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## Global Battlefield

#### Advantage one is the global battlefield

#### The AUMF provides the legal authority for a global battlefield. Others will seize on the AUMF’s expansive view of the battlefield to legitimize their own global wars

**Roth 13** – Executive Director @ Human Rights Watch [Kenneth Roth, “ (JD from Yale University) The Law of Armed Conflict, the Use of Military Force, and the 2001 Authorization for Use of Military Force” “ [Statement to the Senate Armed Services Committee](http://www.hrw.org/news/2013/05/16/us-statement-senate-armed-services-committee-aumf-targeted-killing-guantanamo) , May 16, 2013, pg. http://www.hrw.org/news/2013/05/16/us-statement-senate-armed-services-committee-aumf-targeted-killing-guantanamo

The Authorization for the Use of Military Force

When it comes to our most basic rights, there is probably no more important distinction than the line between peace and war.  In peacetime, the government can use lethal force only if necessary to stop an imminent threat to life, and it can detain only after according full due process.  But in wartime, the government can kill combatants on the battlefield, and it has greatly enhanced power to detain people without charge or trial.  So, safeguarding the right to life and liberty depends in important part on ensuring that the government is not operating by wartime rules when it should be abiding by peacetime rules.

Human Rights Watch does not ordinarily take positions on whether a party to a conflict is justified in taking up arms.  Rather, once armed conflict breaks out, we generally confine ourselves to monitoring how both sides to the conflict fight the war, with the aim of enforcing international standards protecting noncombatants.  In the Latin terms used among legal experts, we focus on jus in bello, not jus ad bellum.

However, the combination of a declared global war and the newly enhanced capacity to kill individual targets far from any traditional battlefield poses new dangers to basic rights—ones that will only grow as the US role in the Afghan armed conflict winds down. That leaves only al-Qaeda and similar armed groups but without the elements that traditionally limit use of the war power: the control of territory and a recognizable battlefield. To paint the problem most starkly, might a government that wants to kill a particular person simply declare “war” on him and shoot him, circumventing the basic due-process rights to which the target would ordinarily be entitled?  Or, might a government intent on wiping out a drug gang simply declare “war” on its members?  If a government wants to be less draconian but still avoid the burden of mounting a criminal prosecution, might it declare “war” on drug trafficking and detain without trial any participants it picks up?

These are not fanciful scenarios.  Drug traffickers pose a violent threat to many Americans and are almost certainly responsible for more American deaths than terrorism.  Already we talk of a metaphorical war on drugs.  Why not a real war?

I hope we cringe at that thought.  Detested as drug traffickers are, I hope we recoil at the thought of summarily killing or detaining them. But that is the risk if we allow the government unhindered discretion to decide when to apply war rules instead of peace rules. This threat of an end run around key constitutional rights highlights the need to articulate clear limits to any war related to terrorism.

Some have suggested that mere transparency around the war-peace distinction should be enough—that Congress might authorize ongoing war against terrorist groups present and future so long as the administration states clearly at any given moment the groups with which it is at war. But that open-ended authorization is dangerous, because governments will be tempted to take the easy path of war rules over the more difficult path of respecting the full panoply of rights that prevail in peacetime. We cannot trust that public scrutiny is enough to restrain abuse given how easy it is to vilify alleged terrorist groups.

If a particular group poses such a serious threat that it can be met only with war, focused war authorization can be sought. But an open invitation to live by war rules makes it too easy for the government to circumvent key rights.

Indeed, it is perilous enough when the government entrusted with the power to set aside certain peacetime rights is the United States. But once the US government takes this step, we can be certain that governments with far less sensitivity to rights will follow suit. The Chinas and Russias of the world will be all too eager to seize this precedent to pursue their enemies under war rules, be they “splittist” Tibetans or “subversive” dissidents.

Even without the AUMF, the United States is hardly defenseless against the scourge of terrorism. Since the September 11 attacks nearly a dozen years ago, the United States has vastly enhanced its intelligence, surveillance, and prosecutorial capacities. And, should these tools prove insufficient to meet a particular threat, the right of self-defense still allows resort to military force.  However, because of the fundamental rights at stake, war should be an option of necessity, not a blank check written in advance, as some are proposing for a revamped AUMF. Now that that Afghan war is winding down, it is time to retire the AUMF altogether.

Drone Attacks

The problem of excessive reliance on the rules of war for using deadly force is illustrated by the use of drones to kill suspects. Drone attacks do not necessarily violate international human rights or humanitarian law. Indeed, given their ability to survey targets for extended periods and to fire with pinpoint accuracy, drones may pose less of a threat to civilian life than many alternatives. Still, their use has become controversial because of profound doubts about whether the Obama administration is abiding by the proper legal standards to deploy them. For example, killing Taliban and al-Qaeda forces fighting US troops may be lawful in a traditional armed conflict like the one still underway in Afghanistan, but what is the justification for killing people who are not part of these groups in places like Yemen and Somalia? And where does northwestern Pakistan fit?

The Obama administration has offered several possible legal rationales for drone strikes, but with little clarity about the concrete, practical limits, if any, under which it purports to operate. Beyond the risk to people in these countries who face possible wrongful targeting, the lack of clarity denies Congress and the American public the ability to exercise effective oversight. It also makes it easier for other countries that are rapidly developing their own drone programs to interpret that ambiguity in a way that is likely to lead to serious violations of international law.

One possible rationale for drone strikes comes from international humanitarian law governing armed hostilities. The Obama administration has formally dropped the Bush administration’s use of the phrase “global war on terror,” but its interpretation of the AUMF as authorizing “war with al Qaeda, the Taliban, and associated forces” looks very similar. This expansive view of the “war” currently facing the United States cries out for a clear statement of its limits. Does the United States really have the right to attack anyone it might characterize as a combatant against the United States anywhere in the world? We would hardly accept summary killing if the target were walking the streets of London or Paris.

John Brennan has said that as a matter of policy the administration has an “unqualified preference” to capture rather than kill all targets. But what are the factors leading the administration to decide that this preference can be met? Will it kill simply because convincing another government to arrest a suspect may be difficult? If so, how much political difficulty will it put up with before launching a drone attack?  Will it kill simply because of the risk involved if US soldiers were to attempt to arrest the suspect? If so, how much risk is the administration willing to accept before pulling the kill switch? The truth is that we have no idea. We don’t know whether these decisions are being made with appropriate care or not. We do know that other governments are likely to interpret this ambiguity in ways that are less respectful than we would want of the fundamental rights involved.

Moreover, away from a traditional battlefield, international human rights law requires the capture of enemies if possible. As noted, failing to apply that law encourages other governments to circumvent it as well—to summarily kill suspects simply by announcing a “war” against their group without there being a traditional armed conflict anywhere in the vicinity. Imagine the mayhem that Russia could cause by killing alleged Chechen “combatants” throughout Europe, or China by killing Uighur “combatants” in the United States. In neither case is the government where the suspect is located likely to cooperate with arrest efforts. And these precedential fears are real: China recently considered using a drone to kill a drug trafficker in Burma. //AT: Executive CP: Lack legal clarity is the issue

#### Drone proliferation is inevitable. Only effective norms will prevent it from eroding firebreaks against nuclear conflict.

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The race for drones

An important, but overlooked, strategic consequence of the Obama administration’s embrace of drones is that it has generated a new and dangerous arms race for this technology. At present, the use of lethal drones is seen as acceptable to US policy-makers because no other state possesses the ability to make highly sophisticated drones with the range, surveillance capability and lethality of those currently manufactured by the United States. Yet the rest of the world is not far behind. At least 76 countries have acquired UAV technology, including Russia, China, Pakistan and India.120 China is reported to have at least 25 separate drone systems currently in development.121 At present, there are 680 drone programmes in the world, an increase of over 400 since 2005.122 Many states and non-state actors hostile to the United States have begun to dabble in drone technology. Iran has created its own drone, dubbed the ‘Ambassador of Death’, which has a range of up to 600 miles.123 Iran has also allegedly supplied the Assad regime in Syria with drone technology.124 Hezbollah launched an Iranian-made drone into Israeli territory, where it was shot down by the Israeli air force in October 2012.125

A global arms race for drone technology is already under way. According to one estimate, global spending on drones is likely to be more than US$94 billion by 2021.126 One factor that is facilitating the spread of drones (particularly non-lethal drones) is their cost relative to other military purchases. The top-of-the line Predator or Reaper model costs approximately US$10.5 million each, compared to the US$150 million price tag of a single F-22 fighter jet.127 At that price, drone technology is already within the reach of most developed militaries, many of which will seek to buy drones from the US or another supplier. With demand growing, a number of states, including China and Israel, have begun the aggressive selling of drones, including attack drones, and Russia may also be moving into this market.128 Because of concerns that export restrictions are harming US competitiveness in the drones market, the Pentagon has granted approval for drone exports to 66 governments and is currently being lobbied to authorize sales to even more.129 The Obama administration has already authorized the sale of drones to the UK and Italy, but Pakistan, the UAE and Saudi Arabia have been refused drone technology by congressional restrictions.130 It is only a matter of time before another supplier steps in to offer the drone technology to countries prohibited by export controls from buying US drones. According to a study by the Teal Group, the US will account for 62 per cent of research and development spending and 55 per cent of procurement spending on drones by 2022.131 As the market expands, with new buyers and sellers, America’s ability to control the sale of drone technology will be diminished. It is likely that the US will retain a substantial qualitative advantage in drone technology for some time, but even that will fade as more suppliers offer drones that can match US capabilities.

The emergence of this arms race for drones raises at least five long-term strategic consequences, not all of which are favourable to the United States over the long term. First, it is now obvious that other states will use drones in ways that are inconsistent with US interests. One reason why the US has been so keen to use drone technology in Pakistan and Yemen is that at present it retains a substantial advantage in high-quality attack drones. Many of the other states now capable of employing drones of near-equivalent technology—for example, the UK and Israel—are considered allies. But this situation is quickly changing as other leading geopolitical players, such as Russia and China, are beginning rapidly to develop and deploy drones for their own purposes. While its own technology still lags behind that of the US, Russia has spent huge sums on purchasing drones and has recently sought to buy the Israeli-made Eitan drone capable of surveillance and firing air-to-surface missiles.132 China has begun to develop UAVs for reconnaissance and combat and has several new drones capable of long-range surveillance and attack under development.133 China is also planning to use unmanned surveillance drones to allow it to monitor the disputed East China Sea Islands, which are currently under dispute with Japan and Taiwan.134 Both Russia and China will pursue this technology and develop their own drone suppliers which will sell to the highest bidder, presumably with fewer export controls than those imposed by the US Congress. Once both governments have equivalent or near-equivalent levels of drone technology to the United States, they will be similarly tempted to use it for surveillance or attack in the way the US has done. Thus, through its own over-reliance on drones in places such as Pakistan and Yemen, the US may be hastening the arrival of a world where its qualitative advantages in drone technology are eclipsed and where this technology will be used and sold by rival Great Powers whose interests do not mirror its own.

A second consequence of the spread of drones is that many of the traditional concepts which have underwritten stability in the international system will be radically reshaped by drone technology. For example, much of the stability among the Great Powers in the international system is driven by deterrence, specifically nuclear deterrence.135 Deterrence operates with informal rules of the game and tacit bargains that govern what states, particularly those holding nuclear weapons, may and may not do to one another.136 While it is widely understood that nuclear-capable states will conduct aerial surveillance and spy on one another, overt military confrontations between nuclear powers are rare because they are assumed to be costly and prone to escalation. One open question is whether these states will exercise the same level of restraint with drone surveillance, which is unmanned, low cost, and possibly deniable. States may be more willing to engage in drone overflights which test the resolve of their rivals, or engage in ‘salami tactics’ to see what kind of drone-led incursion, if any, will motivate a response.137 This may have been Hezbollah’s logic in sending a drone into Israeli airspace in October 2012, possibly to relay information on Israel’s nuclear capabilities.138 After the incursion, both Hezbollah and Iran boasted that the drone incident demonstrated their military capabilities.139 One could imagine two rival states—for example, India and Pakistan—deploying drones to test each other’s capability and resolve, with untold consequences if such a probe were misinterpreted by the other as an attack. As drones get physically smaller and more precise, and as they develop a greater flying range, the temptation to use them to spy on a rival’s nuclear programme or military installations might prove too strong to resist. If this were to happen, drones might gradually erode the deterrent relationships that exist between nuclear powers, thus magnifying the risks of a spiral of conflict between them.

Another dimension of this problem has to do with the risk of accident. Drones are prone to accidents and crashes. By July 2010, the US Air Force had identified approximately 79 drone accidents.140 Recently released documents have revealed that there have been a number of drone accidents and crashes in the Seychelles and Djibouti, some of which happened in close proximity to civilian airports.141 The rapid proliferation of drones worldwide will involve a risk of accident to civilian aircraft, possibly producing an international incident if such an accident were to involve an aircraft affiliated to a state hostile to the owner of the drone. Most of the drone accidents may be innocuous, but some will carry strategic risks. In December 2011, a CIA drone designed for nuclear surveillance crashed in Iran, revealing the existence of the spying programme and leaving sensitive technology in the hands of the Iranian government.142 The expansion of drone technology raises the possibility that some of these surveillance drones will be interpreted as attack drones, or that an accident or crash will spiral out of control and lead to an armed confrontation.143 An accident would be even more dangerous if the US were to pursue its plans for nuclear-powered drones, which can spread radioactive material like a dirty bomb if they crash.144

Third, lethal drones create the possibility that the norms on the use of force will erode, creating a much more dangerous world and pushing the international system back towards the rule of the jungle. To some extent, this world is already being ushered in by the United States, which has set a dangerous precedent that a state may simply kill foreign citizens considered a threat without a declaration of war. Even John Brennan has recognized that the US is ‘establishing a precedent that other nations may follow’.145 Given this precedent, there is nothing to stop other states from following the American lead and using drone strikes to eliminate potential threats. Those ‘threats’ need not be terrorists, but could be others— dissidents, spies, even journalists—whose behaviour threatens a government.

One danger is that drone use might undermine the normative prohibition on the assassination of leaders and government officials that most (but not all) states currently respect. A greater danger, however, is that the US will have normalized murder as a tool of statecraft and created a world where states can increasingly take vengeance on individuals outside their borders without the niceties of extradition, due process or trial.146 As some of its critics have noted, the Obama administration may have created a world where states will find it easier to kill terrorists rather than capture them and deal with all of the legal and evidentiary difficulties associated with giving them a fair trial.147

Fourth, there is a distinct danger that the world will divide into two camps: developed states in possession of drone technology, and weak states and rebel movements that lack them. States with recurring separatist or insurgent problems may begin to police their restive territories through drone strikes, essentially containing the problem in a fixed geographical region and engaging in a largely punitive policy against them. One could easily imagine that China, for example, might resort to drone strikes in Uighur provinces in order to keep potential threats from emerging, or that Russia could use drones to strike at separatist movements in Chechnya or elsewhere. Such behaviour would not necessarily be confined to authoritarian governments; it is equally possible that Israel might use drones to police Gaza and the West Bank, thus reducing the vulnerability of Israeli soldiers to Palestinian attacks on the ground. The extent to which Israel might be willing to use drones in combat and surveillance was revealed in its November 2012 attack on Gaza. Israel allegedly used a drone to assassinate the Hamas leader Ahmed Jabari and employed a number of armed drones for strikes in a way that was described as ‘unprecedented’ by senior Israeli officials.148 It is not hard to imagine Israel concluding that drones over Gaza were the best way to deal with the problem of Hamas, even if their use left the Palestinian population subject to constant, unnerving surveillance. All of the consequences of such a sharp division between the haves and have-nots with drone technology is hard to assess, but one possibility is that governments with secessionist movements might be less willing to negotiate and grant concessions if drones allowed them to police their internal enemies with ruthless efficiency and ‘manage’ the problem at low cost. The result might be a situation where such conflicts are contained but not resolved, while citizens in developed states grow increasingly indifferent to the suffering of those making secessionist or even national liberation claims, including just ones, upon them.

