### Terror

#### AQAP still strong

Roggio 13 (BILL ROGGIO, Senior Fellow at the Foundation for the Defense of Democracies, Hoover Institute Media Fellow, served as a signalman and infantryman in the US Army, Threat Matrix, September 30, 2013, “AQAP fighters storm Yemen Army base in east,” http://www.longwarjournal.org/threat-matrix/archives/2013/09/aqap\_fighters\_storm\_yemen\_army.php#ixzz2pdB2MIv2 //nimo)

Despite losing control of major cities in Abyan and Shabwa province, AQAP is still strong in rural areas of Yemen and is more than capable of both attacking the Yemeni military and plotting against the West. Communications earlier this year between al Qaeda emir Ayman al Zawahiri and Wuhayshi led the US to shut down more than 20 diplomatic facilities across Africa, the Middle East, and Asia.

### Norms

#### Norm setting is effective---US can make the difference on drones

Micah Zenko 13, CFR Douglas Dillon Fellow in the Center for Preventive Action, PhD in Political Science from Brandeis University, “Reforming U.S. Drone Strike Policies,” CFR Special Report 65, January 2013

History shows that how states adopt and use new military capabilities is often influenced by how other states have—or have not—used them in the past. Furthermore, norms can deter states from acquiring new technologies.72 Norms—sometimes but not always codified as legal regimes—have dissuaded states from deploying blinding lasers and landmines, as well as chemical, biological, and nuclear weapons. A well-articulated and internationally supported normative framework, bolstered by a strong U.S. example, can shape armed drone proliferation and employment in the coming decades. Such norms would not hinder U.S. freedom of action; rather, they would internationalize already-necessary domestic policy reforms and, of course, they would be acceptable only insofar as the limitations placed reciprocally on U.S. drones furthered U.S. objectives. And even if hostile states do not accept norms regulating drone use, the existence of an international normative framework, and U.S. compliance with that framework, would preserve Washington’s ability to apply diplomatic pressure. Models for developing such a framework would be based in existing international laws that emphasize the principles of necessity, proportionality, and distinction—to which the United States claims to adhere for its drone strikes—and should be informed by comparable efforts in the realms of cyber and space.¶ In short, a world characterized by the proliferation of armed drones—used with little transparency or constraint—would undermine core U.S. interests, such as preventing armed conflict, promoting human rights, and strengthening international legal regimes. It would be a world in which targeted killings occur with impunity against anyone deemed an “enemy” by states or nonstate actors, without accountability for legal justification, civilian casualties, and proportionality. Perhaps more troubling, it would be a world where such lethal force no longer heeds the borders of sovereign states. Because of drones’ inherent advantages over other weapons platforms, states and nonstate actors would be much more likely to use lethal force against the United States and its allies.

#### High risk of Armenia-Azerbaijan war – miscalc likely

Clapper 13 (James R. Clapper, Director of National Intelligence, March 12, 2013, “Worldwide Threat Assessment¶ of the¶ US Intelligence Community,” http://www2.gwu.edu/~nsarchiv/NSAEBB/NSAEBB424/docs/Cyber-090.pdf //nimo)

The standoff between¶ Armenia¶ and¶ Azerbaijan¶ over the Armenian-occupied Nagorno-Karabakh¶ region remains a potential flashpoint. Heightened rhetoric, distrust on both sides, and recurring violence¶ along the Line of Contact increase the risk of miscalculations that could escalate the situation with little¶ warning.

### Solvency

#### President believes he is constrained by statute

Saikrishna Prakash 12**,** professor of law at the University of Virginia and Michael Ramsey, professor of law at San Diego, “The Goldilocks Executive” Feb, SSRN

We accept that the President’s lawyers search for legal arguments to justify presidential action, that they find the President’s policy preferences legal more often than they do not, and that the President sometimes disregards their conclusions. But the close attention the Executive pays to legal constraints suggests that the President (who, after all, is in a good position to know) believes himself constrained by law. Perhaps Posner and Vermeule believe that the President is mistaken. But we think, to the contrary, it represents the President’s recognition of the various constraints we have listed, and his appreciation that attempting to operate outside the bounds of law would trigger censure from Congress, courts, and the public.

### 2AC – T

#### 1. We meet---we prohibit the President’s ability to act without judicial review

John C. Eastman 6, Prof of Law at Chapman University, PhD in Government from the Claremont Graduate University, served as the Director of Congressional & Public Affairs at the United States Commission on Civil Rights during the Reagan administration, “Be Very Wary of Restricting President's Power,” Feb 21 2006, http://www.claremont.org/publications/pubid.467/pub\_detail.asp]

Prof. Epstein challenges the president's claim of inherent power by noting that the word "power" does not appear in the Commander in Chief clause, but the word "command," fairly implied in the noun "Commander," is a more-than-adequate substitute for "power." Was it really necessary for the drafters of the Constitution to say that the president shall have the power to command? Moreover, Prof. Epstein ignores completely the first clause of Article II -- the Vesting clause, which provides quite clearly that "The executive Power shall be vested in a President." The relevant inquiry is whether those who ratified the Constitution understood these powers to include interception of enemy communications in time of war without the permission of a judge, and on this there is really no doubt; they clearly did, which means that Congress cannot restrict the president's authority by mere statute.¶ Prof. Epstein's own description of the Commander in Chief clause recognizes this. One of the "critical functions" performed by the clause, he notes, is that "Congress cannot circumvent the president's position as commander in chief by assigning any of his responsibilities to anyone else." Yet FISA does precisely that, assigning to the FISA court a core command authority, namely, the ability to authorize interception of enemy communications. This authority has been exercised by every wartime president since George Washington.

