrol, forest fire patrols, and many other tasks. There is a reason for this — the avionics involved are simply not so complicated as to be beyond the abilities of many, many states. Military applications will carry drones many different directions, from next-generation unmanned fighter aircraft able to operate against other craft at much higher G stresses to tiny surveillance drones. But the flying-around technology for aircraft that are generally sizes flown today is not that difficult, and any substantial state that feels like developing them will be able to do so. But the point is that **this was happening anyway, and the technology was already available**. The US might have been first, but it hasn’t sparked an arms race in any sense that absent the US push, no one would have done this. That’s just a fantasy reading of where the technology in general aviation was already going; **Zenko’s** ‘original sin’ **attribution** of this **to the US opening Pandora’s box is not a credible understanding** of the development and applications of the technology. Had the US not moved on this, the result would have been a US playing catch-up to someone else. For that matter, the off-the-shelf technology for small, hobbyist UAVs is simple enough and available enough that terrorists will eventually try to do their own amateur version, putting some kind of bomb on it. Moving on from the avionics, **weaponizing the craft is also not difficult**. The US stuck an anti-tank missile on a Predator; this is also not rocket science. Many states can build drones, many states can operate them, and crudely weaponizing them is also not rocket science. The US didn’t spark an arms race; this would occur to any state with a drone. To the extent that there is real development here, it lies in the development of specialized weapons that enable vastly more discriminating targeting. The details are sketchy, but there are indications from DangerRoom and other observers (including some comments from military officials off the record) that US military budgets include amounts for much smaller missiles designed not as anti-tank weapons, but to penetrate and kill persons inside a car without blowing it to bits, for example. This is genuinely harder to do — but still not all that difficult for a major state, whether leading NATO states, China, Russia, or India. The question is whether it would be a bad thing to have states competing to come up with weapons technologies that are … more discriminating.

**Nuke Pwr**

**No nuke impact**

Richard **Muller** – physics prof Cal Berkeley – **2010**, Physics and Technology for Future Presidents

**Can a Reactor Explode Like an Atomic Bomb? An atomic bomb requires fast neutrons (not moderated) in order to have the entire 80 generations over with before the bomb blows itself apart. After 80 generations, the temperature reaches many millions of degrees. The only reason the bomb doesn’t blow apart at that point is that there isn’t enough time.** With moderated neutrons, the chain reaction is much slower, since the neutrons are slower. This is an important fact: **Commercial nuclear reactors depend on using slow neutrons.** The reason this is important is that **if the nuclear reactor begins to “run away”**—i.e., if the operator makes a mistake and the chain reaction begins to grow exponentially (doubling)—**then the slowness of the neutrons limits the size of the explosion**. **Once the temperature rises to a few thousand degrees K, the atoms arc moving faster than the neutrons, and so the neutrons can’t catch up to them them; the chain reaction stops**. The energy released will blow up the reactor, but that energy will he about the same that you would get from TNT. **It’s an explosion, but it is a million times smaller than a nuclear bomb. A chain reaction that depends on slow neutrons cannot give rise to a nuclear explosion**. For that reason**, a commercial nuclear reactor cannot blow up like a nuclear bomb.** It is important to know this and to be able to explain the logic to the public, since this fact is not widely known. There are real dangers from nuclear reactors (see the section The China Syndrome,” later in this chapter). Blowing up like a nuclear bomb is not one of them.

**Deterrence**

**No impact to global drone use – easily deterred**

**Singh 12** (Joseph Singh is a researcher at the Center for a New American Security. “Betting Against a Drone Arms Race,” http://nation.time.com/2012/08/13/betting-against-a-drone-arms-race/)

**Bold predictions** **of a coming drones arms race are all the rage since the uptake in their deployment under** the **Obama** Administration. Noel Sharkey, for example, argues in an August 3 op-ed for the Guardian that rapidly developing drone technology — coupled with minimal military risk — portends an era in which states will become increasingly aggressive in their use of drones. As drones develop the ability to fly completely autonomously, Sharkey predicts a proliferation of their use that will set dangerous precedents, seemingly inviting hostile nations to use drones against one another. Yet, the narrow applications of current drone technology coupled with what we know about state behavior in the international system lend no credence to these ominous warnings. Indeed, critics seem overly-focused on the domestic implications of drone use. In a June piece for the Financial Times, Michael **Ignatieff** **writes** that “virtual **technologies make it easier for democracies to wage war because they eliminate the risk of blood sacrifice** that once forced democratic peoples to be prudent.” Significant public support for the Obama Administration’s increasing deployment of drones would also seem to legitimate this claim. **Yet, there remain** equally **serious diplomatic and political costs** **that emanate from beyond a fickle electorate**, **which will prevent the likes of the increased drone aggression predicted by both Ignatieff and Sharkey.** Most recently, **the** serious **diplomatic scuffle instigated by Syria’s downing a Turkish reconnaissance plane** in June **illustrated the very serious risks of operating any aircraft in foreign territory.** **States launching drones must still weigh the diplomatic and political costs** of their actions, **which make the calculation surrounding their use** **no fundamentally different to any other aerial engagement**. **This recent bout** also **illustrated a salient point regarding drone technology**: **most states maintain at least minimal air defenses** **that can quickly detect and take down drones,** **as the U.S.**

**discovered when it employed drones at the onset of the Iraq invasion, while Saddam Hussein’s surface-to-air missiles were still active.** What the U.S. also learned, however, was that **drones constitute an effective military tool in an extremely narrow strategic context. They are well-suited either in direct support of a broader military campaign, or to conduct targeted killing operations** **against a technologically unsophisticated enemy.** In a nutshell, then, the very contexts in which we have seen drones deployed. Northern Pakistan, along with a few other regions in the world, remain conducive to drone usage given a lack of air defenses, poor media coverage, and difficulties in accessing the region. Non-state actors, on the other hand, have even more reasons to steer clear of drones: – First, they are wildly expensive. At $15 million, the average weaponized drone is less costly than an F-16 fighter jet, yet much pricier than the significantly cheaper, yet equally damaging options terrorist groups could pursue. – Those alternatives would also be relatively more difficult to trace back to an organization than an unmanned aerial vehicle, with all the technical and logistical planning its operation would pose. – Weaponized drones are not easily deployable. Most require runways in order to be launched, which means that any non-state actor would likely require state sponsorship to operate a drone. Such sponsorship is unlikely given the political and diplomatic consequences the sponsoring state would certainly face. – Finally, drones require an extensive team of on-the-ground experts to ensure their successful operation. According to the U.S. Air Force, 168 individuals are needed to operate a Predator drone, including a pilot, maintenance personnel and surveillance analysts. In short, **the doomsday drone scenario** Ignatieff and Sharkey predict **results from an excessive focus on rapidly-evolving military technology.** Instead, **we must return to what we know about state behavior** **in an anarchistic international order.** **Nations will confront the same principles of deterrence**, for example, **when deciding to launch a targeted killing operation regardless of whether they conduct it through a drone or a covert amphibious assault team. Drones may make waging war more domestically palatable, but they don’t change the very serious risks of retaliation for an attacking state**. **Any state otherwise deterred from using force abroad will not significantly increase its power projection on account of acquiring drones.** What’s more, **the very states whose use of drones could threaten U.S. security** – countries like China – **are not democratic**, **which means that the possible political ramifications of the low risk of casualties resulting from drone use are irrelevant**. For all their military benefits, **putting drones into play requires an ability to meet the political and security risks associated with their use.** Despite these realities, there remain a host of defensible arguments one could employ to discredit the Obama drone strategy. The legal justification for targeted killings in areas not internationally recognized as war zones is uncertain at best. Further, the short-term gains yielded by targeted killing operations in Pakistan, Somalia and Yemen, while debilitating to Al Qaeda leadership in the short-term, may serve to destroy already tenacious bilateral relations in the region and radicalize local populations. Yet, **the past decade’s experience with drones bears no evidence of impending instability in the global strategic landscape**. **Conflict may not be any less likely in the era of drones, but the nature of 21st Century warfare remains fundamentally unaltered despite their arrival in large numbers.**

**1NC --- Heg**

**Soft power not key to heg**

**Ungar, Political Studies Professor 11**, Dr Ariel Ungar is a Professor at the Department of Political Studies, Judea and Samaria College, PhD from Columbia University, The limits of soft power, <http://www.haaretz.com/opinion/the-limits-of-soft-power-1.361425>

Even under the best conditions, in which it is administered effectively, soft power is a slow-acting treatment. Muammar Gadhafi has scoffed at economic sanctions by first camouflaging, then reclaiming most of his assets, and spiriting them back to Tripoli to finance the civil war. The Iranians have successfully evaded sanctions, particularly as major flouters of those sanctions − China, Turkey, etc. − can continue trading, investing and arming without penalty.

Soft power appeared effective when its levers were concentrated financially and intellectually in the hands of the relative good guys. But it has been increasingly dispersed and is skillfully employed by countries that either do not subscribe to the agenda of human freedom or actively seek to subvert it.

The murmurings in Congress about cutting off aid to Pakistan are toothless because the United States and the Western Europeans no longer control the purse strings. China, with its trillions in reserves, can easily step in as an “all-weather friend” to Pakistan both to spite the United States and to maintain a valuable counterweight against its regional rival India. China also exercises soft power against Europe − rather than the reverse − when it dangles offers to purchase European debt and alleviate the financial crisis in the eurozone in return for silence on Chinese protectionist trade practices and human rights violations.

**1NC --- Mil to Mil Coop**

**Mil to mil coop stops disputes from escalating**

**Bloomberg 9/30**, <http://www.bloomberg.com/news/2013-09-30/china-u-s-military-ties-grow-as-countries-eye-each-other-at-sea.html>

Next year, **Chinese ships will join the Rim of** the **Pacific exercise** **for the first time**. During a visit to the Pentagon last month, **Foreign Minister** Wang Yi **described military ties as a “bright spot” in the** U.S.-China **relationship**.

Wang’s words and **China’s participation reflect** a **changed attitude as the world’s** two **biggest militaries boost contacts despite competing for influence** in the Asia-Pacific, home to shipping lanes and resource reserves. The closer ties will be tested as China grows more assertive in a region dotted with nations that would call for U.S. help if attacked.

“The **competition** and conflicts between China and the U.S. **will** still **be there, but it will prevent them from escalating to an unmanageable level**,” Yan Xuetong, dean of the Institute of Modern International Relations at [Tsinghua University](http://topics.bloomberg.com/tsinghua-university/) in Beijing, said by phone. “It is preventable diplomacy rather than positive cooperation.”

U.S.-China ties will be on display at next week’s Asia-Pacific Economic Cooperation forum leaders meeting in Bali. China’s territorial disputes in the [South China Sea](http://topics.bloomberg.com/south-china-sea/) may be discussed, along with changing U.S. and Chinese roles in

**Terrorism**

**AT: Drones Solve Terror**

**Al Qaeda is adapting to drones**

**Zapfe 2013** - head of the Global Security Team at the Center for Security Studies (CSS). He holds a PhD in Political Science from the Center of Excellence at the University of Constance, Germany (July, Martin, “DESCENDING DRONES?” <http://www.css.ethz.ch/publications/pdfs/CSS-Analysis-137-EN.pdf>)

A third reason is the increasing ineffectiveness of drones in the face of an evolving terrorist threat. **Despite the** apparently significant **impact of drone strikes on** the core of **al-Qaida, recent developments indicate that the terrorist network is learning to adapt to the threat of drones. French soldiers have found** among the effects of a local jihadist leader in Mali **a set of instructions on how to evade drone surveillance** most effectively. Security experts assume that al-Qaida issued these instructions in order to enable their regional offshoots, based in areas of operations where the US is not yet carrying out drone missions, to protect themselves against such attacks. For al-Qaida, it makes sense to strengthen regional franchises in this way, since the organisation appears to be nearly leaderless at the operational level. However, the death of bin Laden was only symbolic in this respect: As President Obama rightly pointed out, there has been no major successful attack by al-Qaida in the US since 2001. Globally, the remaining members of its leadership must be content with playing a secondary role in the worldwide jihad. **They have effectively ceded their claim to ideological and, notably, operational leadership to their regional branches, thus allowing these to raise their own profile with attacks on US interests in their immediate environment**. **The current threat in the US, but also in other Western countries** therefore **emanates not so much from terrorists travelling to the US to carry out an attack. The greater threat in the US is from “homegrown” terrorists** who have been raised in the country. The attack on the Boston Marathon and the murder of a British soldier in London in May 2013 illustrate the new threat towards “neighbourhood targets”: Though smaller in their dimensions, **such attacks can pose serious threats to societal harmony** within the affected communities. **Drones are of little use here**. Paradoxically, it may therefore be the case that **the success of drones in decimating al-Qaida will ultimately make it more difficult to gather information about the current terrorist threat**. The killing of terrorism suspects, mainly through the use of drones, has doubtless been an important instrument in the campaign against the core of al-Qaida in recent years. The three interdependent developments outlined above – the decreasing domestic latitude, the counterproductive negative perception of drones strikes that may serve as a recruitment instrument, and the evolution of the terrorist threat towards local threats – will likely cause a decline in the number of such US drone missions. Nevertheless, the US will continue its targeted assassinations of terrorism suspects, and drones will undoubtedly play a key role in the process.