Finally, drones have the capacity to strengthen the surveillance capacity of both democracies and authoritarian regimes, with significant consequences for civil liberties. In the UK, BAE Systems is adapting military-designed drones for a range of civilian policing tasks including ‘monitoring antisocial motorists, protesters, agricultural thieves and fly-tippers’.149 Such drones are also envisioned as monitoring Britain’s shores for illegal immigration and drug smuggling. In the United States, the Federal Aviation Administration (FAA) issued 61 permits for domestic drone use between November 2006 and June 2011, mainly to local and state police, but also to federal agencies and even universities.150 According to one FAA estimate, the US will have 30,000 drones patrolling the skies by 2022.151 Similarly, the European Commission will spend US$260 million on Eurosur, a new programme that will use drones to patrol the Mediterranean coast.152 The risk that drones will turn democracies into ‘surveillance states’ is well known, but the risks for authoritarian regimes may be even more severe. Authoritarian states, particularly those that face serious internal opposition, may tap into drone technology now available to monitor and ruthlessly punish their opponents. In semi-authoritarian Russia, for example, drones have already been employed to monitor pro-democracy protesters.153 One could only imagine what a truly murderous authoritarian regime—such as Bashar al-Assad’s Syria—would do with its own fleet of drones. The expansion of drone technology may make the strong even stronger, thus tilting the balance of power in authoritarian regimes even more decisively towards those who wield the coercive instruments of power and against those who dare to challenge them.

Conclusion

Even though it has now been confronted with blowback from drones in the failed Times Square bombing, the United States has yet to engage in a serious analysis of the strategic costs and consequences of its use of drones, both for its own security and for the rest of the world. Much of the debate over drones to date has focused on measuring body counts and carries the unspoken assumption that if drone strikes are efficient—that is, low cost and low risk for US personnel relative to the terrorists killed—then they must also be effective. This article has argued that such analyses are operating with an attenuated notion of effectiveness that discounts some of the other key dynamics—such as the corrosion of the perceived competence and legitimacy of governments where drone strikes take place, growing anti-Americanism and fresh recruitment to militant networks—that reveal the costs of drone warfare. In other words, the analysis of the effectiveness of drones takes into account only the ‘loss’ side of the ledger for the ‘bad guys’, without asking what America’s enemies gain by being subjected to a policy of constant surveillance and attack.

In his second term, President Obama has an opportunity to reverse course and establish a new drones policy which mitigates these costs and avoids some of the long-term consequences that flow from them. A more sensible US approach would impose some limits on drone use in order to minimize the political costs and long-term strategic consequences. One step might be to limit the use of drones to HVTs, such as leading political and operational figures for terrorist networks, while reducing or eliminating the strikes against the ‘foot soldiers’ or other Islamist networks not related to Al-Qaeda. This approach would reduce the number of strikes and civilian deaths associated with drones while reserving their use for those targets that pose a direct or imminent threat to the security of the United States.

Such a self-limiting approach to drones might also minimize the degree of political opposition that US drone strikes generate in states such as Pakistan and Yemen, as their leaders, and even the civilian population, often tolerate or even approve of strikes against HVTs. Another step might be to improve the levels of transparency of the drone programme. At present, there are no publicly articulated guidelines stipulating who can be killed by a drone and who cannot, and no data on drone strikes are released to the public.154 Even a Department of Justice memorandum which authorized the Obama administration to kill Anwar al-Awlaki, an American citizen, remains classified.155 Such non-transparency fuels suspicions that the US is indifferent to the civilian casualties caused by drone strikes, a perception which in turn magnifies the deleterious political consequences of the strikes. Letting some sunlight in on the drones programme would not eliminate all of the opposition to it, but it would go some way towards undercutting the worst conspiracy theories about drone use in these countries while also signalling that the US government holds itself legally and morally accountable for its behaviour.156

A final, and crucial, step towards mitigating the strategic consequences of drones would be to develop internationally recognized standards and norms for their use and sale. It is not realistic to suggest that the US stop using its drones altogether, or to assume that other countries will accept a moratorium on buying and using drones. The genie is out of the bottle: drones will be a fact of life for years to come. What remains to be done is to ensure that their use and sale are transparent, regulated and consistent with internationally recognized human rights standards. The Obama administration has already begun to show some awareness that drones are dangerous if placed in the wrong hands. A recent New York Times report revealed that the Obama administration began to develop a secret drones ‘rulebook’ to govern their use if Mitt Romney were to be elected president.157

The same logic operates on the international level. Lethal drones will eventually be in the hands of those who will use them with fewer scruples than President Obama has. Without a set of internationally recognized standards or norms governing their sale and use, drones will proliferate without control, be misused by governments and non-state actors, and become an instrument of repression for the strong. One remedy might be an international convention on the sale and use of drones which could establish guidelines and norms for their use, perhaps along the lines of the Convention on Certain Conventional Weapons (CCW) treaty, which attempted to spell out rules on the use of incendiary devices and fragment-based weapons.158 While enforcement of these guidelines and adherence to rules on their use will be imperfect and marked by derogations, exceptions and violations, the presence of a convention may reinforce norms against the flagrant misuse of drones and induce more restraint in their use than might otherwise be seen. Similarly, a UN investigatory body on drones would help to hold states accountable for their use of drones and begin to build a gradual consensus on the types of activities for which drones can, and cannot, be used.159 As the progenitor and leading user of drone technology, the US now has an opportunity to show leadership in developing an international legal architecture which might avert some of the worst consequences of their use.

#### Geographically limiting the AUMF dials back an open ended war

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If the Administration’s use of force outside traditional battlefields is increasingly hard to justify under the AUMF, what should Congress do in response?

Congress could, of course, choose to do in 2013 what it refused to do in 2001, and broaden the existing AUMF to expressly permit the executive branch to use force to deter or preempt any future attacks or aggression towards the United States or U.S. interests. But such an expansion of the AUMF would give this and all future Administrations virtual carte blanche to wage perpetual war against an undefined and infinitely malleablelist of enemies, without any time limits or geographical restrictions.

In my view, this would amount to an unprecedented abdication of Congress’s constitutional responsibilities. In effect, Congress would be delegating its war powers almost wholesale to the executive branch. And while such a broad authorization to use military force could in theory be narrowed or withdrawn by a subsequent Congress, history suggests that the expansion of executive power tends to be a one-way ratchet: power, once ceded, is rarely regained.

Mr. Chairman, my guess is that few members of this committee would wish to contemplate such a broadened AUMF. What is more, it is worth emphasizing once again that while the Bush administration requested such open-ended authority to use force immediately after 9/11, Congress refused to provide it – even at a moment when the terrorist threat to the United States was manifestly more severe than it is now.

Today, the Obama Administration has not requested or suggested that it sees any need for an expanded AUMF. It would be utterly unprecedented for Congress to give the executive branch a statutory authorization to use force when the president has not requested it. Similar flaws characterize proposals to revise the AUMF to permit the president to use force against any organizations he may, in the future, specifically identify as posing a threat to the United States, based on criteria established by Congress. This is the proposal made by the Hoover Institute White Paper co-authored by my colleague Jack Goldsmith. He and his coauthors argue that Congress could pass a revised AUMF containing “general statutory criteria for presidential uses of force against new terrorist threats but requir[ing] the executive branch, through a robust administrative process, to identify particular groups that are covered by that authorization of force.”

While it would surely be useful for Congress to provide greater clarity on what, in its view, constitutes a threat sufficient to justify the open-ended use of military force -- amounting to a declaration of armed conflict-- such a revised AUMF would still effectively delegate to the president constitutional powers properly entrusted to Congress. Once delegated, these powers would be difficult for Congress to meaningfully oversee or dial back—and, once again, it is notable that the president has not requested such a power.

Mr. Chairman, Senator Inhofe, if what we’re concerned about is protecting the nation, there is no need for an expanded AUMF. With or without the 2001 AUMF, no one disputes that the president has the constitutional authority (and the international law authority) to use military force if necessary to defend the United States from an imminent attack, regardless of whether the threat emanates from al Qaeda or from some as yet unimagined terrorist organization.

If Congress chooses to revise the AUMF, it would be far more appropriate to limit it than to expand it. The 2001 AUMF established – at least as a matter of domestic U.S. statutory law-- an indefinitely continuing state of armed conflict between the United States, on the one hand, and those responsible for the 9/11 attacks, on the other hand. This has enabled the executive branch to argue (both as a matter of U.S. law and international law) that it is the principles of the law of armed conflict (LOAC) that should govern the U.S. use of armed force for counterterrorism purposes. But if the law of armed conflict is the applicable legal framework through which to understand the AUMF and through which to evaluate U.S. drone strikes outside of traditional battlefields, there are very few constraints on the U.S. use of armed force, and no obvious means to end the conflict.

Compared to other legal regimes, including both domestic law enforcement rules and the international law on self defense, the law of armed conflict is extremely permissive with regard to the use of armed force. The law of armed conflict permits the targeting both of enemy combatants and their co-belligerents. It also allows enemy combatants to be targeted by virtue of their status, rather than their activities: it is permissible to target enemy combatants while they are sleeping, for instance, even though they pose no “imminent’ threat while asleep, and the lowest-ranking enemy soldier can be targeted just as lawfully as the enemy’s senior-most military leaders. Indeed, uniformed cooks and clerks with no combat responsibilities can be targeted along with combat troops.

It is this highly permissive law of armed conflict framework that has enabled the executive branch to assert that “associates” of al Qaeda and the Taliban may be targeted beyond traditional battlefields, even though this expansion of the use of force beyond those responsible for 9/11was not contemplated by Congress in the 2001 AUMF. Similarly, it is the law of armed conflict framework that has permitted the executive branch to assert the authority to target ever lower-level terrorists and suspected “militants,” rather than restricting drone strikes to those targeting the most dangerous “senior” operatives. It is also the law of armed conflict framework that permits the executive branch to assert that it may target even those individuals and organizations that pose no imminent threat to the United States, in the normal sense of the word “imminent.”

But as the threat posed by Al Qaeda dissipates and U.S. troops withdraw from Afghanistan, it is appropriate for the U.S. to transition to a domestic (and international) legal framework in which there are tighter constraints on the use of military force. Congress can help this transition along by clarifying that the existing AUMF is not an open-ended mandate to wage a “forever war,” and requiring the president to satisfy more exacting legal standards before military force is authorized or used.

In the event that the president becomes aware of a threat so imminent and grave he cannot wait for Congressional authorization prior to using military force, there is no dispute that he can rely on his inherent constitutional powers to take appropriate action until the threat has been eliminated or until Congress can act. However, by expressly granting the power to declare war and associated powers to Congress, our Constitution presumes that the president will only in rare circumstances rely solely on his inherent executive powers to use military force. Historically, non-congressionally authorized uses of force by the president have generally been

reserved for rare and unusual circumstances, and this is as it should be.

Beyond these rare situations of extreme urgency, if the president believes that there is a sustained and intense threat to the United States, he can and should provide Congress with detailed information about the threat, and request that Congress authorize the use of military force to address the specific threat posed by a specific state or organization.

Congress should authorize the use of military force in these circumstances only -- there is no need for Congress to preemptively authorize the president to use military force indefinitely against unspecified threats that the president has not yet identified. And if Congress does authorize the use of military force at the president’s request, the force authorized should be carefully tailored to the specific threat. Furthermore, Congress should be explicit about whether an AUMF is acknowledging or authorizing an ongoing armed conflict, on the one hand, or whether it is simply authorizing the limited use of force for self-defense, on the other hand.

International law imposes criteria for the use of force in national self-defense that are far more stringent than the criteria for using force in the course of an armed conflict that is ongoing. Unlike the international law of armed conflict, the international law of self-defense permits states to use force only to respond to an armed attack or to prevent an imminent armed attack, and the use of force in self defense is subject to the principles of necessity and proportionality. Under self defense rules (unlike law of armed conflict rules) individuals who pose no imminent threat cannot be targeted, and inquiries into imminence, necessity and proportionality tend to restrict the use of force in self defense to strikes against those who— by virtue of their operational seniority or hostile activities- pose threats that are urgent and grave, rather than speculative, distant or minor.

For this reason, I believe that if Congress wishes to refine or clarify the AUMF, it should consider limiting the AUMF’s geographic scope, limiting its temporal duration, and limiting the authorized use of force to that which would be considered permissible self defense under international law, or all three.

Expressly limiting the AUMF’s geographic scope to Afghanistan and/or other areas in which U.S. troops on the ground are actively engaged in combat, for instance, would clarify that the ongoing armed conflict (and the applicability of the law of armed conflict) is limited to these more traditional battlefield situations. As noted above, such a geographical limitation would by no means undermine the president’s ability to use force to protect the United States from threats emanating from outside of the specified region. Such a geographical limitation would merely make it clear that any presidential desire to use force elsewhere would require him either to request an additional narrowly drawn congressional authorization to use force, or would require that any non-congressionally authorized use of force be justified -- constitutionally and internationally – on self defense grounds, by virtue of the gravity and imminence of a specific threat.

Limiting the AUMF’s temporal scope could be accomplished by adding a “sunset” provision to the AUMF. The current AUMF could be set to expire when U.S. troops cease combat operations in Afghanistan, for instance, or in 2015, whichever date comes first. Here again, such a limitation would not preclude the president from requesting an extension or a new authorization to use force, if clearly justified by specific circumstances, nor would it preclude the president from relying on his inherent constitutional powers if force becomes necessary to prevent an imminent attack.

Finally, the AUMF could be revised to clarify Congress’ view of the applicable legal framework. Congress could state explicitly that it authorizes the president to engage in an ongoing armed conflict within the borders of Afghanistan between the U.S. and Al Qaeda, the Taliban and their co-belligerents, but that it does not currently authorize the initiation or continuation of an armed conflict in any other place, and expects therefore that any U.S. military action elsewhere or against other actors shall be governed by principles of self-defense rather than by the law of armed conflict.

There are many possible ways for Congress to signal its commitment to preventing the AUMF from being used to justify a “forever war.” Each of these approaches has both benefits and drawbacks, and each would require significant further discussion. But I believe that Congress’ focus should be on ensuring that war remains an exceptional state of affairs, not the norm. At a minimum, this should preclude any Congressional expansion of existing AUMF authorities. Pg. 10-14

#### The plan legitimizes currents US policy and moderates TKs internationally

Daskal, ’13 [Jennifer C. Daskal, Fellow and Adjunct Professor, Georgetown Center on National Security and the Law, Georgetown University Law Center. THE GEOGRAPHY OF THE BATTLEFIELD: A FRAMEWORK FOR DETENTION AND TARGETING OUTSIDE THE “HOT” CONFLICT ZONE. University of Pennsylvania Law Review, Vol. 161, No. 5. April 2013. <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2049532>]

Additional work is needed to flesh out the precise standards for concluding that a threat justifies action in self-defense. But by applying the general approach described in Part III both to lethal targeting that takes place outside a zone of active hostilities in the course of an armed conflict and to killings undertaken in self-defense outside an armed conflict, states can begin to develop a clear and consistent set of practices to regulate targeted killings outside the conflict zone.214 Such an approach furthers the important goal of creating and protecting a stable set of expectations as to the rules that apply to these killings. The approach serves to limit the state’s use of premeditated lethal force to instances in which the targets pose a profound and ongoing threat that cannot be dealt with through other means. Finally, the framework protects against the perverse situation in which self-defense justifications are used as end-runs around the more restrictive set of law-of-war rules proposed here.

C. Implementation and Security Benefit

One might be skeptical that a nation like the United States would ever accept such constraints on the exercise of its authority. There are, however, several reasons why doing so would be in the United States’ best interest.

First, as described in Section II.B, the general framework is largely consistent with current U.S. practice since 2006. The United States has, as a matter of policy, adopted important limits on its use of out-of-battlefield targeting and law-of-war detention—suggesting an implicit recognition of the value and benefits of restraint.