#### 2. Restriction is limitation, NOT prohibition

CAC 12,COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT, COUNTY OF LOS ANGELES, Plaintiff and Respondent, v. ALTERNATIVE MEDICINAL CANNABIS COLLECTIVE et al., Defendants and Appellants, DIVISION ONE, 207 Cal. App. 4th 601; 143 Cal. Rptr. 3d 716; 2012 Cal. App. LEXIS 772

We disagree with County that in using the phrases “further restrict the location or establishment” and “regulate the location or establishment” in [\*615] section 11362.768, subdivisions (f) and (g), the Legislature intended to authorize local governments to ban all medical marijuana dispensaries that are otherwise “authorized by law to possess, cultivate, or distribute medical marijuana” (§ 11362.768, subd. (e) [stating scope of section's application]); the Legislature did not use the words “ban” or “prohibit.” Yet County cites dictionary definitions of “regulate” (to govern or direct according to rule or law); “regulation” (controlling by rule or restriction; a rule or order that has legal force); “restriction” (a limitation or qualification, including on the use of property); “establishment” (the act of establishing or state or condition of being established); “ban” (to prohibit); and “prohibit” (to forbid by law; to prevent or hinder) to attempt to support its interpretation. County then concludes that “the ordinary meaning [\*\*\*23] of the terms, ‘restriction,’ ‘regulate,’ and ‘regulation’ are consistent with a ban or prohibition against the opening or starting up or continued operation of [a medical marijuana dispensary] storefront business.” We disagree.¶CA(9)(9) The ordinary meanings of “restrict” and “regulate” suggest a degree of control or restriction falling short of “banning,” “prohibiting,” “forbidding,” or “preventing.” Had the Legislature intended to include an outright ban or prohibition among the local regulatory powers authorized in section 11362.768, subdivisions (f) and (g), it would have said so. Attributing the usual and ordinary meanings to the words used in section 11362.768, subdivisions (f) and (g), construing the words in context, attempting to harmonize subdivisions (f) and (g) with section 11362.775 and with the purpose of California's medical marijuana [\*\*727] statutory program, and bearing in mind the intent of the electorate and the Legislature in enacting the CUA and the MMP, we conclude that HN21Go to this Headnote in the case.the phrases “further restrict the location or establishment” and “regulate the location or establishment” in section 11362.768, subdivisions (f) and (g) do not authorize a per se ban at the local level. The Legislature [\*\*\*24] decided in section 11362.775 to insulate medical marijuana collectives and cooperatives from nuisance prosecution “solely on the basis” that they engage in a dispensary function. To interpret the phrases “further restrict the location or establishment” and “regulate the location or establishment” to mean that local governments may impose a blanket nuisance prohibition against dispensaries would frustrate both the Legislature's intent to “[e]nhance the access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects” and “[p]romote uniform and consistent application of the [CUA] among the counties within the state” and the electorate's intent to “ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes” and “encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana.”

#### 3. Authority is what the president may do not what the president can do – their def has no intent to define

Ellen Taylor 96, 21 Del. J. Corp. L. 870 (1996), Hein Online

The term authority is commonly thought of in the context of the law of agency, and the Restatement (Second) of Agency defines both power and authority.'89 Power refers to an agent's ability or capacity to produce a change in a legal relation (whether or not the principal approves of the change), and authority refers to the power given (permission granted) to the agent by the principal to affect the legal relations of the principal; the distinction is between what the agent can do and what the agent may do.

#### 4. Prefer it

#### SB B) Aff ground---only process-based affs can beat the executive CP and ex ante review is illegal

Bloomberg 13, Bloomberg Editorial Board, Feb 18 2013, “Why a ‘Drone Court’ Won’t Work,” http://www.bloomberg.com/news/2013-02-18/why-a-drone-court-won-t-work.html

As for the balance of powers, that is where we dive into constitutional hot water. Constitutional scholars agree that the president is sworn to use his “defensive power” to protect the U.S. and its citizens from any serious threat, and nothing in the Constitution gives Congress or the judiciary a right to stay his hand. It also presents a slippery slope: If a judge can call off a drone strike, can he also nix a raid such as the one that killed Osama bin Laden? If the other branches want to scrutinize the president’s national security decisions in this way, they can only do so retrospectively.

### 2AC – Law

#### 3. Six specific external factors restrain president from circumvention in the squo

Pildes 12 (Richard H. Pildes, Sudler Family Professor of Constitutional Law, NYU School of Law, “Book Reviews Law And The President,” Harvard Law Review [Vol. 125:1381] 2012, //nimo)