**Targeted killing only works when followed by governance functions**

**Alley 2013** - Senior Fellow at Victoria University of Wellington’s Centre for Strategic Studies (Roderic, “The Drone Debate: Sudden Bullet or Slow Boomerang?” google)

First, **what of targeted leadership elimination**? Whether achieved by drone strikes or other means, **observers consider** **its** security **effectiveness as** immediately conclusive but subsequently **mixed**. Jordan considers decapitation effectual in some locations, while counterproductive against larger, older, religious and separatist organisations. 12 **Johnston’s investigation found decapitation contributing to counterinsurgency by reducing insurgent attacks and levels of violence but,** unsurprisingly, **providing no ‘silver bullet’**. 13 Counterinsurgency expert Byman has viewed leadership elimination instrumental in removing charismatic figures able to unify otherwise fissiparous movements. 14 Afghanistan observer Kate **Clark has viewed targeted killings as potent, but only to the extent they are followed by governance functions offering tangible benefits to local populations**. **If not, their impact is no better than neutral**. 15 **Her observations extend to key locations in Pakistan where,** like Afghanistan, **divided loyalties, failed governance, intrusions of external force, and localised violence have been endemic**. However spectacular and immediately final, **leadership eliminations are no substitute for the lengthy, often frustrating tasks** of familiarisation within settings that outsiders find initially alien and incomprehensible. Doing so requires skills of language competency, and an understanding of the histories, cultures and religions of previously subjugated societies. Assumptions that these concerns have lesser importance have not arisen with drone technology alone. **It is rather public and official mind-sets in Israel and the United States that deem the removal of terrorist leaderships of greater priority** than remedying the grievances that they exploit. Badly in need of such remedies have been Pakistan’s troubled North and South Waziristan tribal areas immediately adjacent to Afghanistan. They have witnessed trans-border insurgent and criminal enterprises, such as the Taliban affiliated Haqqani network. This has maintained links with elements in Pakistan’s army-led Inter-Services Intelligence (ISI) directorate although not as intimate as some suggest. 16 Some drone leadership eliminations notwithstanding, **the Haqqani network has sustained an active trans-border presence and enough capacity to kill those suspected of supplying information for use in targeting drone strikes**. That depth of support was sufficient to have it designated a terrorist organisation by the United States in September 2012. In some instances, the removal of unwanted tribal and insurgent leaderships has been locally welcomed, though without preventing further intratribal conflict conducted in the absence of basic governing functions. This is what occurred within the Tehrik-e-Taliban after the August 2009 killing by CIA drone strike of prominent leader Baitullah Mehsud. Perusal of leadership elimination data for Pakistan, collected by The Long War Journal, reveals a peak of activity between 2008 and 2011. These estimates give totals of 19 killed in 2008; 16 in 2009; 18 in 2010; 9 in 2011; and as of March 2013, two eliminations. Of that total of 64, 42 could be identified as either military commanders or closely associated with combat functions (bomb makers, suicide trainers, and shadow commanders), the remaining 22 fulfilling religious, financial, communications, and personal aide functions In Yemen, a sharp rise of Al Qaeda leadership eliminations occurred in 2012 - a total of 42 compared to 10 in 2011 and four a year earlier. They included in 2011 high profile eliminations that included Abu Ali al-Harithi, a commander in the al Qaeda affiliated Aden Abyan Islamic Army, Fahd al-Qussa, Al Qaeda leader and suspect in the 2000 USS Cole bombing, and the CIA elimination of the subsequently discussed US citizen Anwar alAwlaki. 18 Evident in both Pakistan and Yemen by 2013 was the growing list of lower rung eliminations loosely categorised as „militants’ or „foreign fighters’. While dabbling in insurgency, **the greatest motivation to violence by these people lies in exploiting unstable conditions for localised control of economic gain**.

**Defense**

**Probability is one in 3.5 billion**

**Schneidmiller 9** (Chris, Experts Debate Threat of Nuclear, Biological Terrorism, 13 January 2009, http://www.globalsecuritynewswire.org/gsn/nw\_20090113\_7105.php)

There is an "almost **vanishingly small" likelihood** that terrorists would ever be able to acquire and detonate a nuclear weapon, one expert said here yesterday (see GSN, Dec. 2, 2008). In even the most likely scenario of nuclear terrorism, there are 20 barriers between extremists and a successful nuclear strike on a major city, said John Mueller, a political science professor at Ohio State University. The process itself is seemingly straightforward but exceedingly difficult -- buy or steal highly enriched uranium, manufacture a weapon, take the bomb to the target site and blow it up. Meanwhile, variables strewn across the path to an attack would increase the complexity of the effort, Mueller argued. Terrorists would have to bribe officials in a state nuclear program to acquire the material, while avoiding a sting by authorities or a scam by the sellers. The material itself could also turn out to be bad. "Once the purloined material is purloined, [police are] going to be chasing after you. They are also going to put on a high reward, extremely high reward, on getting the weapon back or getting the fissile material back," Mueller said during a panel discussion at a two-day Cato Institute conference on counterterrorism issues facing the incoming Obama administration. Smuggling the material out of a country would mean relying on criminals who "are very good at extortion" and might have to be killed to avoid a double-cross, Mueller said. The terrorists would then have to find scientists and engineers willing to give up their normal lives to manufacture a bomb, which would require an expensive and sophisticated machine shop. Finally, further technological expertise would be needed to sneak the weapon across national borders to its destination point and conduct a successful detonation, Mueller said. Every obstacle is "difficult but not impossible" to overcome, Mueller said, putting the chance of success at no less than one in three for each. The likelihood of successfully passing through each obstacle, in sequence, would be **roughly** one in 3 1/2 billion, he said, but for argument's sake dropped it to 3 1/2 million. "It's a total gamble. This is a very expensive and difficult thing to do," said Mueller, who addresses the issue at greater length in an upcoming book, Atomic Obsession. "So unlike buying a ticket to the lottery ... you're basically putting everything, including your life, at stake for a gamble that's maybe one in 3 1/2 million or 3 1/2 billion." Other scenarios are even less probable, Mueller said. A nuclear-armed state is "exceedingly unlikely" to hand a weapon to a terrorist group, he argued: "States just simply won't give it to somebody they can't control." Terrorists are also not likely to be able to steal a whole weapon, Mueller asserted, dismissing the idea of "loose nukes." Even Pakistan, which today is perhaps the nation of greatest concern regarding nuclear security, keeps its bombs in two segments that are stored at different locations, he said (see GSN, Jan. 12). Fear of an "extremely improbable event" such as nuclear terrorism produces support for a wide range of homeland security activities, Mueller said. He argued that there has been a major and costly overreaction to the terrorism threat -- noting that the Sept. 11 attacks helped to precipitate the invasion of Iraq, which has led to far more deaths than the original event. Panel moderator Benjamin Friedman, a research fellow at the Cato Institute, said academic and governmental discussions of acts of nuclear or biological terrorism have tended to focus on "worst-case assumptions about terrorists' ability to use these weapons to kill us." There is need for consideration for what is probable rather than simply what is possible, he said. Friedman took issue with the finding late last year of an experts' report that an act of WMD terrorism would "more likely than not" occur in the next half decade unless the international community takes greater action. "I would say that the report, if you read it, actually offers no analysis to justify that claim, which seems to have been made to change policy by generating alarm in headlines." One panel speaker offered a partial rebuttal to Mueller's presentation. Jim Walsh, principal research scientist for the Security Studies Program at the Massachusetts Institute of Technology, said he agreed that nations would almost certainly not give a nuclear weapon to a nonstate group, that most terrorist organizations have no interest in seeking out the bomb, and that it would be difficult to build a weapon or use one that has been stolen.

# 2NC

**Terrorism**

**2NC No Public Backlash**

**The public is only opposed to strikes against US citizens – plan doesn’t affect that**

**Zapfe 2013** - head of the Global Security Team at the Center for Security Studies (CSS). He holds a PhD in Political Science from the Center of Excellence at the University of Constance, Germany (July, Martin, “DESCENDING DRONES?” <http://www.css.ethz.ch/publications/pdfs/CSS-Analysis-137-EN.pdf>)

For a US president, and especially for Barack Obama, the domestic legitimacy of the drone missions is decisive. In this respect, however, US public opinion is divided. According to a Gallup survey in March 2013, **65 per cent of US respondents support the targeted assassination of foreign terrorism suspects overseas**. However, **only 41 per cent support the killing of US citizens overseas. O**utside of security policy circles, therefore, **domestic criticism of US policy is not primarily voiced against missions against foreign terrorism suspects, but against the relatively special case of the targeted assassination of** US citizen Anwar **al-Awlaki** in September 2011 in Yemen. However, this question touches upon matters of state policy regarding democratic oversight, and is thus increasingly affecting the acceptance of drones in general.

**2NC Defense**

**They are alarmist – it’s super difficult to detonate and they won’t get a nuke in the first place**

**Fay 13**, Matt is a PhD student in the history department at Temple University, has a Bachelor’s degree in Political Science from St. Xavier University and a Master’s in International Relations and Conflict Resolution with a minor in Transnational Security Studies from American Military University, 7/18/13, “The Ever-Shrinking Odds of Nuclear Terrorism”, webcache.googleusercontent.com/search?q=cache:HoItCUNhbgUJ:hegemonicobsessions.com/%3Fp%3D902+&cd=1&hl=en&ct=clnk&gl=us&client=firefox-a

For over a decade now, one of the most oft-repeated threats raised by policymakers—the one that in many ways justified the invasion of Iraq—has been that of nuclear terrorism. Officials in both the Bush and Obama administrations, including the presidents themselves, have raised the specter of the atomic terrorist. But **beyond mere rhetoric, how likely is a nuclear terrorist attack** really?¶ While pessimistic estimates about America’s ability to avoid a nuclear terrorist attack became something of a cottage industry following the September 11th attacks, a number of scholars in recent years have pushed back against this trend. Frank Gavin has put post-9/11 fears of nuclear terrorism into historical context (pdf) and **argued against the prevailing alarmism**. Anne Stenersen of the Norwegian Defence Research Establishment has challenged the idea that al Qaeda was ever bound and determined to acquire a nuclear weapon. John **Mueller ridiculed the notion of nuclear terrorism** in his book Atomic Obsessions and highlighted the numerous steps a terrorist group would need to take—all of which would have to be successful—in order to procure, deliver, and detonate an atomic weapon. And in his excellent, and exceedingly even-handed, treatment of the subject, On Nuclear Terrorism, Michael Levi outlined the difficulties terrorists would face building their own nuclear weapon and discussed how a “system of systems” could be developed to interdict potential materials smuggled into the United States—citing a “Murphy’s law of nuclear terrorism” that could possibly dissuade terrorists from even trying in the first place.¶ But what about the possibility that a rogue state could transfer a nuclear weapon to a terrorist group? That was ostensibly why the United States deposed Saddam Hussein’s regime: fear he would turnover one of his hypothetical nuclear weapons for al Qaeda to use.¶ Enter into this discussion Keir Lieber and Daryl Press and their article in the most recent edition of International Security, “Why States Won’t Give Nuclear Weapons to Terrorists.” Lieber and Press have been writing on nuclear issues for just shy of a decade—doing innovative, if controversial work on American nuclear strategy. However, I believe this is their first venture into the debate over nuclear terrorism. And while others, such as Mueller, have argued that states are unlikely to transfer nuclear weapons to terrorists, this article is the first to tackle the subject with an empirical analysis.¶ The title of their article nicely sums up their argument: **states will not turn over nuclear weapons terrorists**. To back up this claim, Lieber and Press attack the idea that states will transfer nuclear weapons to terrorists because terrorists operate of absent a “return address.” Based on an examination of attribution following conventional terrorist attacks, the authors conclude:¶ [N]either a terror group nor a state sponsor would remain anonymous after a nuclear attack. We draw this conclusion on the basis of four main findings. First, data on a decade of terrorist incidents reveal a strong positive relationship between the number of fatalities caused in a terror attack and the likelihood of attribution. Roughly three-quarters of the attacks that kill 100 people or more are traced back to the perpetrators. Second, attribution rates are far higher for attacks on the U.S. homeland or the territory of a major U.S. ally—97 percent (thirty-six of thirty-seven) for incidents that killed ten or more people. Third, tracing culpability from a guilty terrorist group back to its state sponsor is not likely to be difficult: few countries sponsor terrorism; few terrorist groups have state sponsors; each sponsor terrorist group has few sponsors (typically one); and only one country that sponsors terrorism, has nuclear weapons or enough fissile material to manufacture a weapon. In sum, attribution of nuclear terror incidents would be easier than is typically suggested, and passing weapons to terrorists would not offer countries escape from the constraints of deterrence.¶ From this analysis, Lieber and Press draw two major implications for U.S. foreign policy: claims that it is impossible to attribute nuclear terrorism to particular groups or potential states sponsors undermines deterrence; and fear of states transferring nuclear weapons to terrorist groups, by itself, does not justify extreme measures to prevent nuclear proliferation.¶ This is a key point. While there are other reasons nuclear proliferation is undesirable, fears of nuclear terrorism have been used to justify a wide-range of policies—up to, and including, military action. Put in its proper perspective however—given the difficulty in constructing and transporting a nuclear device and the improbability of state transfer—**nuclear terrorism hardly warrants** the type of exertions many **alarmist assessments** indicate

**AT: Recruitment**

**No correlation between drone use and recruitment levels.**

**Etzioni 13**, Professor of International Relations @ George Washington University

(Aimtai Etzioni, senior adviser to the Carter administration, “Everything Libertarians and Liberals Get Wrong About Drones”, The Atlantic, 4/30/13, http://www.theatlantic.com/politics/archive/2013/04/everything-libertarians-and-liberals-get-wrong-about-drones/275356/)

Some **critics worry that relying upon drones will engender significant resentment and potentially aid terrorist recruitment efforts.** However, **those who are inclined towards terrorism already loathe the United States for a thousand other reasons.** Pew **surveys show that anti-Americanism thrives in regions where there have been no drone strikes (for example, in Egypt) and, where drones have been active, high levels of anti-Americanism predated their arrival (for instance in Pakistan).**

**\*\*Drones aren’t a recruitment tool – Al Qaeda uses money to recruit and anti-drone propaganda is elitist hype.**

**Axe 13**

(David Axe, quoting Christopher Swift, fellow at the University of Virginia’s Center for National Security Law,“Expert: No Drone Backlash in Yemen”, http://christopher-swift.com/th\_gallery/expert-no-drone-backlash-in-yemen)

**Lethal strikes by armed drones are America’s best and less obtrusive method of killing Islamic militants and dismantling their terror networks while minimizing civilian casualties. Or they’re a misguided and counter-productive attempt at sterilizing the dirty work of counter-terrorism — one that serves as a rallying cry for terrorist recruiters and ends up creating more militants than it eliminates.¶ Those are the opposing views in one of the most urgent debates in military, policy and humanitarian circles today. Now a new, ground-level investigation by a daring American researcher adds a fresh wrinkle to the controversy. Chris Swift, a fellow at the University of Virginia’s Center for National Security Law, spent a week in late May interviewing around 40 tribal leaders in southern Yemen, one of the major drone battlegrounds.¶ What he found might disappoint activists and embolden counter-terrorism officials. “Nobody in my cohort [of interview subjects] drew a causal link between drones on one hand and [militant] recruiting on other,” Swift says.¶ Tweets, blog posts and news reporting from Yemen seem to contradict Swift’s conclusion. Drone strikes in Yemen have gone up, way up, from around 10 in 2011 to some two dozen so far this year. No fewer than 329 people have died in the Yemen drone campaign, at least 58 of whom were innocent civilians, according to a count by the British Bureau of Investigative Journalism.¶ But some Yemenis believe the civilian body count is much higher. “For every headline you read regarding ‘militants’ killed by drones in #Yemen, think of the civilians killed that are not reported,” NGO consultant Atiaf Al Wazir Tweeted.¶ Another Yemeni Twitter user drew the link between the drone war’s innocent victims in a Tweet directed at top U.S. counterterrorism adviser John Brennan. “Brennan do you hear us?!!! We say #NoDrones #NoDrones #NoDrones. You are killing innocent people and creating more enemies in #Yemen.”¶ Reporters have run with the claim that drone strikes breed terrorists. “Drones have replaced Guantánamo as the recruiting tool of choice for militants,” Jo Becker and Scott Shane wrote in The New York Times.¶ “Across the vast, rugged terrain of southern Yemen, an escalating campaign of U.S. drone strikes is stirring increasing sympathy for Al Qaeda-linked militants and driving tribesmen to join a network linked to terrorist plots against the United States,” The Washington Post‘s Sudarsan Raghavan reported.¶ But the narrative embraced by Yemeni Tweeters the Times and the Post originated in, and is sustained by, a comparatively wealthy, educated and English-speaking community based in Yemen’s capital city Sana’a, Swift explains. He calls them the “Gucci jean-wearing crowd.” But cosmopolitan Sana’a isn’t breeding many terrorists, and popular opinions in the city don’t necessarily reflect the reality in Yemen’s embattled south.¶ To get to the sources that really mattered, Swift sensed he had to “get out of the Sana’a political elite,” he says. He teamed up with an experienced fixer — a combined guide, translator and protector — and slipped into heavily-armed Aden in Yemen’s south in the back of pickup trucks. “I always expected that my next checkpoint was going to be my last,” Swift says.¶ Swift survived some close calls and brought back what is arguably the freshest and most relevant data on militant recruiting in southern Yemen. He has since written articles for Foreign Affairs and the Sentinel counterterrorism journal. In southern Yemen “nobody really gets excited about drones,” he explains. He says his sources were “overwhelming saying that Al Qaeda is recruiting through economic inducement.” In other words, for the most part the terror group pays people to join.¶ Which isn’t to say Yemen’s militants don’t fear the American killer robots. In fact, they’re “terrified of drones,” Swift says. “They make a big deal of surviving drones in their propaganda videos.”¶ The militants’ fear of drones perhaps underscores the robots’ effectiveness. It does not argue for widespread resentment among everyday people in southern Yemen that compels them to join the terrorists’ ranks. At least, that’s what Swift believes.**