Second, while the proposed substantive and procedural safeguards are more stringent than those that are currently being employed, their implementation will lead to increased restraint and enhanced legitimacy, which in turn inure to the state. As the U.S. Counterinsurgency Manual explains, it is impossible and self-defeating to attempt to capture or kill every potential insurgent: “Dynamic insurgencies can replace losses quickly. Skillful counterinsurgents must thus cut off the sources of that recuperative power” by increasing their own legitimacy at the expense of the insurgent’s legitimacy. 215 The Counterinsurgency Manual further notes, “[E]xcessive use of force, unlawful detention . . . and punishment without trial” comprise “illegitimate actions” that are ultimately “self-defeating.”216 In this vein, the Manual advocates moving “from combat operations to law enforcement as quickly as feasible.”217 In other words, the high profile and controversial nature of killings outside conflict zones and detention without charge can work to the advantage of terrorist groups and to the detriment of the state. Self-imposed limits on the use of detention without charge and targeted killing can yield legitimacy and security benefits.218

Third, limiting the exercise of these authorities outside zones of active hostilities better accommodates the demands of European allies, upon whose support the United States relies. As Brennan has emphasized: “The convergence of our legal views with those of our international partners matters. The effectiveness of our counterterrorism activities depends on the assistance and cooperation of our allies—who, in ways public and private, take great risks to aid us in this fight.”219 By placing self-imposed limits on its actions outside the “hot” battlefield, the United States will be in a better position to participate in the development of an international consensus as to the rules that ought to apply.

Fourth, such self-imposed restrictions are more consistent with the United States’ long-standing role as a champion of human rights and the rule of law—a role that becomes difficult for the United States to play when viewed as supporting broad-based law-of-war authority that gives it wide latitude to employ force as a first resort and bypass otherwise applicable human rights and domestic law enforcement norms.

Fifth, and critically, while the United States might be confident that it will exercise its authorities responsibly, it cannot assure that other states will follow suit. What is to prevent Russia, for example, from asserting that it is engaged in an armed conflict with Chechen rebels, and can, consistent with the law of war, kill or detain any person anywhere in the world which it deems to be a “functional member” of that rebel group? Or Turkey from doing so with respect to alleged “functional members” of Kurdish rebel groups? If such a theory ultimately resulted in the targeted killing or detaining without charge of an American citizen, the United States would have few principled grounds for objecting.

#### US normative leadership is key

Zenko 13 – Fellow in the Center for Preventive Action @ Council on Foreign Relations [Dr. Micah Zenko (PhD in political science from Brandeis University), “Reforming U.S. Drone Strike Policies,” Council on Foreign Relations, Council Special Report No. 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. Pg. 22-25

## Europe Advantage

#### Advantage two is Transatlantic Relations –

**Current expansive legal regime triggers end of allied intel cooperation and dooms the Atlantic alliance**

Tom **Parker 12**, Former Policy Dir. for Terrorism, Counterterrorism and H. Rts. at Amnesty International, U.S. Tactics Threaten NATO, September 17, <http://nationalinterest.org/commentary/us-tactics-threaten-nato-7461>

A growing chasm in operational practice is opening up between the **U**nited **S**tates and its allies in NATO. This rift is **putting the Atlantic alliance at risk**. Yet no one in Washington seems to be paying attention. The escalating use of **u**nmanned **a**erial **v**ehicle**s** to **strike terrorist suspects** in an increasing number of operational environments from the Arabian Peninsula to Southeast Asia, **coupled** with the continued use of military commissions and **indefinite** **detention**, is driving a wedge between the **U**nited **S**tates and its allies. Attitudes across the Atlantic are hardening fast. This isn’t knee-jerk, man-on-the-street anti-Americanism. European governments that have tried to turn a blind eye to U.S. counterterrorism practices over the past decade are now **forced to pay attention by their own courts**, which will **restrict cooperation in the future**.As recently as last month, the German federal prosecutor’s office opened a probe into the October 2010 killing of a German national identified only as “Buenyamin E.” in a U.S. drone strike in Pakistan. There are at least four other similar cases involving German nationals and several reported strikes involving legal residents of the United Kingdom. In March, Polish prosecutors charged the former head of Polish intelligence, Zbigniew Siemiatkowski, with “unlawfully depriving prisoners of the their liberty” because of the alleged role he played in helping to establish a CIA secret prison in northeastern Poland in 2002–2003. Last December, British Special Forces ran afoul of the UK courts for informally transferring two Al Qaeda suspects detained in Iraq, Yunus Rahmatullah and Amanatullah Ali, to U.S. forces. The British government has been instructed to recover the men from U.S. custody or face legal sanctions that could result in two senior ministers being sent to prison. Perhaps the most dramatic example illustrating the gap that has opened up between the United States and its European allies concerns the 2009 in absentia conviction of twenty-three U.S. agents in an Italian court for the role they played in the extraordinary rendition of radical Imam Hassan Mustafa Osama Nasr from Milan to Cairo. Britain, Poland, Italy and Germany are among America’s closest military partners. Troops from all four countries are currently serving alongside U.S. forces in Afghanistan, but they are now operating within a **very different set of constraints than their U.S. counterparts**. The **E**uropean **C**ourt of **H**uman **R**ights established its jurisdiction over stabilization operations in Iraq, and by implication its writ extends to Afghanistan as well. The British government has lost a series of cases before the court relating to its operations in southern Iraq. This means that concepts such as the right to life, protection from arbitrary punishment, remedy and due process apply in areas under the effective control of European forces. Furthermore, the possibility that **intel**ligence provided by any of America’s European allies could be used to target a terrorism suspect in Somalia or the Philippines for a lethal drone strike now **raises serious criminal liability issues** for the Europeans. The **U**nited **S**tates conducts such operations under the legal theory that it is in an international armed conflict with Al Qaeda and its affiliates that can be pursued anywhere on the globe where armed force may be required. But **not one other member of NATO shares this legal analysis**, which flies in the face of established international legal norms. The United States may have taken issue with the traditional idea that wars are fought between states and not between states and criminal gangs, but its allies have not. The heads of Britain’s foreign and domestic **intel**ligence services have been surprisingly open about the “inhibitions” that this growing divergence has caused the transatlantic special relationship, telling Parliament that it has become an **obstacle to intelligence sharing**. European attitudes are not going to change—the European Court of Human Rights is now deeply embedded in European life, and individual European governments cannot escape its oversight no matter how well disposed they are to assist the United States. The United States has bet heavily on the efficacy of a new array of counterterrorism powers as the answer to Al Qaeda. In doing so it has evolved a concept of operations that has much more in common with the approach to terrorist threats taken by Israel and Russia than by its European partners. There has been little consideration of the wider strategic cost of these tactics, even as the Obama administration doubles down and extends their use. Meanwhile, some of America’s oldest and closest allies are beginning to place **more** and more **constraints on working with U.S. forces**. NATO cannot conduct military operations under two competing legal regimes for long. Something has to give—and **it may just be the Atlantic alliance**.

#### T-TIP is unique vulnerable. EU concerns about US counterterror strategy will get drawn into the negotiations

**Levanti 13** – Masters in European Public Affairs @ Maastricht University [[Natasha Marie Levanti](http://www.europeanpublicaffairs.eu/author/natashamarielevanti/) , “The Transatlantic Journey – TTIP & Cautious Optimism,” Bursting the Bubble, 2 September 2013, pg. http://www.europeanpublicaffairs.eu/the-transatlantic-journey-ttip-cautious-optimism/

Transatlantic economic cooperation has been something on the minds of those on both sides of the Atlantic before the recent economic woes. For instance, the Transatlantic Economic Council (TEC) was formed in 2007 to deal with increasing regulatory cooperation, as well as aid in addressing non-tariff barriers to transatlantic trade. With the economic situations in both Europe and the United States, starting in 2008 with the housing market collapse, the two entities were more concerned about their individual recovery than cooperation between the two. Yet at the same time, the situation proved for many individuals that now is the time to pursue closer transatlantic trade and investment cooperation.

Data protection and surveillance was recently brought to light as a major issue between the U.S., and the EU. One which almost delayed the transatlantic trade talks due to, most notably, German and French objections after knowledge of possible U.S. surveillance tactics came to light. After some U.S. promises, the trade talks will continue as planned, but this is a glimpse of the extensive number of policy differences which will require discussion during this process. The intention and common belief is that the trade talks will go smoothly, creating a broad spectrum trade relationship between two of the world’s largest regional economies. Yet, with recent events one would think the talks are already off to a rocky start. Therefore, it is important to be aware of some of the issues or perspectives concerning E.U. / U.S. relations before they formally appear in the trade talks that are underway. While not all of these will specifically be discussed as part of the trade negotiations, as is seen with the recent occurrence about data protections, some of these issues may in fact be drawn into the talks surrounding the greater European Union relations with the United States.

After recent events, Data Protection is definitely an issue. Data protection issues have been recurrent between the two since the terror attacks of 9/11, though most recently brought to light again due to accusations of the U.S. tapping into various E.U. offices. In order to prevent this recent development from completely derailing the upcoming trade negotiations, the United States has offered to create ‘working groups’ on the subject.

A hot topic recently has been Cybersecurity. This is mainly due to the court cases surrounding U.S. based companies such as Google and Facebook. Yet despite the fact that there are, and probably will remain to be differences in the regulation of cybersecurity, both sides do appear willing to increase cooperation on this front in order to help counter cybercrime.

The European Union Trading System (ETS) is also a touchy subject, a system put in place to have airlines purchase carbon allowances in an effort to offset CO2 emissions by encouraging airlines to invest in more environmentally friendly aircraft. The E.U., under pressure from international relations has stopped, at least for the moment, the system’s international implementation. Part of this ‘international’ pressure was undoubtedly derived from a piece of legislation passed by U.S. Congress in 2012 that ‘prohibits’ U.S. aircraft operators from actively engaging in the European ETS. This matter has currently been taken up by the U.N.’s International Civil Aviation Organization, which promised in November of 2012 that this would be an issue addressed within the coming year.

Periodically, officials from the U.S. will bring up European energy security as an issue, or at least something that, with deeper trade relations, is considered to be a U.S. interest. Part of this issue is the diversification of European energy resources, since currently it is fairly reliant on Russian supplies. Also of concern in the energy sector is the increase of sustainable energy and the consolidation of the EU’s internal energy market.

The fight against terror and the future of NATO are not likely to be discussed at the trade talks; however these two issues need to be considered when looking at the current level of general cooperation between Europe and the United States**.** Both have been led by joint U.S. / European forces and since September 11, 2001, there has most assuredly been a deeper level of communication and cooperation. This is linked in part to other issues such as cybersecurity and data protection, and was, at least in part, some of the reasoning behind recent developments in those two sectors.

#### T-TIP reduces US dependence on China. They can’t win offense because more US-European trade is inevitable.

**Kelly 13** - PhD Candidate with the Centre for the Study of European Governance @ University of Nottingham [Katrina Kelly, “An American perspective on the EU: The United States should work to ensure European stability,” London School of Economics, February 23, 2013, pg. http://blogs.lse.ac.uk/europpblog/2013/02/23/an-american-perspective-on-the-eu-the-united-states-should-work-to-ensure-european-stability/

Eurosceptiscm is gaining attention and support in the UK, and perhaps throughout Europe. Although this appears to be a European problem, any wavering in the stability of the European Union will have widespread effects on the global political economy. In this post I examine eurosceptiscm from an American standpoint, and assesses how and why the United States must continue, if not increase, its support for unity within the European Union.

The cold war officially ended in 1991. Despite this, the United States has remained skeptical that there is not, nor will be, a future military threat from the Eastern hemisphere. If this statement was once considered debatable, such doubts were surely quelled in the spring of 2006 when the United States began negotiations with both the Czech Republic and Poland to determine the best site for the future installation of an anti-ballistic missile site.

The United States has been an aggressive military nation since, or perhaps because of, its initial creation. We are a nation that profits and rarely shirks from military interference and must be realistic about future military engagements. The rationale for defending the EU solely for its appropriateness as a missile defense system against nations like Iran and North Korea only begins to touch on the benefits that the European Union provides for the United States. By combining 27 nations in unity the European Union provides the strongest ally in defense for the United States. We no longer have to address, nor stress, individual diplomatic relations in Europe, but can instead be sure of support from 27 of the world’s strongest nations. The benefits of having strong diplomatic ties with so many nations versus individual nations surely need no further explanation.

In the United Kingdom there is often a tendency to address only the western European nations when discussing the effectiveness of the European Union. In the United States, we must not adopt the British tendency to dismiss the Union as individual nations and study only the effectiveness of the EU as a whole. The Union is a federal state made up 27 member-states, 17 of which use the euro, and must constantly be examined as such. The benefits of the European Union lie not only in the diplomatic solidarity provided by a unity of such a large number of nations, but also in the economic stability provided by such a vast joining of nations.

Growing from the position as a strong “supporter” of European integration; the US/EU now holds the largest economic relationship in the world. In 2010 $1,537.4 billion flowed between the European Union and the United States. Today, the EU counts for 18.7% of exports from the US. Including services, and not including $131.9 billion of direct investments, the EU makes up more than 31% of all US trade relations. When looking at the increasing trend towards globalization, this relationship will only continue to grow as trade relations continue to dissolve international barriers. At least, this is one scenario. On the opposing side the relationship could completely dissolve, not through choice, but through inevitability.

The economic climate today has forced nations to reconsider their spending habits. In Europe, where the recession has caused some nations, specifically southern nations, to hover on the brink of bankruptcy, spending has been scrutinized to the point that each spending measure has become politicized. Eurosceptiscm, or criticism of the EU, is an act of opposition to the process of European integration. The idea centers on the thought that integration weakens the nation-state and claims that it is undemocratic (on the most-extreme side) or argues that the EU is too bureaucratic and costly (the most common argument). Whereas at one time the EU was considered a highly popular institution, today only 31.9% of citizens polled in a Eurobarometer test believe that the EU views the EU positively.

In the UK this view is especially strong. What used to be a notion of the Conservative Party is now a policy initiative that David Cameron recently delivered a speech on. In an age of increased austerity, Cameron has addressed the concern that the EU’s recent demand of a 6.8% increase in UK spending in the EU is unwarranted. What once seemed to be a mere financial grumbling of the Conservatives has become a popular prediction for some economists.

While the British are considering decreased relations with Europe, it may be useful to consider what increasing our relations with Europe could do for both the American and global economy. For the past year, a free-trade agreement between the US and Europe has become more attainable than any discussions in the past decade have alluded to. Both leaders of the private and public sector seem to agree that a free-trade agreement between the two continents could result in the stimulus that economists have been searching for since the 2008 crisis. Although tariffs between the US and EU are already low, the companies that do the most transatlantic trade argue that a decrease in the 3% average would mean huge savings for the firms.  As an agreement like this would boost the earnings of firms without have repercussions on the taxpayer, increasing support for EU/US relations to mature in a NAFTA-like agreement seems to be a feasible idea.

A free-trade agreement would not only act as a stimulus, but would help to weaken the growing American dependence on the Chinese. China has dominated the political debate in the US, which may or may not be accurate, but in reality trade with Europe is much larger than trade with China. Increasing our support for the EU would help to set a positive curve for demand and help to decrease the rate of acceleration of dependence on the Chinese. At the same time, Europe is considering the same type of agreement with China, as they recognize and need, the stimulus benefits from such a trade agreement. If we do not act then surely, as the past decade has shown, the Chinese will be quick to make an agreement with the EU. The Chinese know that fluctuation in the Yuan is always a concern and they would be quick to seal a deal that would help to increase stability in export and imports.

In order to benefit from such a trade agreement, a decision must be taken quickly on European and American trade relations. Without it the natural dissolution of trade barriers will allow this to happen inevitably, but in a slow process that would not act as a stimulus to growth on either side of the Atlantic.

#### Trade imbalance encourages China bashing that undermines US-China relations.

**Ramirez & Rong 12** – Professors of Economics @ George Mason University [Carlos D. Ramirez & Rong Rong “China Bashing: Does Trade Drive the “Bad” News about China in the USA?,” Review of International Economics, 20(2), 2012, pg. 350–363

Trade between the USA and China has been growing at a substantial rate over the last two decades (1990–2010). In 1990, total bilateral trade stood at US$20 billion. By 2008 this figure had risen to US$409 billion, implying an annual growth rate of over 4% in real terms—a rate faster than that of the US economy over the same period.1 It is very likely that Sino-American trade relations will continue to grow in the foreseeable future, although perhaps not at the same rate, given the gravity of the 2007–09 recession in the USA.