III. THE INCOMPLETE CONSEQUENTIALIST THEORY¶ FOR THE ROLE OF LAW¶ For these reasons, I want to move beyond empirical issues and en- gage Posner and Vermeule on their own terms, and at a deeper, more theoretical, and general level. Posner and Vermeule see presidents as Holmesians, not Hartians.69 Yet even if we enter their purely conse- quentialist world, in which presidents follow the law not out of any normative obligation or the more specific duty to faithfully execute the laws but only when the cost-benefit metric of compliance is more fa- vorable than that of noncompliance, powerful reasons suggest that presidents will comply with law far more often than Posner and Vermeule imply. And analysis of those reasons might also point us to understanding better the contexts in which presidents are less likely to comply (either by invoking disingenuous or wholly unpersuasive legal interpretations or by defying the law outright).¶ The Posner and Vermeule approach is characteristic of a general approach to assessing public institutions and the behavior of judges, legislators, presidents, and other public officials that has emerged re- cently within legal scholarship. Under the influence of rational-choice theory and empirical social science from other disciplines, such as po- litical science and economics, some public law scholarship has shifted to trying to predict and understand the behavior of public officials wholly in terms of the material incentives to which they are posited to respond. These incentives include the power of effective sanctions other actors can impose on public officials who deviate from those ac- tors’ preferred positions. In this general rational-choice approach, considerations of morality or duty internal to the legal system do not motivate public actors. Indeed, in the case of Posner and Vermeule’s book, that is more the working assumption of the approach than a fact that the theories actually prove. Public officials do not follow the law out of any felt normative sense of official or moral obligation. In what they view as hard-headed realism, scholars like Posner and Vermeule believe a more external perspective is required to understand presiden- tial behavior. All that matters, from this vantage point, are the conse- quences that will or will not flow from compliance or defiance and manipulation of the law. If other actors, including Congress, thecourts, or “the public” (whatever that might mean, precisely) will ac- cept an action, the President will be able to do it; if not, his credibility and power will be undermined. It is that externally oriented cost- benefit calculation — not the law and not any internal sense of obliga- tion to obey the law — that determines how presidents act in fact. Thus, “politics,” not “law,” determines how much discretion presidents actually have.¶ This approach to presidential power finds its analog in the way a number of constitutional law scholars have come to portray the behav- ior of the Supreme Court. These scholars, such as Professors Michael Klarman,70 Barry Friedman,71 Jack Balkin,72 and others, have asserted various versions of what I call the “majoritarian thesis”73: the claim that Court decisions are constrained to reflect the policy preferences of national political majorities (or national political elite majorities), ra- ther than the outcomes that good-faith internal elaboration of legal doctrine would compel based on normative considerations about ap- propriate methods of legal reasoning and interpretation. In some ver- sions of the majoritarian thesis, these potential external sanctions im- pose outer boundaries on the degrees of freedom the Court has; within those boundaries, the Court remains free to act on its own considera- tions, including perhaps purely legal ones as viewed from an internal perspective. In other versions, the Court is cast as almost mirroring the preferences of national political majorities. Here, too, the behavior of the Court is seen as based less on internal, legal considerations and more on the anticipated external reactions to decisions.¶ At an even broader theoretical level, Professor Daryl Levinson has employed the same kind of purely consequentialist framework to ana- lyze what he calls the “puzzle” of the stability and effectiveness in general of constitutional law.74 Constitutional law decisions often frus-trate the preferences of political majorities. As Levinson puts it, the question of why those majorities do or should ever abide by such deci- sions is much like the question of why presidents do or should abide by law. For Levinson, as for Posner and Vermeule, legal compliance, to the extent that it occurs, cannot be explained by more traditional accounts of the normative force of law or by the sense that courts are politically legitimate institutions whose authority ought to be accepted for that reason. Instead, the explanation must lie in considerations ex- ternal to the legal system, such as the material incentives other actors have to obey, or ignore, Court decisions. Levinson then catalogues an array of material incentives political majorities confront in deciding whether to follow Court decisions whose outcomes they dislike; the re- sulting cost-benefit calculations end up making compliance with Court decisions usually the “rational” course of action even for disappointed political majorities (at least in well-functioning constitutional sys- tems).75 Thus, the rational-choice and normative views end up con- verging in practice. And presumably, most actors do not actually run through these consequentialist calculations in deciding whether to obey particular Court decisions. Instead, these calculations lie deep beneath the surface of much larger systems of education, socialization, public discourse, and the like; most individuals, including public officials, comply with Court decisions unreflectively, because it is the “right” thing to do. But the rational-choice framework leaves open the possi- bility that, at any given moment, the actors the Court’s decision lim- its — the President, Congress, state legislatures, or others — could mobilize the underlying cost-benefit calculations that otherwise lie la- tent and conclude that, this time around, refusal to abide by the law is the more “rational” course.¶ But as Levinson’s work helps to show, even on its own terms, Pos- ner and Vermeule’s approach offers an incomplete account of the role of law. Levinson’s work, for example, is devoted to showing why con- stitutional law will be followed, even by disappointed political majori- ties, for purely instrumental reasons, even if those majorities do not experience any internal sense of duty to obey. He identifies at least six rational-choice mechanisms that will lead rational actors to adhere to constitutional law decisions of the Supreme Court: coordination, repu- tation, repeat-play, reciprocity, asset-specific investment, and positive political feedback mechanisms.76 No obvious reason exists to explain why all or some of these mechanisms would fail to lead presidents sim- ilarly to calculate that compliance with the law is usually important to a range of important presidential objectives. At the very least, for ex- ample, the executive branch is an enormous organization, and for in- ternal organizational efficacy, as well as effective cooperation with other parts of the government, law serves an essential coordination function that presidents and their advisors typically have an interest in respecting. There is a reason executive branch departments are staffed with hundreds of lawyers: while Posner and Vermeule might cynically speculate that the reason is to figure out how to circumvent the law artfully, the truth, surely, is that law enables these institutions to func- tion effectively, both internally and in conjunction with other institu- tions, and that lawyers are there to facilitate that role. In contrast to Posner and Vermeule, who argue that law does not constrain, and who then search for substitute constraints, scholars like Levinson establish that rational-choice theory helps explain why law does constrain. In- deed, as Posner and Vermeule surely know, there is a significant litera- ture within the rational-choice framework that explains why powerful political actors would agree to accept and sustain legal constraints on their power, including the institution of judicial review.77

#### 5. Legal reforms restrain the cycle of violence and prevent error replication

Colm O’Cinneide 8, Senior Lecturer in Law at University College London, “Strapped to the Mast: The Siren Song of Dreadful Necessity, the United Kingdom Human Rights Act and the Terrorist Threat,” Ch 15 in Fresh Perspectives on the ‘War on Terror,’ ed. Miriam Gani and Penelope Mathew, <http://epress.anu.edu.au/war_terror/mobile_devices/ch15s07.html>

This ‘symbiotic’ relationship between counter-terrorism measures and political violence, and the apparently inevitable negative impact of the use of emergency powers upon ‘target’ communities, would indicate that it makes sense to be very cautious in the use of such powers. However, the impact on individuals and ‘target’ communities can be too easily disregarded when set against the apparent demands of the greater good. Justice Jackson’s famous quote in Terminiello v Chicago [111] that the United States Bill of Rights should not be turned into a ‘suicide pact’ has considerable resonance in times of crisis, and often is used as a catch-all response to the ‘bleatings’ of civil libertarians.[112] The structural factors discussed above that appear to drive the response of successive UK governments to terrorist acts seem to invariably result in a depressing repetition of mistakes.¶ However, certain legal processes appear to have some capacity to slow down the excesses of the counter-terrorism cycle. What is becoming apparent in the UK context since 9/11 is that there are factors at play this time round that were not in play in the early years of the Northern Irish crisis. A series of parliamentary, judicial and transnational mechanisms are now in place that appear to have some moderate ‘dampening’ effect on the application of emergency powers.¶ This phrase ‘dampening’ is borrowed from Campbell and Connolly, who have recently suggested that law can play a ‘dampening’ role on the progression of the counter-terrorism cycle before it reaches its end. Legal processes can provide an avenue of political opportunity and mobilisation in their own right, whereby the ‘relatively autonomous’ framework of a legal system can be used to moderate the impact of the cycle of repression and backlash. They also suggest that this ‘dampening’ effect can ‘re-frame’ conflicts in a manner that shifts perceptions about the need for the use of violence or extreme state repression.[113] State responses that have been subject to this dampening effect may have more legitimacy and generate less repression: the need for mobilisation in response may therefore also be diluted.