**AT: Legitimacy/Norms**

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**2NC COOP**

**Intel cooperation is high – Snowden leaks prove**

**NYT 2013** (July 9, “For Western Allies, a Long History of Swapping Intelligence” <http://www.nytimes.com/2013/07/10/world/europe/for-western-allies-a-long-history-of-swapping-intelligence.html?pagewanted=all&_r=1&&pagewanted=print>)

**When** Edward J. **Snowden disclosed the extent of the United States data mining operations in Germany,** monitoring as many as 60 million of the country’s telephone and Internet connections in one day and bugging its embassy, **politicians here, like others in Europe, were by turns appalled and indignant**. But like the French before them, **this week they found themselves backpedaling.** In an interview released this week Mr. **Snowden said that Germany’s intelligence services are “in bed” with the National Security Agency**, “the same as with most other Western countries.” The assertion has added to fresh scrutiny in the European news media of Berlin and other European governments that may have benefited from the enormous American snooping program known as Prism, or conducted wide-ranging surveillance operations of their own. The outrage of European leaders notwithstanding, intelligence experts and historians say the most recent disclosures reflect the complicated nature of the relationship between the intelligence services of the United States and its allies, which have long quietly swapped information on each others’ citizens. “**The other services don’t ask us where our information is from and we don’t ask them**,” Mr. Snowden said in the interview, conducted by the documentary filmmaker Laura Poitras and Jacob Appelbaum, a computer security researcher, and published this week in the German magazine Der Spiegel. “This way they can protect their political leaders from backlash, if it should become public how massively the private spheres of people around the globe are being violated.” **Britain, which has the closest intelligence relationship with the United States of any European country, has been implicated in several of the data operations** described by Mr. Snowden, including claims that Britain’s agencies had access to the Prism computer network, which monitors data from a range of American Internet companies. Such sharing would have allowed British intelligence agencies to sidestep British legal restrictions on electronic snooping. Prime Minister David Cameron has insisted that its intelligence services operate within the law. Another allegation, reported by The Guardian newspaper, is that the Government Communications Headquarters, the British surveillance center, tapped fiber-optic cables carrying international telephone and Internet traffic, then shared the information with the N.S.A. This program, known as Tempora, involved attaching intercept probes to trans-Atlantic cables when they land on British shores from North America, the report said. President François Hollande of France was among the first European leaders to express outrage at the revelations of American spying, and especially at accusations that the Americans had spied on French diplomatic posts in Washington and New York. There is no evidence to date that French intelligence services were granted access to information from the N.S.A., Le Monde reported last week, however, that **France’s external intelligence agency maintains a broad telecommunications data collection system of its own**, amassing metadata on most, if not all, telephone calls, e-mails and Internet activity coming in and out of France. Mr. Hollande and other officials have been notably less vocal regarding the claims advanced by Le Monde, which authorities in France have neither confirmed nor denied. Given their bad experiences with domestic spying, first under the Nazis and then the former the East German secret police, Germans are touchy when it comes to issues of personal privacy and protection of their personal data. Guarantees ensuring the privacy of mail and all forms of long-distance communications are enshrined in Article 10 of their Constitution. When the extent of the American spying in Germany came to light **the chancellor’s spokesman, Steffen Seibert, decried such behavior** as “unacceptable,” **insisting that, “We are no longer in the cold war**.” But experts say **ties between the intelligence services remain rooted in agreements stemming from that era,** w**hen West Germany depended on the United States to protect it** from the former Soviet Union and its allies in the East. “Of course **the German government is very deeply entwined with the American intelligence services,”** said Josef Foschepoth, a German historian from Freiburg University. Mr. Foschepoth spent several years combing through Germany’s federal archives, including formerly classified documents from the 1950s and 1960s, in an effort to uncover the roots of the trans-Atlantic cooperation. In 1965, Germany’s foreign intelligence service, known by the initials BND, was created. Three years later, the West Germans signed a cooperation agreement effectively binding the Germans to an intensive exchange of information that continues up to the present day, despite changes to the agreements. **The attacks on Sept. 11**, 2001, in the United States **saw a fresh commitment by the Germans to cooperate with the Americans in the global war against terror**. Using technology developed by the Americans and used by the N.S.A., the BND monitors networks from the Middle East, filtering the information before sending it to Washington, said Erich Schmidt-Eenboom, an expert on secret services who runs the Research Institute for Peace Politics in Bavaria. In exchange, **Washington shares intelligence with Germany that authorities here say has been essential to preventing terror attacks** similar to those in Madrid or London. **It is a matter of pride among German authorities that they have been able to swoop in and detain suspects, preventing several plots from being carried out**. By focusing the current public debate in Germany on the issue of personal data, experts say Chancellor Angela Merkel is able to steer clear of the stickier questions about Germany’s own surveillance programs and a long history of intelligence sharing with the United States, which still makes many Germans deeply uncomfortable, more than two decades after the end of the cold war. “Every postwar German government, at some point, has been confronted with this problem,” Mr. Foschepoth said of the surveillance scandal. “The way that the chancellor is handling it shows that she knows very well, she is very well informed and she wants the issue to fade away.”

**No Impact**

**No impact to global drone prolif and it’s impossible to solve**

Alejandro **Sueldo 12**, J.D. candidate and Dean’s Fellow at the University of California, Berkeley, School of Law and a PhD candidate at the Department of War Studies at King’s College London of the University of London, 4/11/12, “The coming drone arms race,” <http://dyn.politico.com/printstory.cfm?uuid=70B6B991-ECA7-4E5F-BE80-FD8F8A1B5E90>

Of particular concern are the legal and policy challenges posed if other states imitate the U.S. targeted killing program. For Washington is setting a precedent whereby states can send drones, often over sovereign borders, to kill foreigners or their own citizens, who are deemed threats.

Other states may also follow Washington’s example and develop their own criteria to define imminent threats and use drones to counter them.

Washington will find it increasingly difficult to protest other nations’ targeted killing programs — particularly when the United States has helped define this lethal practice. U.S. opposition will prove especially difficult when other states justify targeted killings as a matter of domestic affairs.

Should enough states follow the U.S. example, the practice of preemptively targeting and killing suspected threats may develop into customary international law.

Such a norm, however, which requires consistent state practice arising out of a sense of legal obligation, now looks unlikely. While targeted killing policies are arguably executed by states citing a legal obligation to protect themselves from imminent threats, widespread state practice is still uncommon.

But international law does not forbid drones. And given the lack of an international regime to control drones, state and non-state actors are free to determine their future use.

This lack of international consensus about how to control drones stems from a serious contradiction in incentives. Though drones pose grave challenges, they also offer states lethal and non-lethal capabilities that are of great appeal. Because the potential for drone technology is virtually limitless, states are now unwilling to control how drones evolve.

**2NC Norms**

**US norms mean nothing**

**Anderson 11** [Kenneth, 10/9/2011, “What Kind of Drones Arms Race Is Coming?” http://opiniojuris.org/2011/10/09/what-kind-of-drones-arms-race-is-coming/]

By asserting that “we’re” creating it, this is a claim that there is an arms race among states over military drones, and that it is a consequence of the US creating the technology and deploying it — and then, beyond the technology, changing the normative legal and moral rules in the international community about using it across borders. In effect, the combination of those two, technological and normative, forces other countries in strategic competition with the US to follow suit. It sounds like it must be true. But is it? There are a number of reasons to doubt that moves by other countries are an arms race in the sense that the US “created” it or could have stopped it, or that something different would have happened had the US not pursued the technology or not used it in the ways it has against non-state terrorist actors. Here are a couple of quick reasons why I don’t find this thesis very persuasive, and what I think the real “arms race” surrounding drones will be. Unmanned aerial vehicles have clearly got a big push from the US military in the way of research, development, and deployment. But the reality today is that the technology will transform civil aviation, in many of the same ways and for the same reasons that another robotic technology, driverless cars (which Google is busily plying up and down the streets of San Francisco, but which started as a DARPA project), will eventually have an important place in ordinary ground transport. UAVs will eventually move into many roles in ordinary aviation, because it is cheaper, relatively safer, more reliable — and it will eventually include cargo planes, crop dusting, border patrol, forest fire patrols, and many other tasks. There is a reason for this — the avionics involved are simply not so complicated as to be beyond the abilities of many, many states. Military applications will carry drones many different directions, from next-generation unmanned fighter aircraft able to operate against other craft at much higher G stresses to tiny surveillance drones. But the flying-around technology for aircraft that are generally sizes flown today is not that difficult, and any substantial state that feels like developing them will be able to do so. But the point is that **this was happening anyway, and the technology was already available**. The US might have been first, but it hasn’t sparked an arms race in any sense that absent the US push, no one would have done this. That’s just a fantasy reading of where the technology in general aviation was already going; **Zenko’s** ‘original sin’ **attribution** of this **to the US opening Pandora’s box is not a credible understanding** of the development and applications of the technology. Had the US not moved on this, the result would have been a US playing catch-up to someone else. For that matter, the off-the-shelf technology for small, hobbyist UAVs is simple enough and available enough that terrorists will eventually try to do their own amateur version, putting some kind of bomb on it. Moving on from the avionics, **weaponizing the craft is also not difficult**. The US stuck an anti-tank missile on a Predator; this is also not rocket science. Many states can build drones, many states can operate them, and crudely weaponizing them is also not rocket science. The US didn’t spark an arms race; this would occur to any state with a drone. To the extent that there is real development here, it lies in the development of specialized weapons that enable vastly more discriminating targeting. The details are sketchy, but there are indications from DangerRoom and other observers (including some comments from military officials off the record) that US military budgets include amounts for much smaller missiles designed not as anti-tank weapons, but to penetrate and kill persons inside a car without blowing it to bits, for example. This is genuinely harder to do — but still not all that difficult for a major state, whether leading NATO states, China, Russia, or India. The question is whether it would be a bad thing to have states competing to come up with weapons technologies that are … more discriminating.

**No causal link**

Kenneth **Anderson 11**, Professor of International Law at American University, 10/9/11, “What Kind of Drones Arms Race Is Coming?,” <http://www.volokh.com/2011/10/09/what-kind-of-drones-arms-race-is-coming/#more-51516>

New York Times national security correspondent Scott Shane has an opinion piece in today’s Sunday Times predicting an “arms race” in military drones. The methodology essentially looks at the US as the leader, followed by Israel – countries that have built, deployed and used drones in both surveillance and as weapons platforms. It then looks at the list of other countries that are following fast in US footsteps to both build and deploy, as well as purchase or sell the technology – noting, correctly, that the list is a long one, starting with China. The predicament is put this way:

Eventually, the United States will face a military adversary or terrorist group armed with drones, military analysts say. But what the short-run hazard experts foresee is not an attack on the United States, which faces no enemies with significant combat drone capabilities, but the political and legal challenges posed when another country follows the American example. The Bush administration, and even more aggressively the Obama administration, embraced an extraordinary principle: that the United States can send this robotic weapon over borders to kill perceived enemies, even American citizens, who are viewed as a threat.

“Is this the world we want to live in?” asks Micah Zenko, a fellow at the Council on Foreign Relations. “Because we’re creating it.”

By asserting that “we’re” creating it, this is a claim that there is an arms race among states over military drones, and that it is a consequence of the US creating the technology and deploying it – and then, beyond the technology, changing the normative legal and moral rules in the international community about using it across borders. In effect, the combination of those two, technological and normative, forces other countries in strategic competition with the US to follow suit. (The other unstated premise underlying the whole opinion piece is a studiously neutral moral relativism signaled by that otherwise unexamined phrase “perceived enemies.” Does it matter if they are not merely our “perceived” but are our actual enemies? Irrespective of what one might be entitled to do to them, is it so very difficult to conclude, even in the New York Times, that Anwar al-Awlaki was, in objective terms, our enemy?)

It sounds like it must be true. But is it? There are a number of reasons to doubt that moves by other countries are an arms race in the sense that the US “created” it or could have stopped it, or that something different would have happened had the US not pursued the technology or not used it in the ways it has against non-state terrorist actors. Here are a couple of quick reasons why I don’t find this thesis very persuasive, and what I think the real “arms race” surrounding drones will be.

Unmanned aerial vehicles have clearly got a big push from the US military in the way of research, development, and deployment. But the reality today is that the technology will transform civil aviation, in many of the same ways and for the same reasons that another robotic technology, driverless cars (which Google is busily plying up and down the streets of San Francisco, but which started as a DARPA project). UAVs will eventually move into many roles in ordinary aviation, because it is cheaper, relatively safer, more reliable – and it will eventually include cargo planes, crop dusting, border patrol, forest fire patrols, and many other tasks. There is a reason for this – the avionics involved are simply not so complicated as to be beyond the abilities of many, many states. Military applications will carry drones many different directions, from next-generation unmanned fighter aircraft able to operate against other craft at much higher G stresses to tiny surveillance drones. But the flying-around technology for aircraft that are generally sizes flown today is not that difficult, and any substantial state that feels like developing them will be able to do so.