Despite the phenomenal rate of growth, trade relations between the two countries have been anything but smooth. Trade disputes have frequently surfaced, and over the years, as the size of the bilateral trade deficit has widened, economic relations have become tense: since 2005, the growing bilateral deficit has been linked to a variety of issues, including currency exchange manipulation, health and safety standards, and discriminatory regulation. Indeed, between 1990 and 2010, the tense trade relations¶ have lead to the introduction of numerous bills in Congress with explicit grievances against China.2

Intertwined with these trade-related complaints are other grievances that, though not necessarily directly related to trade issues, nonetheless form part of Sino-American relations. These other grievances relate to China’s political system, human rights, Tibet, repression, and so forth, and are frequently reported on in US media outlets, more often than not with a slant unfavorable to China.

The purpose of this paper is to investigate empirically the extent to which news reports of US grievances against China that are not necessarily directly related to trade (e.g. on the subject of human rights) are driven by cycles in the US–China trade deficit. Many scholars of Sino-American relations suspect that there is such a link. For example, these scholars see an ulterior motive behind the US preoccupation with China’s record on human rights (Wang, 2002).

To conduct this investigation, a China “bad news” index is constructed for the period January 1990–December 2008.3 To develop the index, a count is made of articles that talk about China in connection with one of the following grievance issues: “human rights,” “Tibet,” “child labor,” “democracy,” and “repression.”4 This paper then makes use of a parsimonious transfer model to examine the extent to which unexpected changes in the trade deficit explain movements in the bad news index. The results indicate that 3–4 months after an unexpected widening of the bilateral trade deficit, the frequency of bad news rises sharply, before subsiding in subsequent months. It is found that the likelihood of this relationship’s being purely coincidental is relatively low— about 1%. The relationship is robust to the choice of the model specification as well as to a variety of assumptions about the behavior of the lag structure.

Explaining the relationship between an unexpected widening of the bilateral trade deficit and an increased frequency of bad news is actually quite straightforward and does not rely on esoteric conspiracy theories. The timing of a decision to publish bad news about China can be explained by a publisher’s interest in readership and therefore in revenues. As the bilateral trade deficit unexpectedly widens, many US members of Congress respond to pressure groups by voicing their misgivings and trepidations on the subject. Indeed, this paper finds empirical support for this last argument. In particular, a positive and statistically significant correlation between the annual number of¶ Congressional hearings on China and the US–China bilateral trade deficit is detected. A regression analysis reveals that this relationship is robust to different functional forms.

The fact that Congress becomes more preoccupied about China, in combination with the fact that China is one of the largest US trading partners, makes China a more salient topic of discussion, so that the media find it more worthwhile to run stories about China with a negative slant. The old adage “there is no news like bad news” is illustrative in this regard. The notion that the US media, in deciding what is newsworthy, operate as profit-maximizing enterprises should not be controversial. Indeed, a substantial amount of research finds that this is the case.5

The results lend evidence to the proposition that the reporting of negative news about China may indeed be influenced by tensions arising from the widening bilateral trade deficit. This investigation gives empirical support to the suspicion of many Sino- American scholars that “China bashing” is, at least in part, a reaction to the widening US–China trade deficit. To the present authors’ knowledge, this is the first paper that empirically evaluates the linkage between US–China trade deficits and news— specifically bad news. Given that relations between the two countries are often at the¶ center of attention in US politics, it is believed that this is an important issue that needs to be elucidated. Pg. 350-351

#### Bashing risks nuclear war

**Gross 12** - Senior associate of Pacific Forum CSIS [Donald Gross (A former State Department official who developed diplomatic strategy toward East Asia. Counselor of the U.S. Arms Control and Disarmament Agency and director of legislative affairs at the National Security Council in the White House), “Quit bashing Beijing — China’s rise is good for America,” Salon, Monday, Oct 22, 2012 03:30 PM EDT, pg. http://www.salon.com/2012/10/22/quit\_bashing\_beijing\_chinas\_rise\_is\_good\_for\_america/

The routine scapegoating of China — which no less a figure than Henry Kissinger, the architect of U.S. rapprochement with Beijing in the 1970s, has called “[extremely deplorable](http://www.huffingtonpost.com/2012/10/03/henry-kissinger-2012-election_n_1937157.html)” — is targeted at vulnerable people who have suffered deeply from the effects of the economic recession.

It is easier for both campaigns to shift blame to foreigners than to remind voters that the global financial crisis began on Wall Street, not in Beijing.  Or to point out that trade with China – America’s third-largest export market – has helped pull the United States out of the global financial crisis.

Demagogic attacks by both campaigns on China are particularly dangerous since they play into often unspoken but prevalent anti-Asian racial prejudices in various parts of the United States.  American leaders should try to overcome the sad history of anti-Asian prejudice, not exploit it for political gain.

Perhaps the only consolation one can take in this season of China bashing is that it may finally force a badly needed national debate on U.S. policy toward China.

With respect to national security, the Obama administration benignly describes its large-scale military buildup in the Pacific as a “strategic pivot” to Asia or “rebalancing” U.S. forces.  Both terms are euphemisms that mask the reality of current policy.  We are now implementing an aggressive containment strategy that stimulates China’s military modernization and its own preparations for war.

Increased tensions with China could have a number of dire outcomes.  They could lead to serious military conflict over Taiwan’s political status, over whether Japan or China holds sovereignty to several uninhabitable islands in the East China Sea, or over the ownership of small islands and energy resources in the South China Sea.  In a worst case, those conflicts could escalate, by accident or design, to a nuclear exchange.

#### Security cooperation with Europe solves nuclear war and multiple transnational threats

**Stivachtis 10** – Director of International Studies Program @ Virginia Polytechnic Institute & State University [Dr. Yannis. A. Stivachtis (Professor of Poli Sci & Ph.D. in Politics & International Relations from Lancaster University), THE IMPERATIVE FOR TRANSATLANTIC COOPERATION,” The Research Institute for European and American Studies, 2010, pg. http://www.rieas.gr/research-areas/global-issues/transatlantic-studies/78.html]

There is no doubt that US-European relations are in a **period of transition**, and that the stresses and strains of globalization are increasing both the number and the seriousness of the challenges that confront transatlantic relations.

The events of 9/11 and the Iraq War have added significantly to these stresses and strains. At the same time, international terrorism, the nuclearization of **North Korea** and especially **Iran**, the proliferation of weapons of mass destruction (WMD), the transformation of **Russia** into a stable and cooperative member of the international community, the growing power of **China**, the political and economic transformation and integration of the **Caucasian** and **Central Asian** states, the integration and stabilization of the **Balkan** countries, the promotion of peace and stability in the **Mid**dle **East**, poverty, climate change, AIDS and other emergent problems and situations require further cooperation among countries at the regional, global and institutional levels.

Therefore, cooperation between the U.S. and Europe is more **imperative** than ever to deal effectively with these problems. It is fair to say that the challenges of crafting a new relationship between the U.S. and the EU as well as between the U.S. and NATO are more regional than global, but the implications of success or failure will be global.

The transatlantic relationship is still in crisis, despite efforts to improve it since the Iraq War. This is not to say that differences between the two sides of the Atlantic did not exist before the war. Actually, post-1945 relations between Europe and the U.S. were fraught with disagreements and never free of crisis since the Suez crisis of 1956. Moreover, despite trans-Atlantic proclamations of solidarity in the aftermath of 9/11, the U.S. and Europe parted ways on issues from global warming and biotechnology to peacekeeping and national missile defense.

Questions such as, the future role of NATO and its relationship to the common European Security and Defense policy (ESDP), or what constitutes terrorism and what the rights of captured suspected terrorists are, have been added to the list of US-European disagreements.

There are two reasons for concern regarding the transatlantic rift. First, if European leaders conclude that Europe must become **counterweight** to the U.S., rather than a partner, it will be difficult to engage in the kind of open search for a common ground than an elective partnership requires. Second, there is a risk that public opinion in both the U.S. and Europe will make it difficult even for leaders who want to forge a new relationship to make the necessary accommodations.

If both sides would actively work to heal the breach, a new opportunity could be created. A vibrant transatlantic partnership remains a real possibility, but only if both sides make the necessary political commitment.

There are strong reasons to believe that the security challenges facing the U.S. and Europe are more shared than divergent. The most dramatic case is terrorism. Closely related is the common interest in halting the spread of weapons of mass destruction and the nuclearization of Iran and North Korea. This commonality of threats is clearly perceived by publics on both sides of the Atlantic.

Actually, Americans and Europeans see eye to eye on more issues than one would expect from reading newspapers and magazines. But while elites on both sides of the Atlantic bemoan a largely illusory gap over the use of military force, biotechnology, and global warming, surveys of American and European public opinion highlight sharp differences over global leadership, defense spending, and the Middle East that threaten the future of the last century’s most successful alliance.

There are other important, shared interests as well. The transformation of Russia into a stable cooperative member of the international community is a priority both for the U.S. and Europe. They also have an interest in promoting a stable regime in Ukraine. It is necessary for the U.S. and EU to form a united front to meet these challenges because first, there is a risk that dangerous materials related to **WMD** will fall into the wrong hands; and second, the **spread of conflict** along those countries’ periphery could destabilize neighboring countries and provide **safe havens for terrorists** and other international criminal organizations. Likewise, in the Caucasus and Central Asia both sides share a stake in promoting political and economic transformation and integrating these states into larger communities such as the OSCE.

This would also minimize the risk of instability spreading and prevent those countries of becoming havens for international terrorists and criminals. Similarly, there is a common interest in integrating the Balkans politically and economically. Dealing with Iran, Iraq, Lebanon, and the Israeli-Palestinian conflict as well as other **political issues in the Mid**dle **East** are also of a great concern for both sides although the U.S. plays a dominant role in the region. Finally, US-European cooperation will be more effective in dealing with the **rising power of China** through engagement but also containment.

The post Iraq War realities have shown that it is no longer simply a question of adapting transatlantic institutions to new realities. The changing structure of relations between the U.S. and Europe implies that a new basis for the relationship must be found if transatlantic cooperation and partnership is to continue. The future course of relations will be **determined above all by U.S. policy towards Europe** and the Atlantic Alliance.

Wise policy can help forge a new, more enduring strategic partnership, through which the two sides of the Atlantic cooperate in meeting the many major challenges and opportunities of the evolving world together. But a policy that **takes Europe for granted** and routinely **ignores or** even **belittles Europe**an concerns, may force Europe to conclude that the costs of continued alliance outweigh its benefits.

#### AND, statutory codification of Obama’s policy solves. Failure allows the issue to quickly fester and undermine relations

**Dworkin 13** - Senior policy fellow @ European Council on Foreign Relations [Anthony Dworkin (Web editor of the Crimes of War Project which a site dedicated to raising public awareness of the laws of war), “Actually, drones worry Europe more than spying,” CNN’s Global Public Square, July 17th, 2013, 10:31 AM ET, pg. http://globalpublicsquare.blogs.cnn.com/2013/07/17/actually-drones-worry-europe-more-than-spying/

Relations between the United States and Europe hit a low point following [revelations](http://www.cnn.com/2013/06/30/world/europe/eu-nsa/index.html) that Washington was spying on European Union buildings and harvesting foreign email messages.

Behind the scenes, though, it is not data protection and surveillance that produces the most complications for the transatlantic intelligence relationship, but rather America's use of armed drones to kill terrorist suspects away from the battlefield. Incidents such as the [recent killing](http://www.reuters.com/article/2013/07/03/us-pakistan-drone-attack-idUSBRE96205820130703) of at least 17 people in Pakistan are therefore only likely to heighten European unease.

In public, European governments have displayed a curiously passive approach to American drone strikes, even as their number has escalated under Barack Obama’s presidency. Many Europeans believe that the majority of these strikes are unlawful, but their governments have maintained an uneasy silence on the issue. This is partly because of the uncomfortable fact that information provided by European intelligence services may have been used to identify some targets. It is also because of a reluctance to accuse a close ally of having violated international law. And it is partly because European countries have not worked out exactly what they think about the use of drones and how far they agree within the European Union on the question. Now, however, Europe’s muted stance on drone strikes looks likely to change.

Why? For one thing, many European countries are now trying to acquire armed drones themselves, and this gives them an incentive to spell out clearer rules for their use. More importantly, perhaps, Europeans have noticed that drones are proliferating rapidly, and that countries like China, Russia and Saudi Arabia are soon likely to possess them. There is a clear European interest in trying to establish some restrictive standards on drone use before it is too late. For all these reasons, many European countries are now conducting internal reviews of their policy on drones, and discussions are also likely to start at a pan-European level.

But as Europeans begin to articulate their policy on the use of drones, a bigger question looms. Can Europe and the United States come together to agree on when drone strikes are permissible? Until now, that would have seemed impossible. Since the September 11 attacks, the United States has based its counterterrorism operations on the claim that it is engaged in a worldwide armed conflict with al Qaeda and associated forces — an idea that President Obama inherited from President George W. Bush and has been kept as the basis for an expanded drone strike campaign. European countries have generally rejected this claim.

However, the changes to American policy that President Obama [announced](http://www.theatlantic.com/politics/archive/2013/05/what-mattered-in-obamas-speech-today-ending-the-open-ended-war-on-terror/276208/) in May could open the way to at least the possibility of a dialogue. Obama suggested that he anticipated a time in the not-too-distant future when the armed conflict against al Qaeda might come to an end. More substantially, he made clear that his administration was in the process of switching its policy so that, outside zones of hostilities, it would only use drone strikes against individuals who posed a continuing and imminent threat to the U.S. That is a more restrictive standard than the claim that any member of al Qaeda or an associated force could lawfully be killed with a drone strike at any time.

European countries might be more willing to accept an approach based on this kind of “self-defense” idea. However, there remain some big stumbling blocks.

First, a good deal about Obama’s new standards is still unclear. How does he define a “zone of hostilities,” where the new rules will not apply? And what is his understanding of an “imminent” threat? European countries are likely to interpret these key terms in a much narrower way than the United States.

Second, Obama’s new approach only applies as a policy choice. His more expansive legal claims remain in the background so that he is free to return to them if he wishes.

But if the United States is serious about working toward international standards on drone strikes, as Obama and his officials have sometimes suggested, then Europe is the obvious place to start. And there are a number of steps the administration could take to make an agreement with European countries more likely.

#### The plan is key – creates legal convergence

**Daskal 12** – Professor and Fellow in the Center on National Security and the Law @ Georgetown University Law Center [Jennifer C. Daskal (Former counsel to the Assistant Attorney General for National Security @ Department of Justice (DOJ). Served on the joint Attorney General and Secretary of Defense-led Detention Policy Task Force and provided legal advice on detention, surveillance, and interrogation practice. Former senior counterterrorism counsel @ Human Rights Watch. JD from Harvard University), “The Geography of the Battlefield: A Framework for Detention and Targeting Outside the 'Hot' Conflict Zone,” University of Pennsylvania Law Review, Vol. 161, May 2012

Second, limiting the exercise of these authorities outside zones of active hostilities better accommodates the demands of European allies, whose support the United States relies upon. As John Brennan has emphasized, “[t]he convergence of our legal views with those of our international partners matters. The effectiveness of our counterterrorism activities depends on the assistance and cooperation of our allies – who, in ways public and private, take great risks to aid us in this fight. But their participation must be consistent with their laws, including their interpretation of international law.” Key European partners have long viewed the conflict with al Qaeda as limited to the hot battlefield of Afghanistan and northwest Pakistan (and formerly Iraq). According to this view, use of force outside such areas is only permitted under a self-defense framework in response to those who pose an “imminent” threat, and law of war detentions are arguably prohibited altogether.98 By accepting self-imposed limits on its out-of-hot battlefield actions, the United States better positions itself to develop international consensus as to the rules that ought to apply.

## Plan

**The United States federal government should statutorily clarify that its authorization to use force is for zones of active hostilities**

#### This is what we mean by “zones of active hostilities”:

Daskal, ’13 [Jennifer C. Daskal, Fellow and Adjunct Professor, Georgetown Center on National Security and the Law, Georgetown University Law Center. THE GEOGRAPHY OF THE BATTLEFIELD: A FRAMEWORK FOR DETENTION AND TARGETING OUTSIDE THE “HOT” CONFLICT ZONE. University of Pennsylvania Law Review, Vol. 161, No. 5. April 2013. <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2049532>]

2. Identifying the Zone

Consistent with treaty and case law, overt and sustained fighting are key factors in identifying a zone of active hostilities. Specifically, the fighting must be of sufficient duration and intensity to create the exigent circumstances that justify application of extraordinary war authorities, to put civilians on notice, and to justify permissive evidentiary presumptions regarding the identification of the enemy.133 The presence of troops on the ground is a significant factor, although neither necessary nor sufficient to constitute a zone of active hostilities. Action by the Security Council or regional security bodies such as NATO, as well as the belligerent parties’ express recognition of the existence of a hot conflict zone, are also relevant.