#### 7. Relying on the heuristic of scenario planning is best – it allows us to cope with complex systems and use that complexity to our advantage

Gorka et al 12 (Dr. Sebastian L. V., Director of the Homeland Defense Fellows Program at the College of International Security Affairs, National Defense University, teaches Irregular Warfare and US National Security at NDU and Georgetown, et al., Spring 2012, “The Complexity Trap,” Parameters, <http://www.carlisle.army.mil/USAWC/parameters/Articles/2012spring/Gallagher_Geltzer_Gorka.pdf>)

Once we abandon complexity and begin to talk of prioritization, diffusion of power, and speed of change, we start to see that there is a deep irony in the complexity trap. Proclaiming complexity to be the bedrock principle of today’s approach to strategy indicates a failure to understand that the very essence of strategy is that it allows us to cope with complexity—or at least good strategy does. Strategy is a commitment to a particular course of action, a heuristic blade that allows us to cut through large amounts of data with an overriding vision of how to connect certain available means with certain desired ends. **By winnowing the essential from the extraneous, such heuristics often outperform more complicated approaches to complex** (or even allegedly “wicked”) **problems that end up being computationally intractable**. **The more complex the system, the more important it is to rely on heuristics to deal with it**. Whether through the use of heuristics or otherwise, **the ability to peer through seemingly impenetrable complexity and to identify underlying patterns and trends is richly rewarded when others remain confused or intimidated by the apparent inscrutability of it all**—especially when that ability is coupled with a recognition that **small changes can have a big impact when amplified throughout an interconnected system**. If complexity, whether real or perceived, is truly the defining characteristic of the current strategic environment, then we should be witnessing a corresponding renaissance in grand strategy design and longterm strategic planning. 40 Not so, unfortunately—or at least not yet. More to the point, **because strategy copes with complexity, complexity actually rewards truly strategic actors**. Those who are prepared, organized, and rich in physical and human capital can exploit complexity to secure their interests. For example, **international regime complexity enables “chessboard politics**” whereby strategic actors can shop among forums for the best international venue to promote their policy preferences or can use cross-institutional political strategies to achieve a desired outcome. 41 Due to its high concentration of technical and legal expertise, the United States is ideally suited to exploit this complexity and to thrive in an age of chessboard politics. 42 The first step is replacing the current reactive worship of complexity with proactive prioritization. To escape the complexity trap, let us dare to decide—that is, let us strategize.

#### 8. Legal restraints work – the theory of the exception is self-serving and wrong

William E. **Scheuerman 6**, Professor of Political Science at Indiana University, Carl Schmitt and the Road to Abu Ghraib, Constellations, Volume 13, Issue 1

Yet this argument relies on Schmitt’s controversial model of politics, as outlined eloquently but unconvincingly in his famous Concept of the Political. To be sure, there are intense conflicts in which it is naïve to expect an easy resolution by legal or juridical means. But the argument suffers from a troubling circularity: **Schmitt** occasionally **wants to define “political” conflicts as those irresolvable by legal** or juridical **devices in order** then **to argue against** **legal** or juridical **solutions** to them. **The claim** also **suffers from** a certain **vagueness** and lack of conceptual precision. At times, it seems to be directed against trying to resolve conflicts in the courts or juridical system narrowly understood; at other times it is directed against any legal regulation of intense conflict. The former argument is surely stronger than the latter. After all, **legal devices have undoubtedly played a positive role** **in taming** or at least minimizing the potential dangers of harsh **political antagonisms**. In the Cold War, for example, international law contributed to the peaceful resolution of conflicts which otherwise might have exploded into horrific violence, even if attempts to bring such conflicts before an international court or tribunal probably would have failed.22¶ Second, Schmitt dwells on the legal inconsistencies that result from modifying the traditional state-centered system of international law by expanding protections to non-state fighters. His view is that irregular combatants logically enjoyed no protections in the state-centered Westphalian model. By broadening protections to include them, international law helps undermine the traditional state system and its accompanying legal framework. Why is this troubling? The most obvious answer is that Schmitt believes that the traditional state system is normatively superior to recent attempts to modify it by, for example, extending international human rights protections to individuals against states. 23 But what if we refuse to endorse his nostalgic preference for the traditional state system? Then a sympathetic reading of the argument would take the form of suggesting that the project of regulating irregular combatants by ordinary law must fail for another reason: it rests on a misguided quest to integrate incongruent models of interstate relations and international law. We cannot, in short, maintain core features of the (state-centered) Westphalian system while extending ambitious new protections to non-state actors.¶ This is a powerful argument, but it remains flawed. Every modern legal order rests on diverse and even conflicting normative elements and ideals, in part because human existence itself is always “in transition.” When one examines the so-called classical liberal legal systems of nineteenth-century England or the United States, for example, one quickly identifies liberal elements coexisting uneasily alongside paternalistic and authoritarian (e.g., the law of slavery in the United States), monarchist, as well as republican and communitarian moments. The same may be said of the legal moorings of the modern welfare state, which arguably rest on a hodgepodge of socialist, liberal, and Christian and even Catholic (for example, in some European maternity policies) programmatic sources. In short, **it is by no means self-evident that trying to give coherent legal form to a transitional** political and social **moment is always doomed to fail**. Moreover, there may be sound reasons for claiming that the contemporary transitional juncture in the rules of war is by no means as incongruent as Schmitt asserts. In some recent accounts, **the general trend** towards extending basic protections to non-state actors **is** plausibly interpreted in a more **positive** – **and by no means incoherent** – light.24¶ Third, Schmitt identifies a deep tension between the classical quest for codified and stable law and the empirical reality of a social world subject to permanent change: “The tendency to modify or even dissolve classical [legal] concepts…is general, and in view of the rapid change of the world it is entirely understandable” (12). Schmitt’s postwar writings include many provocative comments about what contemporary legal scholars describe as the dilemma of legal obsolescence. 25 In The Partisan, he suggests that the “great transformations and modifications” in the technological apparatus of modern warfare place strains on the aspiration for cogent legal norms capable of regulating human affairs (17; see also 48–50). Given the ever-changing character of warfare and the fast pace of change in military technology, it inevitably proves difficult to codify a set of cogent and stable rules of war. The Geneva Convention proviso that legal combatants must bear their weapons openly, for example, seems poorly attuned to a world where military might ultimately depends on nuclear silos buried deep beneath the surface of the earth, and not the success of traditional standing armies massed in battle on the open field. “Or what does the requirement mean of an insignia visible from afar in night battle, or in battle with the long-range weapons of modern technology of war?” (17).¶ As I have tried to show elsewhere, these are powerful considerations deserving of close scrutiny; Schmitt is probably right to argue that the enigma of legal obsolescence takes on special significance in the context of rapid-fire social change.26 Unfortunately, he seems uninterested in the slightest possibility that we might successfully adapt the process of lawmaking to our dynamic social universe. To be sure, he discusses the “motorization of lawmaking” in a fascinating 1950 publication, but only in order to underscore its pathological core.27 Yet **one** possible **resolution** of the dilemma he describes **would be** to figure how **to reform the process** whereby rules of war are adapted to novel changes in military affairs in order **to minimize the danger of** anachronistic or **out-of-date law. Instead, Schmitt** simply **employs the dilemma of legal obsolescence as a battering ram** against the rule of law and the quest to develop a legal apparatus suited to the special problem of irregular combatants.