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**No Norms/No SOlve**

**U.S. drone use doesn’t set a precedent, restraint doesn’t solve it, and norms don’t apply to drones at all in the first place**

Amitai **Etzioni 13**, professor of international relations at George Washington University, March/April 2013, “The Great Drone Debate,” Military Review, <http://usacac.army.mil/CAC2/MilitaryReview/Archives/English/MilitaryReview_20130430_art004.pdf>

Other critics contend that by the United States using drones, it leads other countries into making and using them. For example, Medea Benjamin, the cofounder of the anti-war activist group CODEPINK and author of a book about drones argues that, “The proliferation of drones should evoke reﬂection on the precedent that the United States is setting by killing anyone it wants, anywhere it wants, on the basis of secret information. Other nations and non-state entities are watching—and are bound to start acting in a similar fashion.”60 Indeed scores of countries are now manufacturing or purchasing drones. There can be little doubt that the fact that drones have served the United States well has helped to popularize them. However, it does not follow that United States should not have employed drones in the hope that such a show of restraint would deter others. First of all, this would have meant that either the United States would have had to allow terrorists in hardto-reach places, say North Waziristan, to either roam and rest freely—or it would have had to use bombs that would have caused much greater collateral damage.

Further, the record shows that even when the United States did not develop a particular weapon, others did. Thus, China has taken the lead in the development of anti-ship missiles and seemingly cyber weapons as well. One must keep in mind that the international environment is a hostile one. Countries—and especially non-state actors— most of the time do not play by some set of self constraining rules. Rather, they tend to employ whatever weapons they can obtain that will further their interests. The United States correctly does not assume that it can rely on some non-existent implicit gentleman’s agreements that call for the avoidance of new military technology by nation X or terrorist group Y—if the United States refrains from employing that technology.

I am not arguing that there are no natural norms that restrain behavior. There are certainly some that exist, particularly in situations where all parties beneﬁt from the norms (e.g., the granting of diplomatic immunity) or where particularly horrifying weapons are involved (e.g., weapons of mass destruction). However drones are but one step—following bombers and missiles—in the development of distant battleﬁeld technologies. (Robotic soldiers—or future ﬁghting machines— are next in line). In such circumstances, the role of norms is much more limited.

**K**

**2NC Impact Overview**

**you should privilege this form of structural violence in your impact valuations because there is an ethical need to keep it from being invisible – it’s also an exponential form of attritional violence so even if the aff only causes a “small” amount of structural violence, the terminal impact is huge**

**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.**

**Prefer our impacts- the social consequences of globalization are unpredictable, but neoliberal destruction of the environment is certain and causes extinction**

**Ehrenfeld ‘5,**

(David, Dept. of Ecology, Evolution, and Natural Resources @ Rutgers University, “The Environmental Limits to Globalization”, *Conservation Biology* Vol. 19 No. 2 April 2005)

The social changes wrought by the globalization process are still in flux, and the outcomes over the next few decades are unclear. For example, as production and wealth skyrocket in China and India, as cars replace bicycles and skyscrapers spring up everywhere, will these countries be able to maintain their own supply of cheap labor and the new moneyed class without bloody internal upheavals that threaten national stability? And what will happen as fewer people in the once-rich countries have incomes that allow them to buy the digital cameras, toys, building supplies, and tropical produce that are the lifeblood of global commerce? The complexity of the situation beggars simplistic answers. The overall environmental changes brought about or accelerated by globalization are, however, much easier to describe for the near future, even if the long-term outcomes are still obscure. Climate will continue to change rapidly ( Watson 2002); cheap energy and other resources (Youngquist 1997; Hall et al. 2003; Smil 2003), including fresh water (Aldhous 2003; Gleick 2004), will diminish and disappear at an accelerating rate; agricultural and farm communities will deteriorate further while we lose more genetic diversity among crops and farm animals (Fowler & Mooney 1990; Bailey & Lappe ́ 2002; Wirzba 2003); biodiversity will decline faster as terrestrial and aquatic ecosystems are damaged (Heywood 1995); harmful exotic species will become ever more numerous (Mooney & Hobbs 2000); old and new diseases of plants, animals, and humans will continue to proliferate (Centers for Disease Control and Prevention 1995- present; Lashley & Durham 2002); and more of the great ocean fisheries will become economically—and occasionally biologically—extinct (Myers & Worm 2003). Although critics have taken issue with many of these forecasts (Lomborg 2001; Hollander 2003), the critics’ arguments seem more political than scientific; the data they muster in support of their claims are riddled with errors, significant omissions, and misunderstandings of environmental processes (Orr 2002). Indeed, these environmental changes are demonstrably and frighteningly real. And because of these and related changes, one social prediction can be made with assurance: globalization is creating an environment that will prove hostile to its own survival.

**If we win that legal modeling produces economic inequality and poverty, there will be backlash to the modeling that guts all aff solvency – turns the case**

* Necessary result of the plan is neoliberalization of other countries’ legal codes because that’s how they get investment from the US

**Tamanaha 8 – prof of law @ Hammond**

(Brian, The Dark Side of the Relationship Between the Rule of Law and Liberalism, NYU Journal of Law & Liberty)

**Despite positioning themselves as defenders of liberty**—a claim that is merited on its own terms—**this article has shown** a consistent pattern of **liberals** in the classical vein **trying to prevent, narrow, invalidate, or discredit democratically produced legislation that seeks to redistribute property** or temper market mechanisms to further competing aims. At the turn of the 20th century this was evident in the actions of **U.S. courts** that **struck or narrowed social welfare and labor legislation**; at the turn of the 21st century **this is evident in the neoliberal** package of **reforms imposed on developing countries** seeking aid.123 For anyone who sees democracy—the exercise of political choice over one’s affairs—as an expression of liberty, this side of **liberalism involves persistent attempts to invoke the rule of law to restrict** the exercise of **political liberty. This is the dark side of the rule of law** within liberal theory.¶ **Those in the West** who **find solace in the fact that developing countries have** thus far **suffered the brunt of the aforementioned anti-democratic imposition of neoliberal reforms** are perhaps un- duly optimistic in thinking they have escaped a similar fate. **This very same process, with** similar **anti-democratic tendencies, is taking place writ large around the globe as the imperatives of market capitalism increasingly dictate policies** to national governments.124 The “great transformation” Polanyi described involved the market coming to occupy the dominant organizing position within capitalist societies.125 **We may well be witnessing the completion of this transformation**, not just in the sense that every individual nation comes to be organized in this fashion, but **in the** further **sense that the entire community of nations** (the global order) **is increasingly organized in the same terms. Liberal mechanisms and institutions** functioning **at the transnational level** (for example, the World Trade Organization) **are already coalescing into a de facto kind of “economic constitutionalism” which, through the** operation of the **rule of law, constrains, overrides, and dictates** to **domestic law** making **in connection with liberal economic matters** (affecting property rights, tariffs, subsidies, efforts to protect jobs). In the past, natural law, the common law, and constitutional provisions provided the controlling norms that were enforced by the rule of law. In the future, if current developments bear out, it will be unadulterated liberal economic norms that control world-wide. **Liberals will view this prospect happily, but individuals and societies that prefer other values** above (or equal to) material improvement **will find it alienating and disempowering.**¶ **There is** also **a dark side for the rule of law** in this relation- ship. As I have argued elsewhere,126 the rule of law originated prior to liberalism and can exist independent of liberalism. Liberals tend to obscure this in their jealous identification of the rule of law with liberalism. From a broader perspective, **the singular achievement of the rule of law is its insistence that governments must act in accordance with the law**—an essential restraint that is valuable in all societies **regardless of their social, cultural, economic, or political orientation.** In view of the awesome power and resources governments can wield, holding the government to legal restraints is a universal good.¶ **The risk** in recent developments **is that the rule of law is ripe to be tainted by** its close identification with **liberalism, particularly in developing countries. A number of these countries have suffered from the adverse consequences of neoliberal reforms**;127 **the disparity in wealth has increased to new heights in many countries, without any** evident **improvement for the poor** majority;128 **and** in many of these societies **the populace had little say over whether to accept** or modify **these reforms. International** development **organizations** now **divert money away from infrastructure projects in favor of rule of law projects, like training judges** and police, **and drafting and implementing legal codes that protect property and foreign investment.** In all these various activities, the “rule of law” is put forth as the “front man” for the liberal package. **If this initiative goes badly** in any number of possible ways owing to an innumerable complex of local and global factors, **as seems likely to occur in many places, if substantial pain is suffered without** the **promised economic benefits to the general public, if courts are perceived to defend the rich** who enjoy increasing wealth **while most in society are left wanting, the rule of law may be held responsible or tarnished, viewed by the populace with suspicion or cynicism— making it all the harder to implant and build the rule of law.**¶ **It would be a tragic paradox if the great liberal advocates for the rule of law contributed to preventing it from** taking hold and **spreading** around the world.

**The neoliberal principles underlying the aff prevent solvency – even though it appears to strengthen rule of law, market biases limit state intervention**

**Glinavos 2008** - Lecturer in Law, University of Reading (July 16, Ioannis, “Neoliberal Law: unintended consequences of market-friendly law reforms” Third World Quarterly Volume 29, Issue 6, google scholar)

The fate of a ‘property rights only’ model of law reform and of the unregulated markets doctrine has, however, been affected by the general demise of the Washington Consensus. From 1997 onwards the World Bank has largely abandoned the minimalist conception of the state, where state involvement in the economy was seen as impeding efficient transactions and impairing the extent and quality of investment (the main ideas of the Washington Consensus). By recognising the existence of a variety of distortions, externalities and market failures the Bank accepted in principle the need for intervention and regulatory action. Hence the widespread criticism (see Joseph Stiglitz as an example) of privatisation carried out in an institutional vacuum in post-communist Russia and the resulting criminal takeover of the economy.3 However, the Bank, like other **international financial institutions**, still **maintain**s **the** original **position that the state ought to intervene as little as possible** in the market and that, when compared with state capture and corruption, market inefficiencies are more easily dealt with. **This** position **serves to limit both the reach and the purposes of legal reform, as the presumption of government failure often undercuts the case for state intervention, even where it would otherwise be warranted** in order to enhance efficiency. Consequently, **even though there appears to be a shift from reforms focusing on property rights and contract law to reforms centred on promoting the rule of law** and market-supporting institutions, **the reality of the state's capacity to intervene is still limited.** After all, **the position of international organisations still is that growth is more likely to result from deregulation** and liberalisation that encourage foreign investment and not from government-sponsored development policies, **despite all the evidence**.4 As Rittich notes, discussing Post-Washington Consensus reform proposals: **In second generation reforms, change is clearly visible in the following interconnected areas**: 1) **legal restraints upon the powers of the State**; 2) greater **emphasis on judicial process** and institutions; 3) **expansion of the actors engaged in governance**; 4) **the turn toward soft law**; 5) the recognition of non-legal sources of normativity; and 6) **the use of human rights. All mark a shift toward a much more fragmented and polycentric normative order**, one **in which the center of gravity in respect of governance and regulation is no longer always located in the State**.5

**2NC Framework Block**

**Everything we do, everything we read forms us as subjects as the world – social change cannot be effected unless there is a vocabulary to construct subjects that engage in 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

- we construct the way we interact with the law with reference to this reality

**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?

**This is a comparatively more productive strategy than the aff’s hubristic attempts to change the world – only our framework produces an ethical self that can create productive micropolitics**

**Chandler** **13** **– prof of IR @ Westminster**

(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’.**

**AT: Sustainable**

**Collapse of neoliberalism is inevitable because of economic and environmental trends – multiple structural trends make resuscitation impossible, which means its try-or-die for the alt**

**Li ‘10**

(Minqi, Chinese Political Economist, world-systems analyst, and historical social scientist, currently an associate professor of Economics at the University of Utah “The End of the “End of History”: The Structural Crisis of Capitalism and the Fate of Humanity”, *Science and Society* Vol. 74, No. 3, July 2010, 290–305)

**In 2001, the U. S. stock market bubble started to collapse**, after years of “new economy” boom. The **Bush** administration **took advantage of** the psychological shock of **9/11, and undertook** a series of **“preemptive wars”** (first in Afghanistan and then in Iraq) that ushered in a new era of intensified inter-state conflicts. Towards the end of 2001, **Argentina, which was** regarded as **a neoliberal model country, was hit by a devastating financial crisis**. Decades of neoliberalism had not only undermined the living standards of the working classes, but also destroyed the material fortunes of the urban middle classes (which remained a key social base for neoliberalism in Latin America until the 1990s). **After the** Argentine **crisis, neoliberalism completely lost political legitimacy in Latin America**. This paved the way for the rise of several socialist-oriented governments on the continent. **After** the **2001** global recession, **the global economy** actually **entered** into **a mini–golden age. The** big semi-peripheral economies, the so-called **“BRICs”** (Brazil, Russia, India, and China) **became** the most **dynamic** sector. **The neoliberal global economy was fueled by the super-exploitation of the massive cheap labor force** in the semi-periphery (especially in China). **The strategy** worked, to the extent that it **generated massive** amounts of **surplus value** that could be shared by the global capitalist classes. **But it also created a massive “realization problem.”** That is, **as** the **workers** in the “emerging markets” **were deprived of purchasing power**, on a global scale, **there was a persistent lack of effective demand for the industrial output produced in** China and the rest of **the semi-periphery**. After 2001, **the problem was addressed through increasingly higher levels of debt-financed consumption** in the advanced capitalist countries (especially in the United States). **The neoliberal strategy was economically and ecologically unsustainable**. **Economically**, the **debt-financed consumption** in the advanced capitalist countries **could not go on indefinitely. Ecologically, the rise of the BRICs greatly accelerated resource depletion and environmental degradation** on a global scale. **The global ecological system is now on the verge of total collapse**. The world is now in the midst of a prolonged period of economic and political instability that could last several decades. **In the past, the capitalist world system** had responded to similar crises and **managed to undertake successful restructurings**. Is it conceivable that the current crisis will result in a similar restructuring within the system that will bring about a new global “New Deal”? **In three respects, the current world historical conjuncture is fundamentally different** from that of 1945. Back **in 1945, the U**nited **S**tates **was the indisputable hegemonic power**. It enjoyed overwhelming industrial, financial, and military advantages relative to the other big powers and, from the capitalist point of view, its national interests largely coincided with the world system’s common and long-term interests. **Now, U. S. hegemony is in irreversible decline**. But **none of the other big powers is in a position to replace the U**nited **S**tates and function as an effective hegemonic power. Thus, **exactly at a time when the global capitalist system is in deep crisis, the system is** also **deprived of effective leadership**.4 In 1945, **the construction of a global “New Deal” involved primarily accommodating the** economic and political **demands of the western working classes and the non-western elites** (the national bourgeoisies and the westernized intellectuals). In the current conjuncture, **any new global “New Deal” will have to incorporate not only the western working classes but also the massive, non-western working classes. Can the capitalist world system afford such a new “New Deal” if it could not even afford the old one?** Most importantly, **back in 1945, the world’s resources remained abundant and cheap, and there was still ample global space for environmental pollution. Now, not only has resource depletion reached an advanced stage, but the world has also virtually run out of space for any further environmental pollution.**