#### The executive will comply. Obama is asking for the plan

**Brown 13** [Hayes Brown, "Obama Lays Out Plan To End The War Against Al Qaeda,” Think Progress, May 23, 2013 at 3:52 pm, pg . http://thinkprogress.org/security/2013/05/23/2055331/obama-aumf-repeal/

President Obama delivered a wide ranging speech on Thursday, laying out his vision for countering terrorism in his second term, including announcements on the use of drones, the future closure of the military prison at Guantanamo Bay, and the eventual end of the long war against al Qaeda.

Most importantly, Obama announced that he intends to work closely with Congress to “refine, and ultimately repeal” the 2001 Authorization for the Use of Military Force (AUMF). Passed in the aftermath of 9/11, the AUMF gave the president broad authority to carry out military action against “those nations, organizations, or persons” who “planned, authorized, committed, or aided” the 2001 attack.

“Groups like [Al Qaeda in Arabian Peninsula] must be dealt with, but in the years to come, not every collection of thugs that labels themselves al Qaeda will pose a credible threat to the United States,” Obama said. “Unless we discipline our thinking and our actions, we may be drawn into more wars we don’t need to fight, or continue to grant presidents unbound powers more suited for traditional armed conflicts between nation states.”

Congress recently began its first set of hearings into possible revisions of the AUMF, which is about to enter its twelfth year in force. Currently, there are competing proposals in the Senate and House to either repeal the authorization in its entirety or revise it to allow for the use of force beyond the perpetrators of 9/11. Obama, however, refused to go along with any broadening of the AUMF, saying he “will not sign laws designed to expand this mandate further.”

CAP expert Ken Gude hailed Obama’s commitment to repealing the AUMF as the “beginning of the end” of the war against al Qaeda. While remnants of al Qaeda and new groups remain threats, “the extraordinary military response that followed the attacks of 9/11 embodied in the 2001 Authorization to Use Military Force can now be wound down, the permanent war footing retired, and we can rebalance our efforts to fight terrorism to rely more on our effective and efficient law enforcement and intelligence agencies,” Gude told ThinkProgress.

In his speech today, Obama continued: “Our systematic effort to dismantle terrorist organizations must continue. But this war, like all wars, must end. That’s what history advises. That’s what our democracy demands.” The clear declaration builds upon previous statements from former members of Obama’s administration that the battle against al Qaeda cannot go on indefinitely.

That desire to eventually repeal the AUMF makes up the cornerstone of the counterterrorism strategy Obama laid out today. The current Obama administration approach to conducting targeting killing and other portions that strategy were only just recently codified, as Obama acknowledged in his remarks. In it, the use of drone strikes and other applications of force will be streamlined to a more limited set of targets, with a higher level of scrutiny applied when determining those targets, while a renewed focus on the other elements of preventing terrorism will be implemented.

#### Congress cabins executive military discretion.

**Huq 12** - Professor of Law @ University of Chicago [Aziz Z. Huq, “Review: Binding the Executive (by Law or by Politics),” University of Chicago Law Review, 79 U. Chi. L. Rev. 777, Spring 2012

B. The Executive Unbound paints an image of executive discretion almost or completely unbridled by law or coequal branch. But PV also concede that "the president can exert control only in certain [policy] areas" (p 59). n51 They give no account, however, of what limits a President's discretionary actions. To remedy that gap, this Section explores how the President has been and continues to be hemmed in by Congress and law. My aim here is not to present a comprehensive account of law as a constraining mechanism. Nor is my claim that law is always effective. Both as a practical matter and as a result of administrative law doctrine, the executive has considerable authority to leverage ambiguities in statutory text into warrants for discretionary action. n52 Rather, my more limited aspiration here is to  [\*791]  show that Congress and law do play a meaningful role in cabining executive discretion than The Executive Unbound credits. I start with Congress and then turn to the effect of statutory restrictions on the presidency.

Consider first a simple measure of Presidents' ability to obtain policy change: Do they obtain the policy changes they desire? Every President enters office with an agenda they wish to accomplish. n53 President Obama came into office, for example, promising health care reform, a cap-and-trade solution to climate change, and major immigration reform. n54 President George W. Bush came to the White House committed to educational reform, social security reform, and a new approach to energy issues. n55 One way of assessing presidential influence is by examining how such presidential agendas fare, and asking whether congressional obstruction or legal impediments - which could take the form of existing laws that preclude an executive policy change or an absence of statutory authority for desired executive action - is correlated with presidential failure. Such a correlation would be prima facie evidence that institutions and laws play some meaningful role in the production of constraints on executive discretion.

Both recent experience and long-term historical data suggest presidential agenda items are rarely achieved, and that legal or institutional impediments to White House aspirations are part of the reason. In both the last two presidencies, the White House obtained at least one item on its agenda - education for Bush and health care for Obama - but failed to secure others in Congress. Such limited success is not new. His famous first hundred days notwithstanding, Franklin Delano Roosevelt saw many of his "proposals for reconstruction [of government] ... rejected outright." n56 Even in the midst of economic crisis, Congress successfully resisted New Deal initiatives from the White House. This historical evidence suggests that the diminished success of presidential agendas cannot be  [\*792] ascribed solely to the narrowing scope of congressional attention in recent decades; it is an older phenomenon. Nevertheless, in more recent periods, presidential agendas have shrunk even more. President George W. Bush's legislative agenda was "half as large as Richard Nixon's first-term agenda in 1969-72, a third smaller than Ronald Reagan's first-term agenda in 1981-84, and a quarter smaller than his father's first-term agenda in 1989-92." n57 The White House not only cannot always get what it wants from Congress but has substantially downsized its policy ambitions.

Supplementing this evidence of presidential weakness are studies of the determinants of White House success on Capitol Hill. These find that "presidency-centered explanations" do little work. n58 Presidents' legislative agendas succeed not because of the intrinsic institutional characteristics of the executive branch, but rather as a consequence of favorable political conditions within the momentarily dominant legislative coalition. n59 Again, correlational evidence suggests that institutions and the legal frameworks making up the statutory status quo ante play a role in delimiting executive discretion.

But attention to the White House's legislative agenda may be misleading. Perhaps the dwindling of legislative agendas is offset by newly minted technologies of direct "presidential administration." n60 The original advocate of this governance strategy has conceded, however, that presidential administration is available only when "Congress has left [] power in presidential hands." n61 Where there is no plausible statutory or constitutional foundation for a White House agenda-item, or where there is a perceived need for additional congressional action in the form of new appropriations or the like, Presidents cannot act alone.

The notion of a legislatively constrained presidential agenda is consistent with two canonical political science accounts of the contemporary presidency. Richard Neustadt, perhaps the most influential presidential scholar of the twentieth century,  [\*793] encapsulated the Constitution's system as one of "separated institutions sharing powers" in which "a President will often be unable to obtain congressional action on his terms or even ... halt action he opposes." n62 Writing in 1990, Neustadt concluded that the President "still shares most of his authority with others and is no more free than formerly to rule by command." n63 Neustadt's finding of a weak presidency rested in part on his discernment of political constraints. But he also stressed "Congress and its key committees" as necessary partners in the production of policy. n64 Neustadt thus identified institutions, as much as public opinion, as impediments to the White House.

In harmony with Neustadt's view, Stephen Skowronek's magisterial survey of presidential leadership suggests Presidents are not free to ignore or sideline Congress. Skowronek points out that "it is not just that the presidency has gradually become more powerful and independent over the course of American history, but that the institutions and interests surrounding it have as well." n65 His complex argument (much simplified) situates presidential authority within a cyclical pattern of political "regime" creation, maintenance, and disintegration. n66 In this cycle, the presidency is primarily a destructive force. Chief executives affiliated with past regimes have fewer tools at their disposal than oppositional leaders who "come[] to power with a measure of independence from established commitments and can more easily justify the disruptions that attend the exercise of power." n67 Executive discretion, in this account, is a function of a President's location in the cycle of historical change. It is not a necessary attribute of the institution.

Skowronek also argues that Congress maintains and enforces prior regimes' policy commitments against presidential innovation. He finds congressional abdication to be "virtually unknown to the modern presidency." n68 To the contrary, Skowronek contends, Congress has become more effective over time. Thomas Jefferson in the early 1800s, working with an "organizationally inchoate and politically malleable" legislature, had greater discretion than Ronald  [\*794]  Reagan in the 1980s. n69 By President Reagan's time in office, the "governmental norms and institutional modalities" used to resist presidential initiatives had secured sufficient political capital to become resilient to presidential efforts at change. n70 Until then, political movements proposing greater presidential authority also tended to advocate "some new mechanisms designed to hold [presidential] powers to account." n71 Skowronek provides a useful corrective to the assumption that historical change occurs only at one end of Pennsylvania Avenue. Echoing Neustadt's analysis, his bottom line is that the contemporary executive remains "constrained by Congress" n72 in ways that meaningfully hinder achievement of presidential goals. n73

Nevertheless, neither Neustadt nor Skowronek articulate the precise role of law in congressional obstruction of presidential goals. Perhaps observed executive reticence is merely a result of political calculations, consistent with PV's core hypothesis. But the evidence that the limits on executive authority tend to arise when Congress or existing law preclude a discretionary act suggests that institutions and statutes do play a meaningful role. Such correlations do not, however, establish the precise mechanisms whereby laws and institutions impose frictions on the employment of executive discretion.

Alternatively, perhaps the Neustadt and Skowronek accounts can be explained solely in terms of Congress's negative veto in bicameralism and presentment, which is anticipated by the White House and so delimits the scope of presidential agendas. This would suggest that Congress's power is asymmetrical: it can block some  [\*795] executive initiatives but do little midstream to regulate the use of discretion powers already possessed by the presidency. Consistent with this interpretation, The Executive Unbound stresses the failure of framework laws passed after the Nixon presidency to regulate war and emergency powers (pp 86-87). n74 If the executive can so easily find work-arounds, PV explain, it follows that Congress also has less incentive to pass such laws. In the long term, the incentives for Congress to enact statutory limits on presidential authorities will accordingly atrophy.

There is some merit to this story. But in my view it again understates the observed effect of positive legal constraints on executive discretion. Recent scholarship, for example, has documented congressional influence on the shape of military policy via framework statutes. This work suggests Congress influences executive actions during military engagements through hearings and legislative proposals. n75 Consistent with this account, two legal scholars have recently offered a revisionist history of constitutional war powers in which "Congress has been an active participant in setting the terms of battle," in part because "congressional willingness to enact [] laws has only increased" over time. n76 In the last decade, Congress has often taken the initiative on national security, such as enacting new statutes on military commissions in 2006 and 2009. n77 Other recent landmark security reforms, such as a 2004  [\*796]  statute restructuring the intelligence community, n78 also had only lukewarm Oval Office support. n79 Measured against a baseline of threshold executive preferences then, Congress has achieved nontrivial successes in shaping national security policy and institutions through both legislated and nonlegislated actions even in the teeth of White House opposition. n80

The same point emerges more forcefully from a review of our "fiscal constitution." n81 Article I, § 8 of the Constitution vests Congress with power to "lay and collect Taxes" and to "borrow Money on the credit of the United States," while Article I, § 9 bars federal funds from being spent except "in Consequence of Appropriations made by Law." n82 Congress has enacted several framework statutes to effectuate the "powerful limitations" implicit in these clauses. n83 The resulting law prevents the President from repudiating past policy commitments (as Skowronek suggests) as well as imposing barriers to novel executive initiatives that want for statutory authorization. n84

Three statutes merit attention here. First, the Miscellaneous Receipts Act of 1849 n85 requires that all funds "received from customs, from the sales of public lands, and from all miscellaneous sources, for the use of the United States, shall be paid ... into the treasury of the  [\*797] United States." n86 It ensures that the executive cannot establish off-balance-sheet revenue streams as a basis for independent policy making. Second, the Anti-Deficiency Act, n87 which was first enacted in 1870 and then amended in 1906, n88 had the effect of cementing the principle of congressional appropriations control. n89 With civil and criminal sanctions, it prohibits "unfunded monetary liabilities beyond the amounts Congress has appropriated," and bars "the borrowing of funds by federal agencies ... in anticipation of future appropriations." n90 Finally, the Congressional Budget and Impoundment Control Act of 1974 n91 (Impoundment Act) channels presidential authority to decline to expend appropriated funds. n92 It responded to President Nixon's expansive use of impoundment. n93 Congress had no trouble rejecting Nixon's claims despite a long history of such impoundments. n94 While the Miscellaneous Receipts Act and the Anti-Deficiency Act appear to have succeeded, the Impoundment Act has a more mixed record. While the Supreme Court endorsed legislative constraints on presidential impoundment, n95 President Gerald Ford increased impoundments through creative interpretations of the law. n96 But two decades later, Congress concluded the executive had too little discretionary spending authority and expanded it by statute. n97

 [\*798]  Moreover, statutory regulation of the purse furnishes a tool for judicial influence over the executive. Judicial action in turn magnifies congressional influence. A recent study of taxation litigation finds evidence that the federal courts interpret fiscal laws in a more pro-government fashion during military engagements supported by both Congress and the White House than in the course of unilateral executive military entanglements. n98 Although the resulting effect is hard to quantify, the basic finding of the study suggests that fiscal statutes trench on executive discretion not only directly, but also indirectly via judicially created incentives to act only with legislative endorsement. n99

To be sure, a persistent difficulty in debates about congressional efficacy, and with some of the claims advanced in The Executive Unbound, is that it is unclear what baseline should be used to evaluate the outcomes of executive-congressional struggles. What counts, that is, as a "win" and for whom? What, for example, is an appropriate level of legislative control over expenditures? In the examples developed in this Part, I have underscored instances in which a law has been passed that a President disagrees with in substantial part, and where there are divergent legislative preferences reflected in the ultimate enactment. I do not mean to suggest, however, that there are not alternative ways of delineating a baseline for analysis. n100

In sum, there is strong evidence that law and lawmaking institutions have played a more robust role in delimiting the bounds of executive discretion over the federal sword and the federal purse than The Executive Unbound intimates. Congress in fact impedes presidential agendas. The White House in practice cannot use  [\*799] presidential administration as a perfect substitute. Legislation implementing congressional control of the purse is also a significant, if imperfect, tool of legislative influence on the ground. This is true even when Presidents influence the budgetary agenda n101 and agencies jawbone their legislative masters into new funding. n102 If Congress and statutory frameworks seem to have such nontrivial effects on the executive's choice set, this at minimum implies that the conditions in which law matters are more extensive than The Executive Unbound suggests and that an account of executive discretion that omits law and legal institutions will be incomplete.