9. Their kritik creates a false dichotomy between total rejection and oppression—their “all or nothing” alternative dooms coalitions and closes off space for political activism

Krishna ’93 [Sankaran, Dept. of Polit. Sci., Alternatives, 1993]

The dichotomous choice presented in this excerpt is straightforward: one either indulges in total critique, delegitimizing all sovereign truths, or one is committed to “nostalgic”, essential unities that have become obsolete and have been the grounds for all our oppressions. In offering this dichotomous choice, Der Derian replicates a move made by Chaloupka in his equally dismissive critique of the more mainstream nuclear oppression, the Nuclear freeze movement of the early 1980s, that according to him, was operating along obsolete lines emphasizing “facts” and “realities” while a “postmodern” President Reagan easily outflanked them through an illusory Star Wars program. (See KN: chapter 4)Chaloupka centers this difference between his own supposedly total critique of all sovereign truths (which he describes as nuclear criticism in an echo of literary criticism) and the more partial (and issue-based) criticism of what he calls “nuclear opposition” or “antinuclearists” at the very outset of his book. (KN: xvi) Once again, the unhappy choice forced upon the reader is to join Chaloupka in his total critique of sovereign truths or be trapped in obsolete essentialisms.This leads to a disastrous politics, pitting groups that have the most in common (and need to unite on some basis to be effective) against each other. Both Chaloupka and Der Derian thus reserve their most trenchant critique for political groups that should, in any analysis, be regarded as the closest to them in terms of an oppositional politics and their desired futures. Instead of finding ways to live with these differences and to (if fleetingly) coalesce against the New Right, this fratricidal critique is politically suicidal. It obliterates the space for a political activism based on provisional and contingent coalitions, for uniting behind a common cause even as one recognizes that the coalition is comprised of groups that have very differing (and possibly unresolvable) views of reality.¶ Moreover, it fails to consider the possibility that there may have been other, more compelling reasons for the “failure” of the Nuclear Freedom movement or anti-Gulf War movement. Like many a worthwhile cause in our times, they failed to garner sufficient support to influence state policy. The response to that need not be a totalizing critique that delegitimizes all narratives.The blackmail inherent in the choice offered by Der Derian and Chaloupka, between total critique and “ineffective” partial critique, ought to be transparent. Among other things, it effectively militates against the construction of provisional or strategic essentialisms in our attempts to create space for an activist politics. In the next section, I focus more widely on the genre of critical international theory and its impact on such an activist politics

### 2AC – Security

#### 2. Threats aren’t arbitrary – can’t throw out security

Knudsen 1Olav. F. Knudsen, Prof @ Södertörn Univ College, ‘1 [Security Dialogue 32.3, “Post-Copenhagen Security Studies: Desecuritizing  Securitization,” p. 360]