# 1NR

**AT: Perm**

**The aff locks in to neoliberal democracy through promotion of the rule of law – assumes its values as given which informs the resulting policy**

**Ngugi 2005** - Assistant Professor of Law, University of Washington School of Law (Joel M., “POLICING NEO-LIBERAL REFORMS: THE RULE OF LAW AS AN ENABLING AND RESTRICTIVE DISCOURSE” U. Pa. J. Int'l Econ. L., [https://www.law.upenn.edu/journals/jil/articles/volume26/issue3/Ngugi26U.Pa.J.Int'lEcon.L.513(2005).pdf)](https://www.law.upenn.edu/journals/jil/articles/volume26/issue3/Ngugi26U.Pa.J.Int%27lEcon.L.513%282005%29.pdf%29)

I borrow the notion of "thick concepts" from Philosophy.148 **By "thick concept" I mean a concept which, by being both descriptive and evaluative, hopes to create the conditions for action and urge the action** at the same time. Since I do not wish to be entangled in the philosophical debates regarding the actual operation of thick concepts as concepts that one can use to understand (or reflect on) someone else's ethical perspective, I borrow the term functionally to merely express the property of a concept to host a union of factual and evaluative content simultaneously.149 **I use thick concept therefore, to mean the property of a concept to straddle the factual and the evaluative spheres**.150 As such, **they blend fact with value**.151 By being a union of factual and evaluative content, **they**, at the same time, **guide our application of the concepts and the perception of how things are in the world concerning them,** and other associated phenomena, **and also provide us with a motivation to act.**152 Put differently, thick concepts both are guided by how the world is, and guide peoples' actions. So **they are both world-guided and action-guiding**.153 However, Bernard Williams and other philosophers use thick concepts to try to understand the possibility of having objective ethical judgments in a cross-cultural setting.154 On my part, however, I "misread" them by applying the concept in a straightforward way to mean a concept that, by being both descriptive and evaluative, hopes to create the conditions for action and urge the action at the same time.155 As such, **they avoid the necessity of political contest or debate regarding the nature of the action by imbuing the action urged with a value. Since the value is not subjected to debate** or consensus **but is merely assumed, a thick concept** as 1 use it **plays a negative role in governance**. **It predetermines politics: it brings a value to a situation, and then urges actions based on the situation that is prejudged by the value**. The action is then justified in terms of the situation, while the situation is justified in terms of both the value and the action. My argument here is that **the way the concept of rule of law is deployed** in the Rule of Law projects described above is that it **plays the role of a thick concept** conceived in this way. As such, it predetermines politics. **To the extent that it enables any form of** participation, **democracy**, choice or freedom, **all these political and legal virtues can only be practiced or experienced within the realm of the already decided and predetermined politics**. **These forms of** participation, **democracy**, choice, and freedom **can therefore only be comprehended as technical objectives of the established order rather than real choices aimed at constructing and reconstructing the social, political, and economic relations** in the society by consensus, according to changing needs of the society. The practical effect of the conflation of the two notions of rule of law into a thick concept in the Rule of Law projects, therefore, is fourfold: First, **it makes the rule of law readily available to propose specific programmatic legal and economic reforms.**156 Second, at the same time, the rule of law appears to assure the democratic right to participate in decisionmaking and determination of policies that govern given the polity. However, **the programmatic reforms proposed are already predetermined and pre-decided by the substantive notion of the rule of law and are therefore insulated from the democratic process**.157 Third, this usage of rule of law as a thick concept has a powerful emotive appeal by implicitly linking values with action. **By juxtaposing facts and values, the thick conception of rule of law is an effective tactic for a successful mobilization of public opinion by appeals to conscience that call on value**.158 Fourth, **the more jurisprudential aspects of the rule of law** (i.e. the procedural conception of the rule of law) **are** then **called in aid to "lock-in" the reconfigured socioeconomic formations and relations ushered in by the programmatic**, substantive **reforms** (i.e. the substantive conceptions of the rule of law).159 In this way, the substantive aspects of the rule of law are justified on the grounds that they are necessary for the procedural aspects of the rule of law to have any effectiveness. On the other hand, the procedural conception of the rule of law is justified on the opposite argument: that the procedural conception of the rule of law is necessary for the substantive reforms to have any effectiveness. Hence, **the "procedural" aspects of the rule of law in these projects can then be understood as a supplementary political project to "lock-in" the power gains in the reconfigured political, social, and economic space after the redistribution occasioned by the adoption of the substantive "good" laws dictated by the substantive aspects of the rule of law**. Thus, **a combination of the** core, **formal**, traditional, **jurisprudential conception of the rule of law is united with radically new substantive meanings** built into the concept. In this way, **the rule of law serves as an instrument for subverting the democratic right of the polity rather than equipping it. Rather than fill the mechanisms that give the citizenry power to determine the nature, shape, and direction of economic policies i**n a country, **this conflation of rule of law precludes such effective choice of economic policies** while enabling strategic participation in other areas of politics. Therefore, **the version of rule of law that is being instituted in most parts of the world through Rule of Law projects is one that insulates a particular vision of moral foundation or philosophy of the good of the society from the reach of political debate**, consensus or revision by the participants in the polity. **It imbues on the legal order a certain internal morality of the law that shapes the content of the laws, and the responses and direction of the laws and rules.**160 Because this view of internal morality is purposive, it imbues in the law only a given content of the instantiation of legal, social, economic, and political arrangements between citizens and the government, and among citizens, as mediated by the law. At the same time, however**, it presents itself as** "anti-design," **an open, interactive process resulting in an outcome of processes that determines politics without fixed goals**, design or plan.161 So, **while it circumscribes the available choices** for the citizenry, **it presents itself only as a guarantor of process that merely grants freedom to citizens** and other participants in the polity (such as investors) to relate with one another. This position by IDAs is similar to the position long ago taken by Lon Fuller: (Ljaw is not, like management, a matter of directing other persons how to accomplish tasks set by a superior, but is basically a matter of providing the citizenry with a sound and stable framework for their interactions with one another, the role of government being that of standing as a guardian of the integrity of this system.162 This conception of the rule of law is complex because it simultaneously incorporates a formalistic or procedural component while at the same time linking it with a positive prescription of a value of internal morality of the law. It is this double aspect of it that coheres with the need to have "good laws."163 It is, hence, both evaluative as a formal criterion, and also prescriptive of values that the purposive orientation of the law must reflect in its internal morality. This, therefore, implies the need for substantive content in certain laws. For Lon Fuller, therefore, as for the IDAs, the internal morality actually forms the "constitutive outside" that politically legitimates and de-legitimates the "zone" of acceptable and unacceptable substantive "good," "comprehensive," or "appropriate" laws.164 Hence, **the rule of law that emerges from the main message of neo-liberalism** (that "imperfect markets can be made to work better than imperfect governments"165) ends up not being the institutional mechanism through which the government cedes economic role to the market. Rather, it **becomes a totalitarian imposition of a structure that ensures participation in already decided politics**. It starts with the innocuous claim that "all social relations be wholly voluntary and private."166 **Markets will then foster "unanimity without conformity**, and reduce social strain by decreasing the number of highly contested political decisions."167 **The result is, however, that the law that emerges is "individualistic, microeconomic, and focused towards private law**."168 **Such a focus**, in turn, **serves to define private property**, freedom of contract, and private corporate autonomy **in absolute ways**, the same way as they were constructed within the common law context in the United States during the Classical Legal period.169 **This as opposed to conceptions of property, freedom of contract, and private corporate autonomy that are malleable to collective choices based on ideas of community values, egalitarianism, altruism, social justice, and equity**.170

**\*\*Norms/Modeling**

**their form of legal modeling forces non-Western countries into the dominant neoliberal model – Western institutions threaten to withhold essential aid if a country does not have a neoliberal judicial system – quality of life is held hostage as the sacrificial lamb for the liberal order**

**Tamanaha 8 – prof of law @ Hammond**

(Brian, The Dark Side of the Relationship Between the Rule of Law and Liberalism, NYU Journal of Law & Liberty)

The final piece in the entangled relationship between the rule of law and liberalism brings us to the present. Unlike the pre- ceding discussion, it does not involve the work of theorists, but rather represents the culmination of this stream of ideas in a course of action. **Beginning in the** late **1980s** and accelerating in the 1990s, **Western nations and international financial institutions implemented world-wide a set of reforms labeled the “Washington consensus.” The World Bank and the International Monetary Fund began to condition loans and grants** to developing countries **on a package of** economic and political **reforms called “good governance”** and “structural adjustment programs,” **which entailed** reducing market restrictions and trade barriers, freeing capital flow, privatizing publicly held assets, **protecting property and enforcing contracts,** protecting foreign investments, enacting western commercial laws, **reducing corruption, establishing independent courts, enhancing democracy, and, prominently, building the rule of law.**95 **This neoliberal package of reforms aims at reproducing the economic and legal conditions** that prevail **in Western countries.** In addition to requiring loan recipient countries to implement these reforms, **international lending organizations altered how they allocated aid. Spending money directly on infrastructure development and economic projects came to be seen as wasteful when established legal institutions are lacking. The resultant shift in expenditures has been dramatic. “Thirty years ago,”** the General Counsel to the World Bank recently observed, **“the Bank had 58% of its portfolio in infrastructure, today it is reduced to 22% while** human development and **law and institutional reform represent 52%** of our total lending.”97¶ **Today, establishing the rule of law is the central plank in development** thought and activities. As Thomas Carothers observed, “Aid agencies prescribe rule-of-law programs to cure a remarkably wide array of ailments in developing and post- communist countries, from corruption and surging crime to lagging foreign investment and growth.”98 Citing World Bank studies, former President of the World Bank James Wolfensohn “said that the empirical evidence shows a large, significant and causal relation- ship between improved rule of law and income of nations, rule of law and literacy, and rule of law and reduced infant mortality.”99 A detailed study issued in 2006 by the Bank, Where Is the Wealth of Nations?, asserted that “in most countries intangible capital is the largest share of total wealth.”100 “Intangible capital,” according to the study, includes human capital (knowledge and skills in labor force), social capital (trust), and governance elements. The study emphasized that “the rule of law”—which it defined as “the extent to which agents have confidence in and abide by the rules of society”—makes a substantial contribution to intangible capital.102 Increasing the rule of law, it concluded, is one of “the most important” means to increase total wealth.103 The study even made a concrete assertion that a one percent increase in the rule of law index contributes more to intangible capital than a one percent increase in school years.104¶ **It is beyond the scope of this article to evaluate the often claimed connection between the rule of law and economic development (although it must be said that the extraordinary economic development of China** in the past two decades, **when lacking key aspects of the rule of law, serves as a major counter-example). The point** of raising it here **is to show** once again **how the rule of law has been intertwined in a broader liberal agenda with adverse implications for democracy.** **Although enhancing democracy is** routinely **listed among the collection of development initiatives, a prominent feature of** the structural adjustment and **good governance programs was the manifestly anti-democratic mode in which they were implemented.**¶ **Under the threat that the aid would be withheld** if they re- fused, **these reforms were “voluntarily” accepted** by nations that wished to receive economic aid. Political leaders often bypassed popular input, for the reforms invariably brought harsh immediate social and economic consequences.106 Recipient **countries typically enacted these programs without seeking** or securing broad **domestic consent.**107 **They “emerge from a top-down and secret process of negotiations between technocrats** representing a government and an international lending agency.”108 The programs, which restrict and control domestic law-making on a host of important issues, amount to a form of “economic constitutionalism” that precludes policy choices and politics in connection with broad swaths of internal matters.109 Defenders of these programs insist that where properly implemented they have helped the poor (a disputed claim110). What is relevant here is not whether the promised economic benefits have been delivered, but rather the anti- democratic tenor of these programs—the latest episode in the long history set forth in this article. Democracy is fine, as long as it keeps its hands off the liberal program. Even legislation is fine, as this ex- ample shows, when legislation is utilized to implement and protect the liberal program.

**Terrorism Link/DA**

**Terrorism threat discourse propels the neoliberal economy – the use of terrorism risk calculus is part of an insurance paradigm that transforms society into a field of economic subjects**

\*Insurance begins with the assumption that existing society is ethical, and then seeks to order the future by using risk to maintain the status quo

\*Produces the same technologies of power that neoliberalism relies upon for economic exchange

**Aradau & Van Munster ‘8**

(Claudia, The Open University, Department of Politics and International Studies, Rens, University of Southern Denmark, Odense, Department of Political Science and Public Management, “Insuring Terrorism, Assuring Subjects, Ensuring Normality: The Politics of Risk After 9/11”, *Alternatives* 33 (2008), 191-210)

This article argues that **insurance is located on a continuum of danger and risk** rather than being a separate rationality that can provide a radically different logic for governing the social. As we have shown elsewhere, **insurance has become allied with precautionary technologies and has entered the heterogeneous dispositif for governing terrorism**.'^ Therefore, **insurance is consonant with**, rather than disruptive of, the **global modes of security practices**, and **a governmental analysis of risk needs to locate security practices** not just in the bureaucratic field of the "professionals of unease management"^ but also **in the "shadows" of the insurance industry**. Although **insurance** and its actuarial **practices** have been seen as inconspicuous practices of social life (and hence unconnected with security), their "**unobtrusiveness is precisely why they have become so important: they make power more** effective and **efficient by diminishing its political** and moral **fallout**."^ **Insurance enters the continuum of national-security**/social security **by ordering a future of** precariousness, **threat**, and uncertainty **through actuarial practices**. Locating insurance in the continuity of security practices allows us to unpack the political implications of underwriting terrorism. How does terrorism insurance enter the dispositif of governing terrorism, and what does this mean politically? The insurance industry has had an instrumental role since the early days of the "war on terror," and **underwriting terrorism has become part of the global govemmentality of terrorism**.10 We explore the political implications of the classificatory practices that insurance presupposes and argue that the **technologies of insurance foster subjects who are consistent with the logic of capitalism**. **Insurance entrenches a political imaginary where antagonisms have been displaced**, or are suspended **by, an overwhelming concern with the continuity of** social and **economic processes**. **Underwriting terrorism is an integral part of securing capitalism** and its processes. While connections have been explored between the "way of life" that the so-called war on terror purports to secure and the neoliberal economy.^ this article investigates its political consequences of insuring terrorism by unpacking the relationship to time, subjectivity, and alterity. To this purpose, the article proceeds in three stages: It starts by questioning the inattention to insurance in security studies; it moves on to offer a specific interpretation of the logic of insurance and its practices as situated in the continuity of security practices; and finally turns to an analysis of the political implications of underwriting terrorism.