## Global battlefield again

Unrestricted drone use causes nuclear war in the Caucuses

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Armenia and Azerbaijan could soon be at war if drone proliferation on both sides of the border continues. In a region where a fragile peace holds over three frozen conflicts, the nations of the South Caucasus are buzzing with drones they use to probe one another’s defenses and spy on disputed territories. The region is also host to strategic oil and gas pipelines and a tangled web of alliances and precious resources that observers say threaten to quickly escalate the border skirmishes and airspace violations to a wider regional conflict triggered by Armenia and Azerbaijan that could potentially pull in Israel, Russia and Iran. To some extent, these countries are already being pulled towards conflict. Last September, Armenia shot down an Israeli-made Azerbaijani drone over Nagorno-Karabakh and the government claims that drones have been spotted ahead of recent incursions by Azerbaijani troops into Armenian-held territory. Richard Giragosian, director of the Regional Studies Center in Yerevan, said in a briefing that attacks this summer showed that Azerbaijan is eager to “play with its new toys” and its forces showed “impressive tactical and operational improvement.” The International Crisis Group warned that as the tit-for-tat incidents become more deadly, “there is a growing risk that the increasing frontline tensions could lead to an accidental war.” “Everyone is now saying that the war is coming. We know that it could start at any moment.” ~Grush Agbaryan, mayor of Voskepar With this in mind, the UN and the Organization for Security and Co-operation in Europe (OSCE) have long imposed a non-binding arms embargo on both countries, and both are under a de facto arms ban from the United States. But, according to the Stockholm International Peace Research Institute (SIPRI), this has not stopped Israel and Russia from selling to them. After fighting a bloody war in the early 1990s over the disputed territory of Nagorno-Karabakh, Armenia and Azerbaijan have been locked in a stalemate with an oft-violated ceasefire holding a tenuous peace between them. And drones are the latest addition to the battlefield. In March, Azerbaijan signed a $1.6 billion arms deal with Israel, which consisted largely of advanced drones and an air defense system. Through this and other deals, Azerbaijan is currently amassing a squadron of over 100 drones from all three of Israel’s top defense manufacturers. Armenia, meanwhile, employs only a small number of domestically produced models. Intelligence gathering is just one use for drones, which are also used to spot targets for artillery, and, if armed, strike targets themselves. Armenian and Azerbaijani forces routinely snipe and engage one another along the front, each typically blaming the other for violating the ceasefire. At least 60 people have been killed in ceasefire violations in the last two years, and the Brussels-based International Crisis Group claimed in a report published in February 2011 that the sporadic violence has claimed hundreds of lives. “Each (Armenia and Azerbaijan) is apparently using the clashes and the threat of a new war to pressure its opponent at the negotiations table, while also preparing for the possibility of a full-scale conflict in the event of a complete breakdown in the peace talks,” the report said. Alexander Iskandaryan, director of the Caucasus Institute in the Armenian capital, Yerevan, said that the arms buildup on both sides makes the situation more dangerous but also said that the clashes are calculated actions, with higher death tolls becoming a negotiating tactic. “This isn’t Somalia or Afghanistan. These aren’t independent units. The Armenian, Azerbaijani and Karabakh armed forces have a rigid chain of command so it’s not a question of a sergeant or a lieutenant randomly giving the order to open fire. These are absolutely synchronized political attacks,” Iskandaryan said. The deadliest recent uptick in violence along the Armenian-Azerbaijani border and the line of contact around Karabakh came in early June as US Secretary of State Hillary Clinton was on a visit to the region. While death tolls varied, at least two dozen soldiers were killed or wounded in a series of shootouts along the front. The year before, at least four Armenian soldiers were killed in an alleged border incursion by Azerbaijani troops one day after a peace summit between the Armenian, Azerbaijani and Russian presidents in St. Petersburg, Russia. “No one slept for two or three days [during the June skirmishes],” said Grush Agbaryan, the mayor of the border village of Voskepar for a total of 27 years off and on over the past three decades. “Everyone is now saying that the war is coming. We know that it could start at any moment." Azerbaijan refused to issue accreditation to GlobalPost’s correspondent to enter the country to report on the shootings and Azerbaijan’s military modernization. Flush with cash from energy exports, Azerbaijan has increased its annual defense budget from an estimated $160 million in 2003 to $3.6 billion in 2012. SIPRI said in a report that largely as a result of its blockbuster drone deal with Israel, Azerbaijan’s defense budget jumped 88 percent this year — the biggest military spending increase in the world. Israel has long used arms deals to gain strategic leverage over its rivals in the region. Although difficult to confirm, many security analysts believe Israel’s deals with Russia have played heavily into Moscow’s suspension of a series of contracts with Iran and Syria that would have provided them with more advanced air defense systems and fighter jets. Stephen Blank, a research professor at the United States Army War College, said that preventing arms supplies to Syria and Iran — particularly Russian S-300 air defense systems — has been among Israel’s top goals with the deals. “There’s always a quid pro quo,” Blank said. “Nobody sells arms just for cash.” In Azerbaijan in particular, Israel has traded its highly demanded drone technology for intelligence arrangements and covert footholds against Iran. In a January 2009 US diplomatic cable released by WikiLeaks, a US diplomat reported that in a closed-door conversation, Azerbaijani President Ilham Aliyev compared his country’s relationship with Israel to an iceberg — nine-tenths of it is below the surface. Although the Jewish state and Azerbaijan, a conservative Muslim country, may seem like an odd couple, the cable asserts, “Each country finds it easy to identify with the other’s geopolitical difficulties, and both rank Iran as an existential security threat.” Quarrels between Azerbaijan and Iran run the gamut of territorial, religious and geo-political disputes and Tehran has repeatedly threatened to “destroy” the country over its support for secular governance and NATO integration. In the end, “Israel’s main goal is to preserve Azerbaijan as an ally against Iran, a platform for reconnaissance of that country and as a market for military hardware,” the diplomatic cable reads. But, while these ties had indeed remained below the surface for most of the past decade, a series of leaks this year exposed the extent of their cooperation as Israel ramped up its covert war with the Islamic Republic. In February, the Times of London quoted a source the publication said was an active Mossad agent in Azerbaijan as saying the country was “ground zero for intelligence work.” This came amid accusations from Tehran that Azerbaijan had aided Israeli agents in assassinating an Iranian nuclear scientist in January. Then, just as Baku had begun to cool tensions with the Islamic Republic, Foreign Policy magazine published an article citing Washington intelligence officials who claimed that Israel had signed agreements to use Azerbaijani airfields as a part of a potential bombing campaign against Iran’s nuclear sites. Baku strongly denied the claims, but in September, Azerbaijani officials and military sources told Reuters that the country would figure in Israel’s contingencies for a potential attack against Iran. "Israel has a problem in that if it is going to bomb Iran, its nuclear sites, it lacks refueling," Rasim Musabayov, a member of the Azerbiajani parliamentary foreign relations committee told Reuters. “I think their plan includes some use of Azerbaijan access. We have (bases) fully equipped with modern navigation, anti-aircraft defenses and personnel trained by Americans and if necessary they can be used without any preparations." He went on to say that the drones Israel sold to Azerbaijan allow it to “indirectly watch what's happening in Iran.” According to SIPRI, Azerbaijan had acquired about 30 drones from Israeli firms Aeronautics Ltd. and Elbit Systems by the end of 2011, including at least 25 medium-sized Hermes-450 and Aerostar drones. In October 2011, Azerbaijan signed a deal to license and domestically produce an additional 60 Aerostar and Orbiter 2M drones. Its most recent purchase from Israel Aeronautics Industries (IAI) in March reportedly included 10 high altitude Heron-TP drones — the most advanced Israeli drone in service — according to Oxford Analytica. Collectively, these purchases have netted Azerbaijan 50 or more drones that are similar in class, size and capabilities to American Predator and Reaper-type drones, which are the workhorses of the United States’ campaign of drone strikes in Pakistan and Yemen. Although Israel may have sold the drones to Azerbaijan with Iran in mind, Baku has said publicly that it intends to use its new hardware to retake territory it lost to Armenia. So far, Azerbaijan’s drone fleet is not armed, but industry experts say the models it employs could carry munitions and be programmed to strike targets. Drones are a tempting tool to use in frozen conflicts, because, while their presence raises tensions, international law remains vague at best on the legality of using them. In 2008, several Georgian drones were shot down over its rebel region of Abkhazia. A UN investigation found that at least one of the drones was downed by a fighter jet from Russia, which maintained a peacekeeping presence in the territory. While it was ruled that Russia violated the terms of the ceasefire by entering aircraft into the conflict zone, Georgia also violated the ceasefire for sending the drone on a “military operation” into the conflict zone. The incident spiked tensions between Russia and Georgia, both of which saw it as evidence the other was preparing to attack. Three months later, they fought a brief, but destructive war that killed hundreds. The legality of drones in Nagorno-Karabakh is even less clear because the conflict was stopped in 1994 by a simple ceasefire that halted hostilities but did not stipulate a withdrawal of military forces from the area. Furthermore, analysts believe that all-out war between Armenia and Azerbaijan would be longer and more difficult to contain than the five-day Russian-Georgian conflict. While Russia was able to quickly rout the Georgian army with a much superior force, analysts say that Armenia and Azerbaijan are much more evenly matched and therefore the conflict would be prolonged and costly in lives and resources. Blank said that renewed war would be “a very catastrophic event” with “a recipe for a very quick escalation to the international level.” Armenia is militarily allied with Russia and hosts a base of 5,000 Russian troops on its territory. After the summer’s border clashes, Russia announced it was stepping up its patrols of Armenian airspace by 20 percent. Iran also supports Armenia and has important business ties in the country, which analysts say Tehran uses as a “proxy” to circumvent international sanctions. Blank said Israel has made a risky move by supplying Azerbaijan with drones and other high tech equipment, given the tenuous balance of power between the heavily fortified Armenian positions and the more numerous and technologically superior Azerbaijani forces. If ignited, he said, “[an Armenian-Azerbaijani war] will not be small. That’s the one thing I’m sure of.”

# 2AC

## Case

### Predict

#### Debates about future crises are critical to social movements that pressure governments to address existential risks

Fuyuki **Kurasawa**, December **2004**. Professor of Sociology, York University of Toronto. “Cautionary Tales: The Global Culture of Prevention and the Work of Foresight,” Constellations 11.4, Ebsco.

In the twenty-first century, the lines of political cleavage are being drawn along those of competing dystopian visions. Indeed, one of the notable features of recent public discourse and socio-political struggle is their negationist hue, for they are devoted as much to the prevention of disaster as to the realization of the good, less to what ought to be than what could but must not be. The debates that preceded the war in Iraq provide a vivid illustration of this tendency, as both camps rhetorically invoked incommensurable catastrophic scenarios to make their respective cases. And as many analysts have noted, the multinational antiwar protests culminating on February 15, 2003 marked the first time that a mass movement was able to mobilize substantial numbers of people dedicated to averting war before it had actually broken out. More generally, given past experiences and awareness of what might occur in the future, given the cries of ‘never again’ (the Second World War, the Holocaust, Bhopal, Rwanda, etc.) and ‘not ever’ (e.g., nuclear or ecological apocalypse, human cloning) that are emanating from different parts of the world, the avoidance of crises is seemingly on everyone’s lips – and everyone’s conscience. From the United Nations and regional multilateral organizations to states, from non-governmental organizations to transnational social movements, the determination to prevent the actualization of potential cataclysms has become a new imperative in world affairs. Allowing past disasters to reoccur and unprecedented calamities to unfold is now widely seen as unbearable when, in the process, the suffering of future generations is callously tolerated and our survival is being irresponsibly jeopardized. Hence, we need to pay attention to what a widely circulated report by the International Commission on Intervention and State Sovereignty identifies as a burgeoning “culture of prevention,”3 a dynamic that carries major, albeit still poorly understood, normative and political implications. Rather than bemoaning the contemporary preeminence of a dystopian imaginary, I am claiming that it can enable a novel form of transnational socio-political action, a manifestation of globalization from below that can be termed preventive foresight. We should not reduce the latter to a formal principle regulating international relations or an ensemble of policy prescriptions for official players on the world stage, since it is, just as significantly, a mode of ethico-political practice enacted by participants in the emerging realm of global civil society. In other words, what I want to underscore is the work of farsightedness, the social processes through which civic associations are simultaneously constituting and putting into practice a sense of responsibility for the future by attempting to prevent global catastrophes. Although the labor of preventive foresight takes place in varying political and socio-cultural settings – and with different degrees of institutional support and access to symbolic and material resources – it is underpinned by three distinctive features: dialogism, publicity, and transnationalism. In the first instance, preventive foresight is an intersubjective or dialogical process of address, recognition, and response between two parties in global civil society: the ‘warners,’ who anticipate and send out word of possible perils, and the audiences being warned, those who heed their interlocutors’ messages by demanding that governments and/or international organizations take measures to steer away from disaster. Secondly, the work of farsightedness derives its effectiveness and legitimacy from public debate and deliberation. This is not to say that a fully fledged global public sphere is already in existence, since transnational “strong publics” with decisional power in the formal-institutional realm are currently embryonic at best. Rather, in this context, publicity signifies that “weak publics” with distinct yet occasionally overlapping constituencies are coalescing around struggles to avoid specific global catastrophes.4 Hence, despite having little direct decision-making capacity, the environmental and peace movements, humanitarian NGOs, and other similar globally-oriented civic associations are becoming significant actors involved in public opinion formation. Groups like these are active in disseminating information and alerting citizens about looming catastrophes, lobbying states and multilateral organizations from the ‘inside’ and pressuring them from the ‘outside,’ as well as fostering public participation in debates about the future. This brings us to the transnational character of preventive foresight, which is most explicit in the now commonplace observation that we live in an interdependent world because of the globalization of the perils that humankind faces (nuclear annihilation, global warming, terrorism, genocide, AIDS and SARS epidemics, and so on); individuals and groups from far-flung parts of the planet are being brought together into “risk communities” that transcend geographical borders.5 Moreover, due to dense media and information flows, knowledge of impeding catastrophes can instantaneously reach the four corners of the earth – sometimes well before individuals in one place experience the actual consequences of a crisis originating in another. My contention is that civic associations are engaging in dialogical, public, and transnational forms of ethico-political action that contribute to the creation of a fledgling global civil society existing ‘below’ the official and institutionalized architecture of international relations. The work of preventive foresight consists of forging ties between citizens; participating in the circulation of flows of claims, images, and information across borders; promoting an ethos of farsighted cosmopolitanism; and forming and mobilizing weak publics that debate and struggle against possible catastrophes. Over the past few decades, states and international organizations have frequently been content to follow the lead of globally- minded civil society actors, who have been instrumental in placing on the public agenda a host of pivotal issues (such as nuclear war, ecological pollution, species extinction, genetic engineering, and mass human rights violations).

### Plan bad

Just says emotions are importance, no reason that means we should ignore policy

#### Policy = important to political success

John G **GUNNELL** Political Science @ SUNY Albany **’98** *Politeia* “Speaking politically: politics and the academic intellectual in the United States”(Winter 1998) http://www.unisa.ac.za/default.asp?Cmd=ViewContent&ContentID=11579&P\_XSLFile=unisa/accessibility.xsl