In the post-Cold War period,  agenda-setting has been much easier to influence than the securitization approach assumes. That change cannot be credited to the concept; the change in  security politics was already taking place in defense ministries and parlia-  ments before the concept was first launched. Indeed, securitization in my view  is more appropriate to the security politics of the Cold War years than to the  post-Cold War period.  Moreover, I have a problem with the underlying implication that it is unim-  portant whether states ‘really’ face dangers from other states or groups. In the  Copenhagen school, threats are seen as coming mainly from the actors’ own  fears, or from what happens when the fears of individuals turn into paranoid  political action. In my view, this emphasis on the subjective is a misleading  conception of threat, in that it discounts an independent existence for what-  ever is perceived as a threat. Granted, political life is often marked by misper-  ceptions, mistakes, pure imaginations, ghosts, or mirages, but such phenom-  ena do not occur simultaneously to large numbers of politicians, and hardly most of the time. During the Cold War, threats – in the sense of plausible  possibilities of danger – referred to ‘real’ phenomena, and they refer to ‘real’  phenomena now. The objects referred to are often not the same, but that is a  different matter. Threats have to be dealt with both in terms of perceptions and in  terms of the phenomena which are perceived to be threatening.  The point of Wæver’s concept of security is not the potential existence of  danger somewhere but the use of the word itself by political elites. In his 1997  PhD dissertation, he writes, ‘One can view “security” as that which is in  language theory called a speech act: it is not interesting as a sign referring to  something more real – it is the utterance itself that is the act.’   The deliberate  disregard of objective factors is even more explicitly stated in Buzan & Wæver’s joint article of the same year.   As a consequence, the phenomenon of  threat is reduced to a matter of pure domestic politics.   It seems to me that the  security dilemma, as a central notion in security studies, then loses its founda-  tion. Yet I see that Wæver himself has no compunction about referring to the  security dilemma in a recent article.  This discounting of the objective aspect of threats shifts security studies to  insignificant concerns. What has long made ‘threats’ and ‘threat perceptions’  important phenomena in the study of IR is the implication that urgent action  may be required. Urgency, of course, is where Wæver first began his argu-  ment in favor of an alternative security conception, because a convincing sense  of urgency has been the chief culprit behind the abuse of ‘security’ and the  consequent ‘politics of panic’, as Wæver aptly calls it.   Now, here – in the case  of urgency – another baby is thrown out with the Wæverian bathwater. When  real situations of urgency arise, those situations are challenges to democracy;  they are actually at the core of the problematic arising with the process of  making security policy in parliamentary democracy. But in Wæver’s world,  threats are merely more or less persuasive, and the claim of urgency is just an-  other argument. I hold that instead of ‘abolishing’ threatening phenomena  ‘out there’ by reconceptualizing them, as Wæver does, we should continue  paying attention to them, because situations with a credible claim to urgency  will keep coming back and then we need to know more about how they work  in the interrelations of groups and states (such as civil wars, for instance), not  least to find adequate democratic procedures for dealing with them.

#### 4. Perm do the plan and rethink security logic ­– K alone insufficient

Bilgin 5 Pinar Bilgin, Prof. of IR @ Bilkent Univ, ‘5 [Regional Security in The Middle East, p. 60-1]

Admittedly, providing a critique of existing approaches to security, revealing those hidden assumptions and normative projects embedded in Cold War Security Studies, is only a first step. In other words, from a critical security perspective, self-reflection, thinking and writing are not enough in themselves. They should be compounded by other forms of practice (that is, action taken on the ground). It is indeed crucial for students of critical approaches to re-think security in both theory and practice by pointing to possibilities for change immanent in world politics and suggesting emancipatory practices if it is going to fulfil the promise of becoming a 'force of change' in world politics. Cognisant of the need to find and suggest alternative practices to meet a broadened security agenda without adopting militarised or zero-sum thinking and practices, students of critical approaches to security have suggested the imagining, creation and nurturing of security communities as emancipatory practices (Booth 1994a; Booth and Vale 1997). Although Devetak's approach to the theory/practice relationship echoes critical approaches' conception of theory as a form of practice, the latter seeks to go further in shaping global practices. The distinction Booth makes between 'thinking about thinking' and 'thinking about doing' grasps the difference between the two. Booth (1997: 114) writes: Thinking about thinking is important, but, more urgently, so is thinking about doing .... Abstract ideas about emancipation will not suffice: it is important for Critical Security Studies to engage with the real by suggesting policies, agents, and sites of change, to help humankind, in whole and in part, to move away from its structural wrongs. In this sense, providing a critique of existing approaches to security, revealing those hidden assumptions and normative projects embedded in Cold War Security Studies, is only a first (albeit crucial) step. It is vital for the students of critical approaches to re-think security in both theory and practice.

#### 6. Rejecting security destroys the potential for freedom and value to life

Booth 5 Ken Booth, Prof. of IR @ Wales, ‘5 [Critical Security Studies and World Politics, p. 22]

The best starting point for conceptualizing security lies in the real conditions of insecurity suffered by people and collectivities. Look around. What is immediately striking is that some degree of insecurity, as a life determining condition, is universal. To the extent an individual or group is insecure, to that extent their life choices and chances are taken away; this is because of the resources and energy they need to invest in seeking safety from domineering threats - whether these are the lack of food for one’s children or organizing to resist a foreign aggressor. The corollary of the relationship between insecurity and a determined life is that a degree of security creates life possibilities. Security might therefore be conceived as synonymous with opening up space in people’s lives. This allows for individual and collective human becoming - the capacity to have some choice about living differently - consistent with the same but different search by others. Two interrelated conclusions follow from this. First, security can be understood as an instrumental value; it frees its possessors to a greater or lesser extent from life-determining constraints and so allows different life possibilities to be explored. Second, security is synonymous simply with survival. One can survive without being secure (the experience of refugees in long-term camps in war-torn parts of the world, for example). Security is therefore more than mere animal survival (basic animal existence). It is survival-plus, the plus being the possibility to explore human becoming, As an instrumental value, security is sought because it frees people(s) to some degree to do other than deal with threats to their human being. The achievement of a level of security - and security is always relative - gives to individuals and groups some time, energy, and scope to chose to be or become, other than merely survival as human biological organisms. Security is an important dimension of the process by which the human species can reinvent itself beyond the merely biological.