**Strategies of counter-terrorism insurance divide the body politic into developed and underdeveloped worlds, producing massive structural violence**

**Aradau & Van Munster ‘8**

(Claudia, The Open University, Department of Politics and International Studies, Rens, University of Southern Denmark, Odense, Department of Political Science and Public Management, “Insuring Terrorism, Assuring Subjects, Ensuring Normality: The Politics of Risk After 9/11”, *Alternatives* 33 (2008), 191-210)

**The presence of insurance technologies in the dispositif for governing terrorism** is supplemented by its own security rationality. The insurance industry **draws particular lines of exclusion and division**, which are not always superposed on the boundaries that practices of national security draw out. Mark Duffield has remarked that **the difference between insured and noninsured life is contiguous to that between developed and underdeveloped life**.29 **Insurance provides forms of solidarity** and sustainability **in the developed world, while the** so-called **Third World is expected to deploy other forms of resilience**. While Duffield locates the boundaries drawn by insurance at the global level, the governmentality literature has already shown that **insurance creates its own divisions within forms of "developed life."**30 Through practices of underwriting, **insurance already disqualifies certain categories of subjects from the solidarity of political community**. Moreover, its category of "moral hazard" has been shown to reproduce ideological forms of exclusion. The next section explores insurance as a dispositif for governing the social by means of "taming" the future.

**Sacrifice zones created by neoliberalism are the psychological pre-condition for terrorism – a rampantly individualistic social order combined with material deprivation is the driving incentive for radicalization and genocide**

**Pramono ‘3**

(Siswo, School of Social Sciences, The Australian National University, Canberra, “The Genocidal Global Politics and Neoliberalism”, *Journal of Economic and Social Research* 4 (2), 115-138)

**The long history of US imperialism provides the best example of the practical politics of neoliberalism. Major General Smedley Butler of the US Marine Corps**, who were twice awarded the Medal oh Honor, and who were acknowledged by General Douglas MacArthur as one of the great generals in American history, testified in 1933 about the US imperialism in Latin America: There isn't a trick in the racketeering bag that the military gang is blind to. It has its 'finger-men' to point out enemies, its 'muscle-men' to destroy enemies, its 'brain men' to plan war preparation and a 'Big Boss' Super- Nationalistic-Capitalism. It may seem odd for me, a military man, to adopt such a comparison. Truthfulness compels me to. I spent thirty- three years and four months in active military service as a member of this country's most agile military force, the Marine Corps. I served in all commissioned ranks from Second Lieutenant to Major General. And during that period, **I spent most of my time being a high class muscle- man for Big Business, for Wall Street and for the Bankers**. In short**, I was a racketeer, a gangster for capitalism**. I suspected I was just part of a racket at the time. Now I am sure of it. I helped make Honduras 'right' for American fruit companies in 1903. I helped make Mexico, especially Tampico, safe for American oil interests in 1914. I helped make Haiti and Cuba a decent place for the National City Bank boys to collect revenues in. I helped in the raping of half a dozen Central American republics for the benefit of Wall Street. The record of racketeering is long. I helped purify Nicaragua for the international banking house of Brown Brothers in 1909-1912. I brought light to the Dominican Republic for American sugar interests in 1916. In China I helped to see to it that Standard Oil went its way unmolested. During those years, I had, as the boys in the back room would say, a swell racket. Looking back on it, I feel that I could have given Al Capone a few hints. The best he could do was to operate his racket in three districts. I operated on three continents (cited in Ali, 2002: 259-260). As such, **for the genocidal global politics of the US, establishment and neoliberalism are like bow and arrow**. In other words, as argued by Friedman, a columnist of the New York Times (28 March 1999): "**The hidden hand of the market will never work without a hidden fist**. McDonald's cannot flourish without McDonnell-Douglas, the designer of the F-15, and the hidden fist that keeps the world safe for Silicon Valley's technology is called the United States Army, Air Force, Navy and Marine Corps." **An "axis of evil" was** then **drawn between the World Trade Center and Pentagon, and hence between neoliberalism and military establishment,** in the pursuance of genocidal global politics. Scepticism is thus a way to view the current neoliberal global politics. military **The danger is present and imminent. The bulk of humans on earth are deprived,** economically and hence, socially, **by the neoliberal market fundamentalists. Most individuals**, borrowing the words of Staub (1989:35), **experience "attack on or threat to life, material well-being, or self-concept and self-esteem**." Staub, in his The roots of evil (1989), devoted a substantial part of the volume to examining **the psychology of hard times and how difficult life conditions can lead to genocide** or intensify the existing genocide. And, for him, a key-word of genocide is "aggression". **It does not follow**, however, **that all kinds of aggression will end up in genocide, but there can be no genocide without aggression.** As such, the next task is to reveal the possible linkage between the neoliberal global social structure and the increasing act of genocidal aggression within states and without. An adaptation from Staub's study about psychological states and processes that promote aggression can help clarify such a linkage. **In** **this context**, the **neoliberal** global **politics should be viewed as genocidal attacks to the real and potential victims of the neoliberal imperialism.** The **neoliberal global politics incite anger, rage, and the motive for retaliation and harm doing** (Staub, 1989). **Only a few**, perhaps, **would** formally **condone** the September 11, which represents attacks against the World Trade Center - Pentagon "axis of evil", and the Bali carnage of October 12, which represents attack on the Washington - Canberra axis. **But many would understand such genocidal attacks as retaliation against the practice of the US neoliberal global politics**. The following is a note of conversation in New York between Tariq Ali, the author of The Clash of Fundamentalisms, and a white-bearded Latino taxi driver who drove him to the airport: [Ali]: Where were you on September 11th? [Driver]: (looking at [him] closely in the rear-view mirror) Why do you ask? [Ali]: I just wondered. [Driver]: Where are you from? [Ali]: London. [Driver]: No, I mean where are you really from? [Ali]: Pakistan [Driver]: I'm Taliban. Look at me. No, no. I'm from Central America. Can't you tell? [Ali]: I just wondered whether you were anywhere near the Twin Towers that day. [Driver]: No, I wasn't but I wouldn't have cared if I was. [Ali]: What do you mean? [Driver]: It wouldn't have mattered if I had got killed. The important thing is that they were hit. I was happy. You know why? [Ali]: No. [Driver]: You know how many people they've killed in Central America. You know? [Ali]: Tell me. [Driver]: Hundreds of thousands. Yes, really. They're still killing us. I'm really happy they were hit. We got our revenge. I feel sorry for the ones who died. That's more than they feel for us. [Ali]: Why do you live here? [Driver]: My son is at school here. I'm working to pay for his education. We had to come here because they left nothing back home. Nothing. No schools. No universities. You think I'd rather be here than in my own country? (Ali, 2002: 291-292). The Latino taxi driver in New York was no fan of Major General Butler or bin Laden, or perhaps, had never heard about them. But he shared with Major General Butler the disgust towards the US exploitation of Latin America. And he, too, shared the grievance to free the world from neoliberal exploitation as articulated in bin Laden's Declaration of War (1996). The point is that **those who live under the neoliberal global oppression share the same desire to retaliate. Retaliation aside, aggression**, for Staub (1989: 39), **"is an effective self-defense, since it communicates that [genocidal] instigation does not pay and makes renewed instigation less likely." But such a communication will only be effective if the conflicting parties speak the same language of violence. Here, self-defense**, for one, **tends to be interpreted as anticipatory or pre-emptive self-defense**. As such, the self-defense always represents naked aggression (eg, the case of the September 11 terrorist attacks and the corresponding attacks of Afghanistan and Iraq). Second, **each party can play victim of the other, and thus use the notion of self-defense as the ground of its aggression**. Determination to commit self-defense is not only practical, but also psychological. The neoliberal global politics can also incite to the desire to protect the psychological self such as identity and self-esteem (Staub, 1989). Protection against who? A **protection against the perceived hegemon**, for one, can give rise to the desire for harm doing as suggested in the previous point. **But**, worse, **often** "it **employs such 'internal', psychological means as scape-goating or devaluation of others, which eventually provides a basis for violence against them"** (Staub, 1989: 39). Those who attempt to protect the psychological self can arbitrarily determine the "others", which might include minority and unwanted groups, which have nothing to do with the provoking hegemon. **Thus**, for instance, **facing the mounting US military threat at the end of 2001, the anti-American sentiment within the Taliban regime was directed against the non-Phustun Afganis such as Hazaris, Tajiks and Uzbeks.** And in the 1991 Gulf War, the anti-American sentiment within the Iraqi regime was directed against the Kurd minority. The next instigating factor to observe is the question of (in)justice. A sense of injustice can incite resentment, anger, and violence (Staub, 1989). For instance, following the political reform in 1998, Indonesia is becoming more democratic but poor. Yet, it is the democratisation —more than the simplistically alleged radicalism— which gives rise to the anti-American sentiment. **More and more Indonesians dare to challenge, although with little success, the practice of US neoliberal global politics.** Why should Indonesians who work for an American leading sportswear company in Indonesia be paid less than US$ 2.00 per day for a product worth US$ 45 - US 80 in American market? (McKinley, 2001). Aside from the question of (in)justice, the rising anti-American sentiment in Indonesia, and in the third world in general, which has sometimes led to violence, should be viewed as a result of frustration, acute deprivation, and sense of powerlessness. **Such psychological conditions will motivate peoples to regain a sense of personal efficacy and personal power. If people feel vulnerable** to diseases, poverty, the constant threat of military pre-emptive strikes and weapons of mass-destruction, and, ultimately, death, **then killing** (eg, homicide, genocide) **"may give the killer a feeling of invulnerability and power over [the] death" itself** (Staub, 1989: 41). **Such killings elusively help improve a sense of personal power.** And this personal power is a psychological tool to help survive the increasing uncertainty, anarchy or chaos. "Chaos, disorder and sudden profound changes, especially when accompanied by frustration, threat, and attack," for Staub (1989: 41), "invalidate the conceptions of self and world that serve as guides by which new experience acquires meaning and life gains coherence." As such, chaotic changes from a society based on the value of work to a workless society, as discussed in the previous section, would trigger moral panic until the arrival (or the acceptance) of a 'new' ideology that is perceived as able to provide a renewed comprehension. If you were deprived from material gain, why would you not embrace something against (or destroy) all kinds of material gain? (eg, the case of Taliban anti-modernisation policy in Afghanistan) If you were deprived of a better life (and in no way can attain this) why would not you embrace a sub-culture that destroys all kinds of lives (eg, the case of terrorist ideology). In either case, albeit suicidal- genocidal, you were no longer a loser. Thus, the **neoliberal global politics help the appeal of such destructive** (and murderous) **ideology** in the decaying society. The point is that **not only is the neoliberal theory-as-practice genocidal,** as depicted in the previous sections, **but also it inflicts difficult life conditions that increase the severity of the existing global genocide. Most big cases of genocide happened in the backdrop of difficult life conditions.** Turkey committed genocide against the Armenians after years of humiliation —losses of territory, power, and global political status— before and during the World War I. Difficult life condition following the defeat of Germany in World War I helped Hitler's rise to power. And the Holocaust was committed in the years when Germany was losing World War II. In Cambodia, the Polpot regime committed genocide in 1970s after years of civil war, starvation, and misery. In Argentina, severe economic problems preceded genocide (Staub, 1989). In Rwanda, the collapse of the coffee industry, the country's main national earning, preceded genocide. And in Indonesia, symptoms of genocidal society have been apparent since the collapse of the national economy following the Asian economic meltdown in 1997. **With the neoliberal theory-as-practice, genocidal global politics is materialised and intensified.** 5. Conclusion **The course of neoliberal globalisation seems to have headed toward ‘creative destruction’ of the very important social fabric of global societies. The social disorganisation at the global level will incur** **unbearable social costs for human civilisation. It is thus the responsibility of every one who has the power** –political, economic, scientific, and moral— **to lead the international community to alter this deadly genocidal course**. If the world is to take Polanyi’s critiques seriously, there is an urgent need to review the neoliberal perception of values of society and the free market. The present capitalist regime must be changed in order to become a sustainable one. The capitalist regime must serve at best the basic tenet of liberalism, that the economy must work to the good of the majority, not the vice versa. Otherwise homo economicus3 could develop into homo homini lupus4, and hence rampaging genocidal societies at both local and global levels.

**Credibility Link**

**Credibility cements relations between global elites and establishes capitalist territoriality**

**Negri ‘1**,

(Antonio, Giuseppe, & Maurizio, Prof. of Poli Sci @ U of Padua, Writers for Multitudes, Ruptures Within Empire, The Power of Exodus, http://www.generation-online.org/t/empireruptures.htm)