POLITICAL THEORY AS A METAPRACTICE We often fail to recognise how much contemporary political theory bears the genetic imprint of its nineteenth-century origins. Political science and political theory in the United States originated as a surrogate for religion and moral philosophy, but what scholars have failed to figure out is exactly how this academic community can have practical significance. Michael Walzer, for example, has advanced the idea of the theorist as a `connected critic' who, while seeking necessary `critical distance', enters the `mainstream' and pursues criticism as `interpretation' and `opposition' and seeks to mediate between `specialists and commoners' or `elite and mass' (1987; 1988). Walzer acknowledges the conflict between the claim of philosophy to `objective truths' and the authority of the political community but, as with so many conceptual solutions, he fails to situate this image. None of Walzer's many historical examples, from the Hebrew prophets to Michel **Foucault**, touch directly upon the circumstances of **contemporary institutionalised academic metapractices.** Charles Lindblom has grappled intensively with the problem of whether social science can provide `usable knowledge' (Cohen and Lindblom 1979) and how social scientific inquiry can contribute to social change (1990), with what might be called the problem of relating knowing about to knowing how, but in the end, the issue seems to come down to the place and role of the university in contemporary society. Russell Jacoby has argued that the American university has come to function as a sort of `brain drain' which has attracted but also absorbed and neutralised the potential public intellectual, particularly on the Left (1988). This is a provocative claim, but it is based on a romanticised image of the existence and impact of public intellectuals in American political life. Thomas Bender, for example, has more carefully explored the impact of the modern university on the participation of academics in public life (1993). Those attracted to the university seldom really had a stomach for political life and dirty hands. Jacoby's more recent analysis, in The Chronicle of Higher Education, probably hits close to the mark. He suggests that the university is at once politicised and apolitical (1996). Academicians take positions on a variety of political and moral issues but in a universe and language that is quite **disconnected from practical politics**. In the academy there is a kind of virtual politics represented in discussions of feminism, liberalism, citizen identity and the like, but this seldom reaches the political world. Allan Bloom's claim, and lament, that Leftist ideology has taken over the university assumes that the university (1988) is a staging zone for political education, but this would be difficult to sustain empirically. And despite abstractly voiced concerns about, and attestations to, political relevance, most scholarly activity is generated and propelled by academic concerns and professionalism. A dominant theme in many humanistic fields such as **literary criticism is that they are**, in one way or another, **a form of political action** or that they can exercise significant influence on public life (Lentrecchia 1983; Norris 1985). Most of these claims are advanced by individuals who fancy themselves **radical** and **oppositional thinkers**. At the same time conservatives, such as Bloom, Roger Kimball (1990), Dinesh D'Sousa (1991), Martin Anderson (1992) and Lynne Cheney (1995), protest the influence of these individuals in the American academy and warn of their corrosive impact on public life and morals. What these commentators have in common, however, is the belief that what takes place in the university really has consequences, but specifying, or determining, the exact nature of these consequences is another matter. Claims, such as those of Isaac and myself, about the alienation of political theory from politics as well as arguments, such as Jacoby's, about the apolitical character of the academy are countered in a number of ways. One response is to point to what is sometimes called the `cross-over' phenomenon, that is, instances of academics entering political life or politicians moving to the academy, but this fails to take account of what the metapractical dream has been all about, that is, to have authority over practice without joining it. And it has other difficulties attached to it. While `crossover' may seem intuitively significant - cases like those of Woodrow Wilson, Henry Kissinger, Hubert Humphrey in one direction, and those of Jimmy Carter and similar instances in the other direction -- these are exceptions that do not prove the rule. What these classic cases, as well as instances of Straussians joining the Reagan and Bush administration or the influence of communitarian liberals and academic advocates of strong democracy in the Clinton White House, tell us about the general relationship between political theory and politics is that for the most part these realms are actually quite disparate. They represent more choices between vocations than articulation. We note these incidents because they are so unusual, not because they represent the manner in which political theorists are characteristically involved in politics. And even though we might wish to think that these are examples of theory leading practice, they probably are closer to instances of practice using theory. Another line of argument is based on the `trickle-down' hypothesis that the university can and does play, through education and other processes of cultural diffusion, a major role in shaping the public consciousness. Some also subscribe to the view that there are many individual theorists who are actually talking about politics and confronting pressing political problems, both by dealing with the philosophical dimension of these issues and by speaking to and for various concrete and sometimes marginalised constituencies. And there is the further claim that many do not simply give at the office but take their work home and through their individual efforts carry it into the relevant communities. While these are interesting theses, they remain largely at the level of professional folklore. To the extent that they can be demonstrated, they may indicate something about a few individuals but do not tell us very much about the general structural relationship between political theory and politics. Although it would be interesting to know if and to what extent and in what manner academic discourse does reverberate in the world of social practices, claims about such influence remain largely matters of **faith, rhetoric and metapractical fantasy**. There is, however, a more significant point. In instances as diverse as nineteenth-century social science, various images of political science as a policy analysis, critical theory, and Wolin's account of political theory as a vocation, the vision involved transcending the vagaries and unpredictability of individual action and establishing a professional cadre as an institutional social force that would carry authority and inform practice on a systematic basis. What received short-shrift in Isaac's analysis, however, was a consideration of whether political theory actually had anything to say about the events of 1989. I happened to be in Berlin, at an academic conference dealing with the historical origins of modern social science, the day that the `wall' came down. It was a profoundly moving event and, as usual, theorists were in awe at being so proximate to actual politics. What was most striking, however, was the general lack of any sense of the imminence of the event and the inability to provide more that the most mundane explanation of its occurrence. I remember asking an East German border guard, who was being plied with champagne and roses, what he thought of it all, and his answer was much the same as that of my colleagues: `Rationalitat hat gesieget.' In the recent NOMOS volume on `theory and practice', (Shapiro and DeCew 1995) there is still a failure to recognise that the problem of the relationship of metapractices to their object is less a universal with various manifestations than a category for subsuming historically situated issues that have a certain family resemblance. `Theory' is used generically to encompass everyone from Aristotle to Rawls, and practice often appears as an abstract and equally undifferentiated datum. There is scant attention either to the situation of the academician, who for the most part, either explicitly or implicitly, is the principal reference for `theory', or to the particularities of politics and other practices. Here philosophers embrace positions such as `critical race theory', talk about the environment and claim that justice as fairness demands the use of solar technology, assess the quality of life in developing countries, and make a variety of claims which suggest that they somehow have a voice in the matters they discuss, but such **metapractical discourse is quite different from talking to and in politics**. There seems to be the assumption, as one contributor put it, that `political theory is simply conscientious civic conversation without a deadline'. Finally, and maybe most significant, there is the seldom confronted issue of justifying the very idea of theoretical intervention when there is a simultaneous commitment to democracy. There is a presumption that although such intervention may be difficult to achieve, it is, as Isaac implies, in principle, desirable, but the claim of theory to epistemic and moral privilege and to some special form of political authority is not easily reconciled with an image of democratic deliberation. It is, in the end, difficult to say what ethical imperatives should govern the practice of academic political theory and what constitutes authenticity in this enterprise, but maybe the greatest ethical lapse is not the failure to speak to or about certain events or address certain normative issues but rather the refusal to come to terms with the actual situation and character of theoretical practice. There is a persistent, but often unreflective, assumption that academicians, by simply doing what comes naturally, that is, **practising academic virtuosity**, are somehow acting in other spheres - politics, moral discourse, or the pursuit of human emancipation. The **danger of** such **false consciousness**, however, is something that is **ever present** in the very nature of metapractices which both long to return to their origins and yearn for authority over the universe from which they sprung. Much of the talk about political theorists speaking politically represents little more than the discursive residue of **unrequited hope**.

## T\*\*

### A2 restrict = eliminate

We meet – the plan eliminates authority outside hot battlefields – we don’t pass a new AUMF

Daskal 13 - Fellow and Adjunct Professor, Georgetown Center on National Security and the Law

University of Penn L. Rev., THE GEOGRAPHY OF THE BATTLEFIELD: A FRAMEWORK FOR DETENTION AND TARGETING OUTSIDE THE "HOT" CONFLICT ZONE, April, 2013, 161 U. Pa. L. Rev. 1165, Lexis

Of course, there are a number of possible ways to define the threat. For lethal targeting, I suggest two such categories: (1) those involved in the active planning or operationalization of specific, imminent, and externally focused attacks, regardless of their relative hierarchical position in the organization; and (2) operational leaders who present a significant, ongoing, and externally focused threat, even if they are not implicated in the planning of a specific, imminent attack. n141 The first definition is a conduct-based test that prohibits [\*1211] the use of lethal force absent a specific, imminent, and significant threat. The second definition encompasses those who pose a continuous and significant threat given their leadership roles within an organization. n142 Whether an individual meets this threat requirement depends on the individual's role within the organization, his capacity to operationalize an attack, and the degree to which the threat is externally focused. For example, an al Shabaab operational leader, whose attacks are focused on the internal conflict between al Shabaab and Somalia's Transnational Federal Government, would not qualify as a legitimate target in the separate conflict between the United States and al Qaeda, even if he had demonstrated associations with al Qaeda. He might, however, be a legitimate target if he were involved in the planning of externally focused attacks and had demonstrated the capacity and will to operationalize the attacks. n143¶ Such restrictions serve the important purpose of limiting state authority to target and kill to instances in which the individual poses an active, ongoing, and significant threat. The low-level foot soldier who is found thousands of miles from the hot conflict zone could not be targeted unless involved in the planning or preparation of a specific, imminent attack. Even mid-level operatives, such as the prototypical terrorist recruiter, would be off-limits, unless they were plotting, or recruiting for, a specific, imminent attack. n144 Such recruiters could, however, be prosecuted for providing material support to a terrorist organization. n145

#### Statuatory restriction is five things including limiting authority – not extra topical

KAISER 80 The Official Specialist in American National Government, Congressional Research Service, the Library of Congress [Congressional Action to Overturn Agency Rules: Alternatives to the Legislative Veto; Kaiser, Frederick M., 32 Admin. L. Rev. 667 (1980)]

In addition to direct statutory overrides, there are a variety of statutory and nonstatutory techniques that have the effect of overturning rules, that prevent their enforcement, or that seriously impede or even preempt the promulgation of projected rules. For instance, a statute may alter the jurisdiction of a regulatory agency or extend the exemptions to its authority, thereby affecting existing or anticipated rules. Legislation that affects an agency's funding may be used to prevent enforcement of particular rules or to revoke funding discretion for rulemaking activity or both. Still other actions, less direct but potentially significant, are mandating agency consultation with other federal or state authorities and requiring prior congressional review of proposed rules (separate from the legislative veto sanctions). These last two provisions may change or even halt proposed rules by interjecting novel procedural requirements along with different perspectives and influences into the process.

It is also valuable to examine nonstatutory controls available to the Congress:

1. legislative, oversight, investigative, and confirmation hearings;

2. establishment of select committees and specialized subcommittees to oversee agency rulemaking and enforcement;

3. directives in committee reports, especially those accompanying legislation, authorizations, and appropriations, regarding rules or their implementation;

4. House and Senate floor statements critical of proposed, projected, or ongoing administrative action; and

5. direct contact between a congressional office and the agency or office in question.

Such mechanisms are all indirect influences; unlike statutory provisions, they are neither self-enforcing nor legally binding by themselves. Nonetheless, nonstatutory devices are more readily available and more easily effectuated than controls imposed by statute. And some observers have attributed substantial influence to nonstatutory controls in regulatory as well as other matters.3

It is impossible, in a limited space, to provide a comprehensive and exhaustive listing of congressional actions that override, have the effect of overturning, or prevent the promulgation of administrative rules. Consequently, this report concentrates upon the more direct statutory devices, although it also encompasses committee reports accompanying bills, the one nonstatutory instrument that is frequently most authoritatively connected with the final legislative product. The statutory mechanisms surveyed here cross a wide spectrum of possible congressional action:

1. single-purpose provisions to overturn or preempt a specific rule;

2. alterations in program authority that remove jurisdiction from an agency;

3. agency authorization and appropriation limitations;

4. inter-agency consultation requirements; and

5. congressional prior notification provisions.

#### Predictability – ev in context

#### Aff flex – eliminating entire topic area only allows five affs without solvency advocates

#### Functional limits

#### reasonability

extra t not a voting issue

## agamben

weigh the plan

#### framework

#### Perm do both.

**Positive aspects of biopower outweigh- best protects oppressed groups**

Ken **BOOTH** prof ofIR @ Aberystwyth Theory of World Security **2007**

Daryl Glaser. a scholar from South Africa, and therefore somebody directly familiar with life in a state that was once committed to institutionalised racism, has offered an important counter to the Bauman thesis and the simplistic interhnkinil by postmodern writers of the Holocaust and modernimJ°" In a book written a decade after Mandela's release, Glaser argued that it was not the surveillance, statistics, and regulation that were the aspects of Nazi behaviour demanding attention. Nor was it the 'lawfulness, planning, bureaucratic regulation or the professionalisation of knowledge' that fed into Nazi racial policies. That is, Glaser claimed that the features of modernity showcased by the Bauman thesis were not what demanded attention; rather, it was the 'institutionalisation of a racial hierarchy of wealth, status and power, enforced by repressive, often arbitrary state authority, assisted by bad laws'. What was wrong in Nazi Germany (and in apartheid South Africa) was not 'modernity', but laws and politics that served ideas of racial superiority - a prejudice that was directly contrary to 'modern ideals like social justice'. Modernity for Glaser delivered ideas of social justice to South Africa, while its modalities in the form of statistics and regulation, and so on constituted the very means by which illiteracy could be overcome, and the health of the disadvantaged improved. Rejecting the logic and political implications of the Bauman thesis, Glaser advocated 'more and better law, effectively enforced, and more "scientific" information about the condition of the people, not less of these "modern" goods'. His view was that the people(s) of postapartheid South Africa were in a better position than in the recent past albeit still a perilous one, because the oppressed had identified with modernity's ideas of tolerance and equality, and had found solidarity in the global human rights supporters. Social development (improved literacy and better health), he stressed, requires planning, professionalised knowledge, and other modalities of modernity - not their rejection. What Glaser called the 'organisational machinery of "modernity" to give effect to "modern" ideas like social justice' 107 does not guarantee the security and hence prospects for emancipation for South Africa's peoples, but it does give them hope.105 The idea of progress is not what it was, but is more useful as a result. It should never be considered as part of nature's plan for history, or pursued with hubris, but always with reflexivity The ideals of emancipation that inform progressive politics are guides for judgement and action; without them societies will replicate structural and other oppressions, and humanity will never be what it might become. (132-133)

**Their evidence is one-sided– it refuses to investigate the overwhelming number of historical examples where mass murder did not result in biopolitical societies**

**Dickinson,** University of Cincinnati, **‘4** (Edward Ross, “Biopolitics, Fascism, Democracy: Some Reflections on Our Discourse About “Modernity,” Central European History, vol. 37, no. 1, March)

A second example is Geoff Eley’s masterful synthetic introduction to a collection of essays published in 1996 under the title Society, Culture, and the State in Germany, 1870–1930. Eley set forth two research agendas derived from his review of recent hypotheses regarding the origins and nature of Nazism. One was to discover what allowed so many people to identify with the Nazis. The second was that we explore the ways in which welfare policy contributed to Nazism, by examining “the production of new values, new mores, new social practices, new ideas about the good and efficient society.” Eley suggested that we examine “strategies of policing and constructions of criminality, notions of the normal and the deviant, the production and regulation of sexuality, the . . . understanding of the socially valued individual . . . the coalescence of racialized thinking . . .”62 So far so good; but why stop there? Why not examine the expanding hold of the language of rights on the political imagination, or the disintegration of traditional authority under the impact of the explosive expansion of the public sphere? Why not pursue a clearer understanding of ideas about the nature of citizenship in the modern state; about the potentials of a participatory social and political order; about human needs and human rights to have those needs met; about the liberation of the individual (including her sexual liberation, her liberation from ignorance and sickness, her liberation from social and economic powerlessness); about the physical and psychological dangers created by the existing social order and how to reduce them, the traumas it inflicted and how to heal them? In short, why not examine how the construction of “the social” — the ideas and practices of the modern biopolitical interventionist complex — contributed to the development of a democratic politics and humane social policies between 1918 and 1930, and again after 1945? Like Fritzsche’s essay, Eley’s accurately reflected the tone of most of those it introduced. In the body of the volume, Elizabeth Domansky, for example, pointed out that biopolitics “did not ‘automatically’ or ‘naturally’ lead to the rise of National Socialism,” but rather “provided . . . the political Right in Weimar with the opportunity to capitalize on a discursive strategy that could successfully compete with liberal and socialist strategies.”63 This is correct; but the language of biopolitics was demonstrably one on which liberals, socialists, and advocates of a democratic welfare state could also capitalize, and did. Or again, Jean Quataert remarked—quite rightly, I believe — that “the most progressive achievements of the Weimar welfare state were completely embedded” in biopolitical discourse. She also commented that Nazi policy was “continuous with what passed as the ruling knowledge of the time” and was a product of “an extreme form of technocratic reason” and “early twentieth-century modernity’s dark side.” The implication seems to be that “progressive” welfare policy was fundamentally “dark”; but it seems more accurate to conclude that biopolitics had a variety of potentials.64 Again, the point here is not that any of the interpretations offered in these pieces are wrong; instead, it is that we are, collectively, so focused on unmasking the negative potentials and realities of modernity that we have constructed a true, but very one-sided picture. The pathos of this picture is undeniable, particularly for a generation of historians raised on the Manichean myth— forged in the crucible of World War II and the Cold War— of the democratic welfare state. And as a rhetorical gesture, this analysis works magnificently — we explode the narcissistic self-admiration of democratic modernity by revealing the dark, manipulative, murderous potential that lurks within, thus arriving at a healthy, mature sort of melancholy. But this gesture too often precludes asking what else biopolitics was doing, besides manipulating people, reducing them to pawns in the plans of technocrats, and paving the way for massacre. In 1989 Detlev Peukert argued that any adequate picture of modernity must include both its “achievements” and its “pathologies”— social reform as well as “Machbarkeitswahn,” the “growth of rational relations between people” as well as the “swelling instrumental goal-rationality,” the “liberation of artistic and scientific creativity” as well as the “loss of substance and absence of limits [Haltlosigkeit].”65 Yet he himself wrote nothing like such a “balanced” history, focusing exclusively on Nazism and on the negative half of each of these binaries; and that focus has remained characteristic of the literature as a whole. What I want to suggest here is that the function of the rhetorical or explanatory framework surrounding our conception of modernity seems to be in danger of being inverted. The investigation of the history of modern biopolitics has enabled new understandings of National Socialism; now we need to take care that our understanding of National Socialism does not thwart a realistic assessment of modern biopolitics. Much of the literature leaves one with the sense that a modern world in which mass murder is not happening is just that: a place where something is not —yet— happening. Normalization is not yet giving way to exclusion, scientific study and classification of populations is not yet giving way to concentration camps and extermination campaigns. Mass murder, in short, is the historical problem; the absence of mass murder is not a problem, it does not need to be investigated or explained.