7. Alternative fails

Gunning 7 (Jeroen Gunning, Lecturer in International Politics @ Univ. of Wales, ‘7 [Government and Opposition 42.3, “A Case for Critical Terrorism Studies?” p. Blackwell-synergy])

The notion of emancipation also crystallizes the need for policy engagement. For, unless a ‘critical’ field seeks to be policy relevant, which, as Cox rightly observes, means **combining** ‘critical’ and ‘problem-solving’ approaches, it does not fulfil its ‘emancipatory’ potential.94 One of the temptations of ‘critical’ approaches is to remain mired in critique and deconstruction without moving beyond this to reconstruction and policy relevance.Vital as such critiques are, the challenge of a critically constituted field is also to engage with policy makers – and ‘terrorists’ – and work towards the realization of new paradigms, new practices, and a transformation, however modestly, of political structures. That, after all, is the original meaning of the notion of ‘immanent critique’ that has historically underpinned the ‘critical’ project and which, in Booth's words, involves ‘the discovery of the latent potentials in situations on which to build political and social progress’, as opposed to putting forward utopian arguments that are not realizable. Or, as Booth wryly observes, ‘this means building with one's feet **firmly on the ground**, not constructing castles in the air’ and asking ‘what it means for real people in real places’.96 Rather than simply critiquing the status quo, or noting the problems that come from an un-problematized acceptance of the state, a ‘critical’ approach must, in my view, also concern itself with offering concrete alternatives. Even while historicizing the state and oppositional violence, and challenging the state's role in reproducing oppositional violence, it must wrestle with the fact that ‘the concept of the modern state and sovereignty embodies a coherent response to many of the central problems of political life’, and in particular to ‘the place of violence in political life’. Even while ‘de-essentializing and deconstructing claims about security’, it must concern itself with ‘how security is to be redefined’, and in particular on what theoretical basis.97 Whether because those critical of the status quo are wary of becoming co-opted by the structures of power (and their emphasis on instrumental rationality),98 or because policy makers have, for obvious reasons (including the failure of many ‘critical’ scholars to offer policy relevant advice), a greater affinity with ‘traditional’ scholars, the role of ‘expert adviser’ is more often than not filled by ‘traditional’ scholars.99 The result is that policy makers **are insufficiently challenged to question** the basis of their policies and develop new policies based on immanent critiques. A notable exception is the readiness of European Union officials to enlist the services of both ‘traditional’ and ‘critical’ scholars to advise the EU on how better to understand processes of radicalization.100 But this would have been impossible if more critically oriented scholars such as Horgan and Silke had not been ready to cooperate with the EU. Striving to be policy relevant does not mean that one has to accept the validity of the term ‘terrorism’ or stop investigating the political interests behind it. Nor does it mean that each piece of research must have policy relevance or that one has to limit one's research to what is relevant for the state, since the ‘critical turn’ implies a move beyond state-centric perspectives. End-users could, and should, thus include both state and non-state actors such as the Foreign Office and the Muslim Council of Britain and Hizb ut-Tahrir; the Northern Ireland Office and the IRA and the Ulster Unionists; the Israeli government and Hamas and Fatah (as long as the overarching principle is to reduce the political use of terror, whoever the perpetrator). It does mean, though, that a critically constituted field must work hard to bring together all the fragmented voices from beyond the ‘terrorism field’, to maximize both the field's rigour and its policy relevance. Whether a critically constituted ‘terrorism studies’ will attract the fragmented voices from outside the field depends largely on how broadly the term ‘critical’ is defined. Those who assume ‘critical’ to mean ‘Critical Theory’ or ‘poststructuralist’ may not feel comfortable identifying with it if they do not themselves subscribe to such a narrowly defined ‘critical’ approach. Rather, to maximize its inclusiveness, I would follow Williams and Krause's approach to ‘critical security studies’, which they define simply as bringing together ‘many perspectives that have been considered outside of the mainstream of the discipline’.101 This means refraining from establishing new criteria of inclusion/exclusion beyond the (normative) expectation that scholars self-reflexively question their conceptual framework, the origins of this framework, their methodologies and dichotomies; and that they historicize both the state and ‘terrorism’, and consider the security and context of all, which implies among other things an attempt at empathy and cross-cultural understanding.102 Anything more normative would limit the ability of such a field to create a genuinely interdisciplinary, non-partisan and innovative framework, and exclude valuable insights borne of a broadly ‘critical’ approach, such as those from conflict resolution studies who, despite working within a ‘traditional’ framework, offer important insights by moving beyond a narrow military understanding of security to a broader understanding of human security and placing violence in its wider social context.103 Thus, a poststructuralist has no greater claim to be part of this ‘critical’ field than a realist who looks beyond the state at the interaction between the violent group and their wider social constituency.104

#### 8. Critiquing the realist state forgoes the most important actor: the political. Giving up the vote is worse than any impact to security logic

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Though hardly the first to make this ar-gument, Holsti shows convincingly that internal wars are now by far the most important kind of war. This point has been used to argue that interstate rela- tions have decreased in significance. If we compare two categories of relations, intrastate and interstate, that is of course true in relative quantitative terms. However, one must not overlook what those wars are about: the control of the state apparatus and its territory. Internal wars testify not to the disappearance of the state, but to its continuing importance. Hence, the state must continue to be a central object of our work in IR, not least in security studies. We should study the state – conceived as a penetrated state – specifically because it performs essential security functions that are rarely performed by other types of organization, such as being: • the major collective unit processing notions of threat; • the mantle that cloaks the exercise of elite power; • the organizational expression that gives shape to communal ‘identity’ and ‘culture’; • the chief agglomeration of competence to deal with issue areas crossing ju- risdictional boundaries; • the manager of territory/geographical space – including functioning as a ‘receptacle’ for income; and • the legitimizer of authorized action and possession. Recognizing the problems of state-focused approaches belongs to the beginner’s lessons in IR. There is the danger of legitimizing the state as such by placing it at the center of research, and of legitimizing thereby the repression and injustice which on a massive scale have been and still are perpetrated in its name around the globe. Some draw the conclusion on this basis that states should not be studied, a stance which is obviously unwarranted and pointless. The state is an instrument of power on a scale beyond most other instruments of power. For this reason alone, keeping a watch on how it is used should be a top priority for social scientists. The mobilization – the assumption of the mantle – of state power by more or less arbitrarily chosen (or self-selected) individuals or groups, to act on behalf of all, is something which requires continual problematization, not least when it is done vis-à-vis other collectivities. The state is also the instrument of de- mocracy on a large scale in its most well-functioning forms. Surveying democ- racy’s state of health is a crucial responsibility for social scientists. Finally, when it comes to performing collective tasks on a large scale, the state is the most potentially effective organizing instrument across an almost limitless range of objectives. Security is among them. In short, the state is too central to the large-scale business of human life to be ignored or put aside, whether for ideological or idealistic reasons. Still, we need to recognize the historical dimension in this. It is not necessarily the state’s present form which makes it an important object of study; rather, it is its primary function of being the largest universal-purpose collective-action unit around. Such units require study in all civilizations and at all times in human history, regardless of their name or specific functions. The Westpha- lian preoccupation of IR is therefore somewhat overdrawn. There is no need to apologize for focusing on states or state-like units.