Negri: In the early 90s there were really very few of us demonstrating. Today, we are many more, at least here in Italy. That is in itself a fact to take into account. But it is equally true of the United States, I believe. In addition to this important point, the New York events do indeed constitute a rupture. It is a rupture in imperial management, and one that takes place within the process of building the imperial network that collective capital has been putting into place. The construction of this imperial network started in the early 90s, with the end of the Cold War. It should be considered a real rupture because it comes from outside, or rather, outside of this process, which is not to say that it comes from the exterior of imperial constitution. By this I mean that there has been a process of imperial constitution, whereby capitalist sovereignty has been expanded out across the entire fabric of international relations; this has created a large-scale shift in sovereignty whereby international relations have been overshadowed by imperial sovereignty. And it was precisely in this moment that a suspension, a rupture occurred: the attack against the United States. Thus the rupture came from outside of the process, but at the same time it comes from within Empire. It involves a suspension of the process, a setback, a block; it is something that has been imposed. Before this turn of events there was undoubtedly an American attempt to unilaterally take control of the process. But now they are confronted by some very serious difficulties. For the sake of clarity, we'd best make use of an abstraction. In my opinion, three crises are in progress (I say "three" in order to simplify, but in fact there are multiple crises). These three crises concern the characterization of imperial sovereignty. The first crisis has to do with the military component. The reason for this crisis is that the sovereignty, this enormous power that the Americans built up (development of the bomb made such an absolute hegemony possible), today finds itself confronted by something to which it must face up: kamikazes, suicidal acts. If in the past this sovereignty held power over life and death, pushed to the level of a nuclear power extended over the entire world, today this power no longer exists. Thousands of people can decide to oppose it with their voluntary death. It’s like the cutter phenomenon [1]. It's a problem that must be resolved. The next crisis has to do with currency. Sovereignty also brings the power to strike currency. This huge crisis stems from the fact that the striking of currency has been handled within the context of a neo-liberal agenda, that is to say according to "lex mercatoria", thus by the capacity of the private sector to devalue currency. Regulation has ceased to be a function of the State. Now 80 percent of regulation is carried out directly by the private sector. Now, after this attack, the problem of insurance has arisen. Who can insure this private process? They want to exclude the State but that's not possible, for it is not possible to dispense with some principle of apportionment that perforce implies the general interest. The third crisis is one of communication; this is a crisis linked to the circulation of meaning, whose complexity becomes dizzying and which almost seems to get lost. It's a very intriguing phenomenon, but it is likewise absolutely dramatic. The communication crisis is catastrophic. The complexity of meaning, in the context of the situation in which we find ourselves since September 11th, turns out to be so great as to make the crisis impossible to manage: some aspects of this sunder once and for all the framework of normal communication. The problem then is in terms of multiple crises. I said already that in the early 90s we were small in number and that today we are larger. There are many more people who are aware of this crisis, a crisis internal to the construction of Empire and through which we have come to these three fundamental problems: the three fissures which I just brought up. What must be emphasized is that the Americans have tried to be underhanded as regards the Palestinian question, the treaty on non-proliferation of bacteriological weapons, the ecological issues at Kyoto, the question of racism at Durban. At present they find themselves suddenly thrust into this accentuation of contradictions, into this triple crisis. Multitudes: After the events in New York, the most powerful country in the world, its imperial center, declares war on one man. What meaning do you attribute to this new rhetoric of war and its political, military and diplomatic articulations? What type of war will this one be? Does the change in the concept of sovereignty equally imply a change in that of war? Negri: The press seems to be in turmoil over one question: Who can tell us this is not a war without end? What does it mean to wage war, certainly with high tech instruments, but in the valleys and mountains of Afghanistan, where we know there is a risk of this turning into a guerilla war that will go on forever? In other words, don't we run the risk of a "vietnamisation" of the conflict? The concept of war has changed. The reaction in face of this crisis seems to fall within a strategic framework that assumes war to be a key element in management and discipline. When violence no longer has an "outside", when language is no longer a bearer of meaning, when measure cannot be found, it's clear that they must be imposed with extreme force and violence. Here we are in the middle of the problem of sovereignty. I am convinced that sovereignty, as a concept, is an utter mystification; there is no instance of sovereignty, which is not at the same time a rapport, a relationship. The concept of sovereignty, as Luciano Ferrari-Bravo rightly said, is always two-sided: it is a sort of hegemony, which paradoxically integrates something that it does not manage to subsume. It's impossible to exclude either of the two terms when dealing with the concept of the State or politics. The powers of Empire, on the other hand, are constrained to exclude; they are required to think that war is the constituent, institutional form of the new order. What this means precisely is to extol violence, measure [2], and language: make violence a standard procedure, impose measure and create linguistic signification. They want to turn sovereignty into a constituent machine. Multitudes: Empire is a "non-place". However, is a battle for this non-place possible? Is what we are living through now not this battle? How does the relationship Empire-United States -- a relationship that causes so many misunderstandings about the concept of Empire-- manifest itself in light of the New York events? How do you interpret the formation of the "Euro" within the context of this process? Negri: I cannot say of the world capitalist leadership that it is American. For those who are used to linking the rules of power back to those of exploitation, it is only in the second instance that one can, if need be, speak of people. That was still possible when there were imperialist powers. What do we mean by imperialism? It was the possibility to widen the field of exploitation out on an international scale. If today all that is finished, or partly finished or is tendentiously on the verge of finishing, it is no longer possible to speak of "American imperialism." There exists quite simply groups, elites who hold the keys of exploitation and, as a consequence, the keys to the war machine; it is these same groups who are attempting to impose themselves on the world. Naturally, this process is rife with conflict and will necessarily be so for a long time. For the moment, it is above all the North American bosses who exercise this domination. Immediately behind them are the Europeans, the Russians, and the Chinese. They are there to support them, make trouble for them, or even to take on a new position if there is a change in centrality; however any such change would remain superficial seeing as in the end, what is still, as always, at work is collective capital. From the perspective of political science, we can see who is succeeding along with the Americans. It's the Russians. On the other hand, the Europeans are losing out. Since the early 70s, every time Europe -- and I'm not talking here about the big European capitalists who always march in step with their American peers, but rather the European class of leaders-- every time Europe tries to build up, as it sometimes does, its institutions (monetary or military), it gets systematically dragged down into an international crisis.

**AT: No Impact Environment**

**Profit motive fails to solve environmental problems – increases in efficiency cause increases in consumption and economic incentives for environmental degradation are greater than for protection**

**Ehrenfeld ‘8**

(David, Dept. of Ecology, Evolution, and Natural Resources @ Rutgers University, “The Environmental Limits to Globalization”, *Conservation Biology*, Vol. 22 No. 5 2008)

Bram Buscher’s (2008) critique of the neoliberalization of conservation is right on the mark. The **reduction of** all **conservation problems to economic terms is counter-productive and dangerous. Trusting to market forces** and the laws of supply and demand **to correct inequities** and restore healthy equilibria **does not work in economics and certainly** does **not** work **in conservation**. It has been known for many years that good economics will not necessarily promote conservation. For example, Clark (1973) showed, with respect to whaling, that **taking quick profits by exploiting whales to extinction and then reinvesting** the profits **in growth industries was**, unfortunately, **economically superior to reducing** the whale harvest **to a sustainable level**. Even earlier, in 1865, William Stanley Jevons (York 2006) demonstrated that, **paradoxically, increases in the efficiency of use of a resource** often **led to increases in the consumption** of the resource. More recently, Haitao et al. (2007) have described how **turtle farming for profit** and, allegedly, for conservation, **is driving endangered species of turtles in China to extinction**. And Guo (2007) and Morell (2007) have explained why **commercial tiger farms in China are likely to have a deleterious effect on populations of wild tigers.** I discuss these and related issues at greater length in my book Becoming Good Ancestors (Ehrenfeld 2009). **Nor is the incessant harping on ecosystem services,** important as they are, **likely to bring us viable and durable conservation**. As McCauley (2006) states, “**We will make more progress** in the long run by **appealing to people’s hearts** rather **than** to their **wallets. If we oversell the message that ecosystems are important because they provide services, we will have** effectively **sold out on nature**.” Some may argue this view is naive. To the contrary, **the naive view**, as Buscher points out, **is that the neoliberal economic approach** always **leads to win–win solutions** of our most intractable problems. Effective conservation, like life itself, requires a delusion-free reconciliation of economic with moral concerns.

**Warfighting Impact – China**

**Maintaining warfighting capabilities key to deter Chinese invasion of the South China Seas**

**Glaser 12**, CSIS Freeman Chair in China Studies

(Bonnie, Pivot to Asia: Prepare for Unintended Consequences, http://csis.org/files/publication/120413\_gf\_glaser.pdf)

Under the current administration, **the pendulum in U.S. policy toward China has swung from attempting to cooperate** with China on global problems **to pushing back against Chinese assertiveness** and challenges to international laws and norms. **Getting tougher with Beijing was necessary, but** it has also **created unintended consequences** that the next administration, either a second Obama team or a Republican lineup, will have to contend with. The Obama administration’s initial policy in 2009 raised fears in many Asian capitals of a G2 condominium that would make decisions over the heads of others. Those concerns were unwarranted and short lived. Beijing interpreted the **U.S.** approach as **weakness**, which, along with China’s economic success and America’s struggles, **led to a year of Chinese hubris that manifested itself in a series of intimidating actions in China’s neighborhood**. Subsequent entreaties by regional states to counterbalance China increased U.S. attention to the Asia-Pacific region. Now**, the U.S. Asia “pivot” has prompted Chinese anxiety** about U.S. containment and heightened regional worries about intensified U.S.-China strategic competition. In the run-up to the leadership transition that will take place at China’s 18th Party Congress this fall, Beijing is inwardly focused and unlikely to act on its fears. However, **2013 could see a shift in Chinese foreign policy based on the new leadership’s judgment that it must respond** to a U.S. strategy that seeks to prevent China’s reemergence as a great power. **Signs of a potential harsh reaction are** already **detectable**. **The** U.S. Asia **pivot** has **triggered an outpouring of anti-American sentiment in China that will increase pressure on China’s** incoming **leadership to stand up to the U**nited **S**tates. **Nationalistic voices are calling for military countermeasures** to the bolstering of America’s military posture in the region and the new U.S. defense strategic guidelines. For example, an article published in China’s Global Times, a jingoistic newspaper owned by the Communist Party mouthpiece People’s Daily, called for China to strengthen its long-range strike capabilities. **Deng** Xiaoping**’s guideline to keep a low**

 **profile in the international arena**, designed more than two decades ago to cope with uncertainty produced by the collapse of the Soviet bloc**, is increasingly seen by China’s elite and public as irrelevant and** even **harmful** to the task of defending Chinese ever-expanding “core interests.” **Some** voices **are calling for closer alignment with Moscow** **and** promoting **the BRICS** grouping (Brazil, Russia, India, and China) as a new “pole” in the international arena to strengthen the emerging powers against the West. **Xi** Jinping, who will assume the helm as China’s new leader later this year, **will be under pressure** from many domestic constituencies **to** more **forcefully defend Chinese interests** in the international arena. **Seeking to quickly consolidate his power** and enhance the legitimacy of the Communist Party, Xi and **his newly installed** **Politburo** Standing Committee colleagues **may be more willing** than their predecessors **to test drive a policy that is more confrontational**. **The U.S. response to a more muscular Chinese** foreign and military **policy**, should it appear, **will have to be carefully calibrated**. **Ignoring greater Chinese assertiveness would fuel** the **belief**—already emerging in China and elsewhere— **that the U**nited **S**tates **is in** inexorable **decline**. **History shows that when great powers falter, China does not hesitate to seize the opportunity to advance its interests, especially in the S**outh **C**hina **S**ea. As American forces withdrew from Vietnam in the mid-1970s, the Chinese grabbed the Paracel Islands from Saigon. Similarly, when the Soviet Union withdrew from Vietnam’s Cam Ranh Bay and the United States terminated its base agreement with the Philippines, China quietly occupied Mischief Reef to the dismay of Manila. Yet a hostile and overbearing U.S. response would confirm Chinese suspicions that the United States seeks to contain its rise, which could cement the emergence of a U.S.-China Cold War. In addition, it would further alarm regional states who seek at all costs to avoid having to choose between the United States and China. **U.S. policy will need to combine firmness with subtlety**. A strategy will need to be shaped that protects regional stability and reassures China’s neighbors, but also avoids greater U.S.- China strategic competition and the classic security dilemma, wherein each side believes that growing capabilities reflect hostile intent and responds by producing that reality. **Sustained attention and commitment** of sufficient resources to the Asia- Pacific region **will be key to assuaging the doubts of regional friends and allies about U.S. staying power**. **The U**nited **S**tates also **will need to maintain** the **military capabilities necessary to deter Chinese aggression**.

**Exec Power Good – Warfighting**

**Unfettered executive war power key to effective warfighting**

**Tabo 9/12**, Center for Legal Pedagogy at Texas Southern University

(13, Tamara, Obama’s Right To Be Wrong: Presidential Power And Military Action, abovethelaw.com/2013/09/obamas-right-to-be-wrong-presidential-power-and-military-action/

**When the framers drafted the Constitution, they rejected the diffuse power structure of the Articles of Confederation and took steps to consolidate authority. This**, in part, **recognized the need for a nimble executive who could act quickly and decisively in ways that neither Congress nor state governments could. Nowhere is this executive power so vital as military involvement in foreign affairs**. Moreover, the framers of the Constitution likely appreciated the difference between “declaring war” and engaging in military hostilities. In the 17th and 18th centuries, declarations of war served primarily as formal statements about the diplomatic relationship between nations, not as indications of whether boots were on the ground or swords were drawn. There’s good historical reason to think that, though Alexander Hamilton and his ilk were wary of too much power vested in a monarch, **they acknowledged the need for a strong commander-in-chief capable of directing military action without first seeking a Congressional declaration of war.**

**A weak executive is the greatest threat to US leadership - only strong presidential power will hedge against inconsistent tendencies of Congress**

**Mallaby 2k**

(Sebastian, Member of the Washington Post's Editorial Board, Foreign Affairs, January/February, lexis)

Finally, some will object that the weakness of the presidency as an institution is not the main explanation for the inadequacies of American diplomacy, even if it is a secondary one. The ad hominem school of thought argues instead that Bill Clinton and his advisers have simply been incompetent. Others make various sociological claims that isolationism or multiculturalism lies at the root of America's diplomatic troubles. All of these arguments may have merit. But **the evidence** cited by both camps **can be better explained by the structural weakness of the presidency.** Take, for example, one celebrated error: President Clinton's declaration at the start of the Kosovo war that the Serbs need not fear NATO ground troops. This announcement almost certainly cost lives by encouraging the Serbs to believe that America was not serious about stopping ethnic cleansing. The ad hominem school sees in this example proof of Clinton's incompetence; the sociological school sees in it proof of isolationist pressure, which made the option of ground troops untenable. But a third explanation, offered privately by a top architect of the Kosovo policy, is more plausible. According to this official, **the president knew that pundits and Congress would criticize whichever policy he chose.** Clinton therefore preemptively took ground troops off the table, aware that his critics would then urge him on to a ground war -- and also aware that these urgings would convince Belgrade that Washington's resolve would stiffen with time, rather than weaken. **The president's stand against ground troops was** therefore **the** logical, tactical **move of a leader feeling vulnerable to his critics.** Other **failings of American diplomacy can likewise be accounted for by the advent of the nonexecutive presidency.** Several commentators, notably Samuel Huntington and Garry Wills in these pages, have attacked the arrogance of America's presumption to offer moral leadership to the world. But **American leaders** resort to moral rhetoric largely out of weakness. They **fear** that **their policy will be blocked** unless they generate moral momentum powerful enough to overcome domestic opponents. Likewise, **critics point to the hypocrisy of the United States** on the world stage. America seeks U.N. endorsement when convenient but is slow to pay its U.N. dues; America practices legal abortion at home but denies funds to organizations that do the same abroad. Again, **this hypocrisy has everything to do with the weak executive. The president has a favored policy but is powerless to make Congress follow it.** Still other critics decry American diplomacy as a rag-bag of narrow agendas: Boeing lobbies for China trade while Cuban-Americans demand sanctions on Cuba. Here, too, presidential power is the issue. A strong presidency might see to it that America pursues its broader national interest, but a weak one cannot. This is why Clinton signed the Helms-Burton sanctions on Cuba even though he knew that these would do disproportionate harm to U.S. relations with Canada and Europe. What if America's nonexecutive presidency is indeed at the root of its diplomatic inadequacy? First, it follows that it is too optimistic to blame America's foreign policy drift on the weak character of the current president. The institution of the presidency itself is weak, and we would be unwise to assume that a President Gore or Bradley or Bush will perform much better. But it also follows that it is too pessimistic to blame America's foreign policy drift on cultural forces that nobody can change, such as isolationism or multiculturalism. We are dealing with an institutional problem, so it will take institutional reform to improve matters. **America must explore ways of arresting the erosion of executive power, by streamlining the confirmation process**, by reversing the Supreme Court's Clinton v. Jones decision in order to limit the executive's vulnerability to legal assault, **and** by **avoiding legislated** mandates in **foreign policy. Since the republic's founding, Americans have been suspicious of concentrated power. This suspicion has now gone too far. There are worse things to fear than a powerful president -- such as a country or a world adrift. This big nation and the small world it inhabits desperately need a strong chief executive to guide them.**

**Syria**

**Obama’s Syria move increased Presidential war powers because it maintained ultimate control with the executive**

**Balkin 9/3, Law Prof at Yale**

(Jack, What Congressional Approval Won't Do: Trim Obama's Power or Make War Legal, www.theatlantic.com/politics/archive/2013/09/what-congressional-approval-wont-do-trim-obamas-power-or-make-war-legal/279298/)

**One of the most misleading metaphors in the discussion of President Obama’s Syria policy is that the president has “boxed himself in” or has “painted himself into a corner.” These metaphors treat a president’s available actions as if they were physical spaces and limits on action as if they were physical walls. Such metaphors would make sense only if we also stipulated that Obama has the power to snap his fingers and create a door or window wherever he likes. The Syria crisis has not created a new precedent for limiting presidential power. To the contrary, it has offered multiple opportunities for increasing it. If Congress says no to Obama, it will not significantly restrain future presidents from using military force. At best, it will preserve current understandings about presidential power. If Congress says yes, it may bestow significant new powers on future presidents** -- and it will also commit the United States to violating international law. For Obama plans to violate the United Nations Charter, and he wants Congress to give him its blessing. **People who believe Obama has painted himself into a corner or boxed himself in might not remember that the president always has the option to ask Congress to authorize any military action he proposes**, thus sharing the responsibility for decision if the enterprise goes sour. If Congress refuses, Obama can easily back away from any threats he has made against Syria, pointing to the fact that Congress would not go along. There is no corner. There is no box. Wouldn’t congressional refusal make the United States look weak, as critics including Senator John McCain warn loudly? Hardly. The next dictator who acts rashly will face a different situation and a different calculus. The UN Security Council or NATO may feel differently about the need to act. There may be a new threat to American interests that lets Obama or the next president offer a different justification for acting. It just won’t matter very much what Obama said about red lines in the past. World leaders say provocative things all the time and then ignore them. Their motto is: That was then, and this is now. If Congress turns him down, won’t Obama be undermined at home, as other critics claim? In what sense? It is hard to see how the Republicans could be less cooperative than they already are. And it’s not in the interest of Democrats to fault a president of their own party for acceding to what Congress wants instead of acting unilaterally. **Some commentators argue** (or hope) t**hat whatever happens, Obama’s request for military authorization will be an important precedent that will begin to restore the constitutional balance between the president and Congress in the area of war powers. Don’t bet on it. By asking for congressional authorization in this case, Obama has not ceded any authority that he ­or any other president ­has previously asserted in war powers.** Syria presents a case in which previous precedents did not apply. There is no direct threat to American security, American personnel, or American interests. There is no Security Council resolution to enforce. And there is no claim that America needs to shore up the credibility of NATO or another important security alliance. Nor does Obama have even the feeble justification that the Clinton Administration offered in Kosovo­: that congressional appropriations midway through the operation offered tacit and retroactive approval for the bombings. **It is naive to think that the next time a president wants to send forces abroad without congressional approval, he or she will be deterred by the fact that Barack Obama once sought congressional permission to bomb Syria**. If a president can plausibly assert that any of the previous justifications apply -- ­including those offered in the Libya intervention -- the case of Syria is easily distinguishable.

**2NC Congress Spillover Block (With XO)**

**1.) Institutional memory – the plan embeds normative categories**

**Paul 2008** - Senior Social Scientist; Professor, Pardee RAND Graduate School Pittsburgh Office Education Ph.D., M.A., and B.A. in sociology, University of California, Los Angeles (September,Christopher, “US Presidential War Powers: Legacy Chains in Military Intervention Decisionmaking\* ,” Journal of Peace Research, Vol. 45, No. 5 (Sep., 2008), pp. 665-679)

The Institutional Context 'Institution' is used quite inclusively in this article. Following Nee & Ingram (1998: 19), 'An institution is a web of interrelated norms ? formal and informal ? governing social relationships' (emphasis in original).**For military intervention decisions,** these **institutions include** not only the formal organizations and departments of the gov ernment, but also **the basic building blocks of the policy formation process: the laws gov erning who participates** in the policy process **and** the **procedures** that must be followed. **More subtle factors** in policy formation **are also institutionalized: the relationships between different policy participants** (for ex ample, the congress and the White House, or the press and the military), **taken for granted normative categories such as isolationism vs. interventionism, and the range of policies that are considered 'legitimate' by the elec torate and by other nations**. **The preferences, capabilities, and basic self-identities of indi viduals are conditioned by these institutional structures; if these individuals are part of the policymaking process, they can affect policy** (Haney, 1997: 17). **All actors are constrained by existing political institutions** (Mann, 1993: 52). **These institutions create and constitute the context** (writ large) **in which policy is made**. The changes in the institutional contexts that constitute policy legacies tend to be of two different types. **The first type of institutional legacy is a formal change in rules,** structure, organization, or procedure. **The second type is** an **informal** institutional change, perhaps a change in the broad taken-for-granted logics that inform decision making. **This could include changes in** institu tionalized **preferences, perceptions, informal rules,** and 'schemas' (Sewell, 1992: 1-29). The most important difference between the two has to do with how the legacy comes about. Changes in taken-for-granted logics and schemas involve subtle shifts in perceptions based on demonstrated challenges to previously held assumptions or beliefs. These changes may or may not be undertaken consciously and reflexively, but they are certainly not something that is discussed and decided on; rather, they are a product of collective logic, sense, and unspoken consensus. For example, prior to President Truman's commitment of US forces to combat in Korea without congressional permission or a declaration of war, the division of powers laid down in the Constitution was assumed to be a sufficient protection of the various branches of the government s prerogatives with regarding to war-making. After Korea, such protections were less taken for granted and more contested, ultimately resulting in a formal institutional change: the War Powers Resolution of 1973. Such **formal organizational institutional legacies, on the other hand, are the product of active decisionmaking and are codified** in rule or law. As the product of a decision making process, **these are 'intended' changes, and, if the language formalizing the change is not precisely aligned with its intentions, unintended institutional consequences can result**. A case in point: **the War Powers Re solution has not so much retilted the balance of power over war-making** toward congress **as placed artificial institutional constraints** (time limits, reporting requirements) **on how presidents plan and launch military interventions**.

**2.) Precedential effect – the plan requires reframing constitutional separations of power**

**Heder 2010** - magna cum laude , J. Reuben Clark Law School, Brigham Young University(Adam, J.D., “THE POWER TO END WAR: THE EXTENT AND LIMITS OF CONGRESSIONAL POWER,” St. Mary’s Law Journal Vol. 41 No. 3, http://www.stmaryslawjournal.org/pdfs/Hederreadytogo.pdf)

This constitutional silence invokes Justice Rehnquist’s oftquoted language from the landmark “political question” case, Goldwater v. Carter . 121 In Goldwater , a group of senators challenged President Carter’s termination, without Senate approval, of the United States ’ Mutual Defense Treaty with Taiwan. 122 A plurality of the Court held, 123 in an opinion authored by Justice Rehnquist, that this was a nonjusticiable political question. 124 He wrote: “In light of the absence of any constitutional provision governing the termination of a treaty, . . . the instant case in my view also ‘must surely be controlled by political standards.’” 125 Notably, Justice Rehnquist relied on the fact that there was no constitutional provision on point. Likewise, **there is no constitutional provision on whether Congress has the legislative power to limit, end, or otherwise redefine the scope of a war**. Though Justice Powell argues in Goldwater that the Treaty Clause and Article VI of the Constitution “add support to the view that the text of the Constitution does not unquestionably commit the power to terminate treaties to the President alone,” 126 the same cannot be said about Congress’s legislative authority to terminate or limit a war in a way that goes beyond its explicitly enumerated powers. There are no such similar provisions that would suggest Congress may decline to exercise its appropriation power but nonetheless legally order the President to cease all military operations. Thus, the case for deference to the political branches on this issue is even greater than it was in the Goldwater context. Finally, **the Constitution does not imply any additional powers for Congress to end, limit, or redefine a war**. The textual and historical evidence suggests **the Framers purposefully declined to grant Congress such powers.** And as this Article argues, **granting Congress this power would be inconsistent with the general war powers structure of the Constitution**. **Such a reading of the Constitution would unnecessarily empower Congress and tilt the scales heavily in its favor**. More over, **it would strip the President of his Commander in Chief authority to direct the movement of troops** at a time when the Executive’s expertise is needed. 127 And fears that the President will grow too powerful are unfounded, given the reasons noted above. 128 In short, the Constitution does not impliedly afford Congress any authority to prematurely terminate a war above what it explicitly grants. 129 Declaring these issues nonjusticiable political questions would be the most practical means of balancing the textual and historical demands, the structural demands, and the practical demands that complex modern warfare brings . Adjudicating these matters would only lead the courts to engage in impermissible line drawing — lines that would both confus e the issue and add layers to the text of the Constitution in an area where the Framers themselves declined to give such guidance.

**That independently collapses hegemony**

**Bolton 2009** - Senior fellow at the American Enterprise Institute & Former U.S. ambassador to the United Nations (October 18, John R., “The danger of Obama's dithering,” Los Angeles Times, <http://articles.latimes.com/2009/oct/18/opinion/oe-bolton18>)

**Weakness in American foreign policy** in one region often **invites challenges elsewhere, because our adversaries carefully follow diminished American resolve**. Similarly, **presidential indecisiveness**, whether because of uncertainty or internal political struggles, **signals that the United States may not respond to international challenges in clear and coherent ways. Taken together, weakness and indecisiveness have proved** historically **to be a toxic combination for America's global interests.** That is exactly the combination we now see under President Obama. If anything, his receiving the Nobel Peace Prize only underlines the problem. All of Obama's campaign and inaugural talk about "extending an open hand" and "engagement," especially the multilateral variety, isn't exactly unfolding according to plan. Entirely predictably, we see more clearly every day that **diplomacy is not a policy but only a technique. Absent presidential leadership**, which at a minimum means clear policy direction and persistence in the face of criticism and adversity, **engagement simply embodies weakness and indecision**.

**AT: Waxman**

**The link turns case – drives states to secrecy**

Geoffrey **Corn 13**, Professor of Law and Presidential Research Professor, South Texas College of Law, 2013, “Geography of Armed Conflict: Why it is a Mistake to Fish for the Red Herring,” International Legal Studies, 89 INT’L L. STUD. 77 (2013)

\*\*NOTE: “Sub rosa” denotes secrecy or confidentiality – Wikipedia

**The law of conflict regulation is** arguably **at a critical crossroads. If threat drives strategy**, and strategy drives the existence of armed conflict, **the concept of TAC seems an unavoidable reality** in the modern strategic environment. **Opponents of TAC will continue to argue for limiting armed conflict to the well–accepted** inter–State or intra–State **hostilities** frame-works, **but this would only drive States to adopt sub rosa uses of the same type of power** **under the guise of legal fictions. Concepts such as self–defense targeting, or internationalized law enforcement, might avoid the armed conflict characterization**, but **they would do little to resolve the un-derlying uncertainties associated with TAC**. Even worse, **they would inject regulatory uncertainty into the planning and execution of military counter-terror operations**, **a**

**nd expose those called upon to put themselves in harm’s way to protect the State to legal liabilities based on inapposite legal norms**.

**Restricting to geographic areas emboldens terrorists**

Geoffrey **Corn 13**, Professor of Law and Presidential Research Professor, South Texas College of Law, 5/16/13, Statement before the Senate Armed Services Committee, CQ Congressional Testimony, lexis

3. What is the geographic scope of the AUMF and under what circumstances may the United States attack belligerent targets in the territory of another country?

In my opinion, **there is no need to amend the AUMF to define the geographic scope** of military operations it authorizes. On the contrary, I believe **doing so would fundamentally undermine the efficacy of U.S. counter-terror military operations by** overtly **signaling** to the enemy **exactly where to pursue safe-haven and** de facto **immunity from** the reach of **U.S. power**. This concern is similar to that associated with explicitly defining co- belligerents subject to the AUMF, although I believe it is substantially more significant. It is an operational and tactical axiom that insurgent and non-state threats rarely seek the proverbial "toe to toe" confrontation with clearly superior military forces. Al Qaeda is no different. Indeed, their attempts to engage in such tactics in the initial phases of Operation Enduring Freedom proved disastrous, and ostensibly caused the dispersion of operational capabilities that then necessitated the co-belligerent assessment. **Imposing an arbitrary geographic limitation of the scope of military operations against this threat would therefore be inconsistent with the strategic objective of preventing future terrorist attacks** **against the United States**.

I believe much of the momentum for asserting some arbitrary geographic limitation on the scope of operations conducted to disrupt or disable al Qaeda belligerent capabilities is the result of the commonly used term "hot battlefield." This notion of a "hot" battlefield is, in my opinion, an operational and legal fiction. **Nothing in the law of armed conflict or military doctrine defines the meaning of "battlefield.**" Contrary to the erroneous assertions that the use of combat power is restricted to defined geographic locations such as Afghanistan (and previously Iraq), **the geographic scope of armed conflict must be dictated by a totality assessment of a variety of factors**, ultimately **driven by the strategic end state the nation seeks to achieve**. The nature and dynamics of the threat -including key vulnerabilities - is a vital factor in this analysis. These threat dynamics properly influence the assessment of enemy capabilities and vulnerabilities, which in turn drive the formulation of national strategy, which includes determining when, where, and how to leverage national power (including military power) to achieve desired operational effects. Thus, threat dynamics, and not some geographic "box", have historically driven and must continue to drive the scope of armed hostilities. The logic of this premise is validated by (in my opinion) the inability to identify an armed conflict in modern history where the scope of operations was legally restricted by a conception of a "hot" battlefield. Instead, threat dynamics coupled with policy, diplomatic considerations and, in certain armed conflicts the international law of neutrality, dictate such scope. Ultimately, battlefields become "hot" when persons, places, or things assessed as lawful military objectives pursuant to the law of armed conflict are subjected to attack.

**The plan spills over to jack training**

Geoffrey **Corn 10**, Professor of Law and Presidential Research Professor, South Texas College of Law, 2010, “Mixing Apples and Hand Grenades: The Logical Limit of Applying Human Rights Norms to Armed Conﬂict,” International Humanitarian Legal Studies 1 (2010) 52–94

Furthermore, while it might be tempting to assume that shifting from one use of force paradigm to another is a simple task, those familiar with the relationship between training and operational eﬀectiveness know this is a highly complex process. As a result, **eﬀective training must be mission driven**, which means that **preparation for armed conﬂict must focus primarily on developing a warrior ethos derived from the armed conﬂict use of force paradigm: deadly force as a measure of ﬁrst resort**. 134 Therefore, **soldiers are trained to employ deadly force against such targets, irrespective of the conduct they encounter.** Furthermore, based on the relative clarity provided by the rule of military objective pursuant to which operational opponents are subject to attack with maximum lethality and all other individuals are the object of protection, **it is the minimization of the harmful eﬀects of lawful targeting of military objectives that is the focus or proportionality analysis**.