### 1AR

#### War powers authority refers to the President’s overall power over national defense and warmaking – synonymous

Manget 91 Fred F, Assistant General Counsel with the CIA, "Presidential War Powers", 1991, media.nara.gov/dc-metro/rg-263/6922330/Box-10-114-7/263-a1-27-box-10-114-7.pdf

The President's war powers authority is actually a national defense power that exists at all times, whether or not there is a war declared by Congress, an armed conflict, or any other hostilities or fighting. In a recent case the Supreme Court upheld the revocation of the passport of a former CIA employee (Agee) and rejected his contention that certain statements of Executive Branch policy were entitled to diminished weight because they concerned the powers of the Executive in wartime. The Court stated: "History eloquently attests that grave problems of national security and foreign policy are by no means limited to times of formally declared war. " 3 ; Another court has said that the war power is not confined to actual engagements on fields of battle only but embraces every aspect of national defense and comprehends everything required to wage war successfully. 3 H A third court stated: "It is-and must be-true that the Executive should be accorded wide and normally unassailable discretion with respect to the conduct of the national defense and the prosecution of national objectives through military means . "39 ¶ Thus, the Executive Branch's constitutional war powers authority does not spring into existence when Congress declares war, nor is it dependent on there being hostilities. It empowers the President to prepare for war as well as wage it, in the broadest sense. It operates at all times.

**Privileging ontology and epistemology guarantees policy failure because of theoretical reductionism, and isn’t relevant to the truth value of our arguments.**

**Owen 2 (**university of Southampton, David Owen, Reader of Political Theory at the Univ. of Southampton, Millennium Vol 31 No 3 2002 p. 655-7)

Commenting on the ‘philosophical turn’ in IR, Wæver remarks that ‘[a] frenzy for words like “epistemology” and “ontology” often signals this philosophical turn’, although he goes on to comment that these terms are often used loosely.4 However, loosely deployed or not, it is clear that debates concerning ontology and epistemology play a central role in the contemporary IR theory wars. In one respect, this is unsurprising since it is a characteristic feature of the social sciences that periods of disciplinary disorientation involve recourse to reflection on the philosophical commitments of different theoretical approaches, and there is no doubt that such reflection can play a valuable role in making explicit the commitments that characterise (and help individuate) diverse theoretical positions. Yet, such a philosophical turn is not without its dangers and I will briefly mention three before turning to consider a confusion that has, I will suggest, helped to promote the IR theory wars by motivating this philosophical turn. The first danger with the philosophical turn is that it has an inbuilt tendency to prioritise issues of ontology and epistemology over explanatory and/or interpretive power as if the latter two were merely a simple function of the former. But **while the** explanatory and/or interpretive **power of a theoretical account is not** wholly **independent of its ontological and**/or **epistemological commitments** (otherwise criticism of these features would not be a criticism that had any value), **it is by no means clear that it is**, in contrast, **wholly dependent on these** philosophical **commitments**. Thus, for example, **one need not be sympathetic to rational choice theory to recognise** that **it can provide powerful accounts of certain** kinds of **problems**, such as the tragedy of the commons in which dilemmas of collective action are foregrounded. It may, of course, be the case that the advocates of rational choice theory cannot give a good account of why this type of theory is powerful in accounting for this class of problems (i.e., how it is that the relevant actors come to exhibit features in these circumstances that approximate the assumptions of rational choice theory) and, if this is the case, it is a philosophical weakness—but this does not undermine the point that, for a certain class of problems, rational choice theory may provide the best account available to us. In other words, while the critical judgement of theoretical accounts in terms of their ontological and/or epistemological sophistication is one kind of critical judgement, it is not the only or even necessarily the most important kind. The second danger run by the philosophical turn is that because **prioritisation of ontology and epistemology** promotes theory-construction from philosophical first principles, it **cultivates a theory-driven rather than problem-driven approach to IR**. Paraphrasing Ian Shapiro, the point can be put like this: **since** it is the case that **there is always a plurality of possible true descriptions of a given action**, event or phenomenon, **the challenge is to decide which is the most apt** in terms of getting a perspicuous grip on the action, event or phenomenon in question given the purposes of the inquiry; yet, from this standpoint, **‘theory-driven work is** part of a **reductionist** program’ **in that it ‘dictates always opting for the description** that calls for the explanation that **flows from the preferred model** or theory’.5 The justification offered for this strategy rests on the mistaken belief that it is necessary for social science because general explanations are required to characterise the classes of phenomena studied in similar terms. However, as Shapiro points out, this is to misunderstand the enterprise of science since ‘**whether there are general explanations** for classes of phenomena **is a question for** social-scientific **inquiry, not to be prejudged** before conducting that inquiry’.6 Moreover, **this** strategy easily **slips into** the promotion of the pursuit of **generality over** that of **empirical validity**. The third danger is that the preceding two combine to encourage the formation of a particular image of disciplinary debate in IR—what might be called (only slightly tongue in cheek) ‘the Highlander view’—namely, an image of warring theoretical approaches with each, despite occasional temporary tactical alliances, dedicated to the strategic achievement of sovereignty over the disciplinary field. It encourages this view because the turn to, and prioritisation of, ontology and epistemology stimulates the idea that there can only be one theoretical approach which gets things right, namely, the theoretical approach that gets its ontology and epistemology right. This image feeds back into IR exacerbating the first and second dangers, and so a potentially vicious circle arises.