#### No circumvention

#### Rejection Worse –prefer comparative evidence

Deranty, Philosophy Prof. @ Macquarie University, 2004

(Jean-Phillipe, *Borderlands* Vol. 3 # 1 “Agamben’s Challenge to normative theories…” p. online)

48. One can acknowledge the descriptive appeal of the biopower hypothesis without renouncing the antagonistic definition of politics. As Rancière remarks, Foucault’s late hypothesis is more about power than it is about politics (Rancière 2002). This is quite clear in the 1976 lectures (Society must be defended) where the term that is mostly used is that of "biopower". As Rancière suggests, when the "biopower" hypothesis is transformed into a "biopolitical" thesis, the very possibility of politics becomes problematic. There is a way of articulating modern disciplinary power and the imperative of politics that is not disjunctive. The power that subjects and excludes socially can also empower politically simply because the exclusion is already a form of address which unwittingly provides implicit recognition. Power includes by excluding, but in a way that might be different from a ban. This insight is precisely the one that Foucault was developing in his last writings, in his definition of freedom as "agonism" (Foucault 1983: 208-228): "Power is exercised only over free subjects, and only insofar as they are free" (221). The hierarchical, exclusionary essence of social structures demands as a condition of its possibility an equivalent implicit recognition of all, even in the mode of exclusion. It is on the basis of this recognition that politics can sometimes arise as the vindication of equality and the challenge to exclusion. 49. This proposal rests on a logic that challenges Agamben’s reduction of the overcoming of the classical conceptualisation of potentiality and actuality to the single Heideggerian alternative. Instead of collapsing or dualistically separating potentiality and actuality, one would find in Hegel’s modal logic a way to articulate their negative, or reflexive, unity, in the notion of contingency. Contingency is precisely the potential as existing, a potential that exists yet does not exclude the possibility of its opposite (Hegel 1969: 541-554). Hegel can lead the way towards an ontology of contingency that recognises the place of contingency at the core of necessity, instead of opposing them. The fact that the impossible became real vindicates Hegel’s claim that the impossible should not be opposed to the actual. Instead, the possible and the impossible are only reflected images of each other and, as actual, are both simply the contingent. Auschwitz should not be called absolute necessity (Agamben 1999a: 148), but absolute contingency. The absolute historical necessity of Auschwitz is not "the radical negation" of contingency, which, if true, would indeed necessitate a flight out of history to conjure up its threat. Its absolute necessity in fact harbours an indelible core of contingency, the locus where political intervention could have changed things, where politics can happen. Zygmunt Bauman’s theory of modernity and his theory about the place and relevance of the Holocaust in modernity have given sociological and contemporary relevance to this alternative historical-political logic of contingency (Bauman 1989). 50. In the social and historical fields, politics is only the name of the contingency that strikes at the heart of systemic necessity. An ontology of contingency provides the model with which to think together both the possibility, and the possibility of the repetition of, catastrophe, as the one heritage of modernity, and the contingency of catastrophe as logically entailing the possibility of its opposite. Modernity is ambiguous because it provides the normative resources to combat the apparent necessity of possible systemic catastrophes. Politics is the name of the struggle drawing on those resources. 51. This ontology enables us also to rethink the relationship of modern subjects to rights. Modern subjects are able to consider themselves autonomous subjects because legal recognition signals to them that they are recognised as full members of the community, endowed with the full capacity to judge. This account of rights in modernity is precious because it provides an adequate framework to understand real political struggles, as fights for rights. We can see now how this account needs to be complemented by the notion of contingency that undermines the apparent necessity of the progress of modernity. Modern subjects know that their rights are granted only contingently, that the possibility of the impossible is always actual. This is why rights should not be taken for granted. But this does not imply that they should be rejected as illusion, on the grounds that they were disclosed as contingent in the horrors of the 20th century. Instead, their contingency should be the reason for constant political vigilance. 52. By questioning the rejection of modern rights, one is undoubtedly unfaithful to the letter of Benjamin. Yet, if one accepts that one of the great weaknesses of the Marxist philosophy of revolution was its inability to constructively engage with the question of rights and the State, then it might be the case that the politics that define themselves as the articulation of demands born in the struggles against injustice are better able to bear witness to the "tradition of the oppressed" than their messianic counterparts.

#### Legal norms to regulate the executive can succeed, their alternative can’t – it has no influence on existing institutions.

William **SCHEUERMAN** Poli Sci @ Indiana **‘6** “Survey Article: Emergency Powers and the Rule of

Law After 9/11\*” The Journal of Political Philosophy: Volume 14, Number 1 p. 68-70

The Schmittian thesis that the exception or emergency represents a “space devoid of law” yet simultaneously rooted in the legal order is a central preoccupation of Agamben’s State of Exception as well. In a sometimes illuminating exegesis, Schmitt is praised for offering “the most rigorous attempt to construct a theory of the state of exception,” chiefly because he gasped the deeply paradoxical “threshold” character of the concept of the emergency: [t]he specific contribution of Schmitt’s theory is precisely to have mad such an articulation between state of exception and juridical order possible. It is a paradoxical articulation, for what must be inscribed within the law is something that is essentially exterior to it, that is, nothing less than the suspension of the juridical order itself . . .33 Though inscribed within the law, the emergency is simultaneously external to it; the emergency explodes the confines of the legal order while necessarily resting and thereby belonging to it. As a reading of the complex twists and turns of Schmitt’s reflections on this paradox, Agamben’s text has much to recommend it. Agamben is justified in pointing out that emergency power has become a ubiquitous facet of contemporary politics, though his analysis provides few useful pointers for how we might distinguish effectively between some emergency settings (e.g., Nazi Germany) and others (Guantanamo Bay). Troubling as well is Agamben’s implicit assumption that a mere exegesis of Schmitt (mixed in with just enough references to other fashionable thinkers) suffices to illuminate the causally complex trends generating the trend towards executive-centered emergency government. When Agamben addresses the legal and empirical literature on emergency power, he is too dismissive.34 Like other recent postmodern commentators on Schmitt and emergency power, he mistakenly assumes the possibility of accepting much of Schmitt’s argumentation without sufficiently confronting its authoritarian logic. Having endorsed many features of Schmitt’s theory of emergency power, for example, Agamben concludes that “the task at hand is not to bring the state of exception back within its spatially and temporally defined boundaries in order to then reaffirm the primacy of a norm and of rights,” that is, somehow firm up the rule of law, “since it is not possible to return to the state of law.”35 In a Schmittian vein, Agamben believes that a deep analysis of emergency power necessarily discredits the rule of law. But how then might we ward off the specter of rampant executive prerogative and emergency government, both of which Agamben, in contrast to Schmitt, abhors? The final pages of his little book leave us with nothing more than the deeply mysterious suggestion that rather than trying to salvage the rule of law we need to “halt the machine” by showing the “central fiction” of the “very concepts of state and law,” in order “ceaselessly to try to interrupt the working of the machine that is leading the West toward global civil war.”36 Agamben’s obscure pronouncements are sure to keep some segments of the academic world busy, but they also help ensure that the postmodern Schmitt revival will have little impact on actual political and legal policy makers. The same cannot be said about a second and more impressive group of recent analysts, consisting chiefly of jurists teaching in U.S. law schools, who rely in a more subtle and selective fashion on Schmitt in order to criticize existing liberal democratic legal regulation of the emergency reforms. In contradistinction to both Schmitt and contemporary postmodern authors, they express strong normative commitments to the rule of law and offer thoughtful, though ultimately problematic, constructive proposals for redesigning emergency laws. Their ideas have already gained significant attention in academic circles, and it is by no means obvious that they will remain without political impact.

#### Norms can restrain state action - Zenko

#### Their totalizing system for understanding sovereignty as nothing but domination, control and the production of bare life is politically counter-productive.

Ernesto **LACLAU** Political Theory @ Essex **‘7** in *Giorgio Agamben: Sovereignty and Life* eds. Matthew Calarco and Steven DeCaroli p. 21-22

Needless to say, we fully reject Agamben's third thesis, according to which the concentration camp is the nomos or fundamental biopolitical paradigm of the West. He asserts: The birth of the camp in our time appears as an event that decisively signals the political space of modernity itself. It is produced at the point at which the politi­cal system of the modern nation-state, which was founded on the functional nexus between a determinate localization (land) and a determinate order (the State) and mediated by automatic rules for the inscription of life (birth or the nation), enters into a lasting crisis, and the State decides to assume directly the care of the nation's biological life as one of its proper tasks. . . . Something can no longer function within the traditional mechanisms that regulated this inscription, and the camp is the new, hidden regulator of the inscription of life in the order—or, rather, the sign of the system's inability to function without being transformed into a lethal machine. (HS, 174-75) This series of wild statements would only hold if the following set of rather dubious premises were accepted: I. That the crisis of the functional nexus between land, State, and the automatic rules for the inscription of life has freed an entity called "biological—or bare—life" That the regulation of that freed entity has been assumed by a single and unified entity called the State That the inner logic of that entity necessarily leads it to treat the freed entities as entirely malleable objects whose archetypical form would be the ban Needless to say, none of these presuppositions can be accepted as they stand. Agamben, who has presented a rather compelling analysis of the way in which an ontology of potentiality should be structured, clos­es his argument, however, with a naïve teleologism, in which **potentiality appears as entirely subordinated to a pre-given actuality**. This teleologism is, as a matter of fact, the symmetrical pendant of the "ethymologism" we have referred to at the beginning of this essay. Their combined effect is to divert Agamben's attention from the really relevant question, which is the system of structural possibilities that each new situation opens. The most summary examination of that system would have revealed that: (1) the crisis of the "automatic rules for the inscription of life" has freed many more entities than "bare life," and that the reduction of the latter to the former takes place only in some extreme circumstances that **cannot** in the least be considered as a **hidden pattern** of modernity; (z) that the pro­cess of social regulation to which the dissolution of the "automatic rules of inscription" opens the way involved a plurality of instances that were far from **unified in a single unity called "the State**"; (3) that the process of State building in modernity has involved a **far more complex** dialec­tic between homogeneity and heterogeneity than the one that Agamben's ‘`camp-based" paradigm reflects. By unifying the whole process of mod­ern political construction around the extreme and absurd paradigm of the concentration camp, Agamben does more than present a distorted his­tory: he blo**cks any possible exploration of the emancipatory possibilities opened by our modern heritage.** Let me conclude with a reference to the question of the future as it can be thought from Agamben's perspective. He asserts: "Only if it is pos­sible to think the Being of abandonment beyond every idea of law (even that of the empty form of laws being in force without significance) will we have moved out of the paradox of sovereignty towards a politics freed from every ban. A pure form of law is only the empty form of relation. Yet the empty form of relation is no longer a law but a zone of indistinguishabil­ity between law and life, which is to say, a state of exception" (HS, 59). We are not told anything about what a movement out of the paradox of sover­eignty and "towards a politics freed from every ban" would imply. But we do not need to be told: the formulation of the problem already involves its own answer. To be beyond any ban and any sovereignty means, simply, to be **beyond politics.** The **myth of a fully reconciled society** is what governs the (non-)political discourse of Agamben. And it is also what **allows him to dismiss all political options** in our societies and to unify them in the concentration camp as their secret destiny. Instead of deconstructing the logic of political institutions, showing areas in which forms of struggle and resistance are possible, he closes them beforehand through an essentialist unification. Political nihilism is his ultimate message.

#### Doesn’t take out solvency – we need to change law not policy – that’s Daskal

#### Their kritik doesn’t take out solvency – we are capable of restraining sovereignty. And the alt doesn’t solve – just results in oppositional solvency.

Ernesto **LACLAU** Political Theory @ Essex **‘7** in *Giorgio Agamben: Sovereignty and Life* eds. Matthew Calarco and Steven DeCaroli p. 12-17

Let us start by considering the three theses in which Agamben sum­marises his argument towards the end of Homo Sacer: The original political relation is the ban (the state of exception as zone of indistinction between outside and inside, exclusion and inclusion). The fundamental activity of sovereign power is the production of bare life as originary political element and as threshold of articula­tion between nature and culture, between zoi; and bios. 3. Today it is not the city but rather the camp that is the fundamen­tal biopolitical paradigm of the West. (HS, Mt) Let me start with the first thesis. According to Agamben—who is quoting Cavalca—" 'to ban' someone is to say that anybody may harm him" (HS, 104-5). That is why the "sacred man" can be killed but not sacrificed—the sacrifice is still a figure representable within the legal order of the city. The life of the bandit clearly shows the kind of exteriority belonging to the sa­cred man: "The life of the bandit, like that of the sacred man, is not a piece of animal nature without any relation to law and the city. It is, rather, a threshold of indistinction and of passage between animal and man, physis and nomos, exclusion and inclusion: the life of the bandit is the life of the loup garou, the werewolf, who is precisely neither man nor beast, and who dwells paradoxically within both while belonging to neither" (HS, to). Sovereignty is at the source of the ban, but it requires an extension of the territory within which the ban applies, for if we were only to deal with the exteriority to law of the loup garou we would still be able to establish a clear line of partage between the "inside" and the "outside" of the community. Agamben is very much aware of the complexity of the relation between outside and inside. For that reason, speaking about Hobbes's "state of na­ture," he indicates that it is not a primitive condition which has been erad­icated once the covenant has transferred sovereignty to the Leviathan, but a constant possibility within the communitarian order, which arises when- ever the city is seen as tamquam dissoluta. In that sense, we are not dealing with a pure, pre-social nature, but with a "naturalization" which keeps its reference to the social order as far as the latter ceases to work. This explains how the state of exception emerges. Carl Schmitt had asserted that there is no rule applicable to chaos, and that the state of exception is required whenever the agreement between the legal order and the wider communi­tarian order has been broken. Far from being a prejuridical condition that is indifferent to the law of the city, the Hobbesian state of nature is the exception and the threshold that constitutes and dwells within it. It is not so much a war of all against all as, more precisely, a con­dition in which everyone is thus wargus, gent caput lupinum. And this lupization of man and humanization of the wolf is at every moment possible in the dissolutio civitatis inaugurated by the state of exception. This threshold alone, which is nei­ther simple natural life nor social life but rather bare life or sacred life, is the always present and always operative presupposition of sovereignty. (HS, lo6) This explains why sovereign power cannot have a contractual origin: "This is why in Hobbes, the foundation of sovereign power is to be thought not in the subjects' free renunciation of their natural right but in the sovereign's preservation of his natural right to do anything to any one, which now ap­pears as the right to punish" (HS, to6). Thus, the ban holds together bare life and sovereignty. And it is important for Agamben to point out that the ban is not simply a sanction—which as such would still be representable with­in the order of the city—but that it involves abandonment the homo sacer and the other figures that Agamben associates to him are simply left outside any communitarian order. That is why he can be killed but not sacrificed. In that sense the ban is non-relational: their victims are left to their own separatedness. This is for Agamben the originary political relation, linked to sovereignty. It is a more originary extraneousness than that of the foreign­er, who still has an assigned place within the legal order. "We must learn to recognise this structure of the ban in the political relations and public spaces in which we will live. In the city the banishment of sacred life is more internal than every interiority and more external than every extraneousness" (HS, iii). The ban has, thus, been at the source of sovereign power. The state of excep­tion, which reduces the citizens to bare life (he has in mind Foucault's bio­politics), has determined modernity from its very beginning. Agamben has, no doubt, touched with the category of the ban some­thing crucially important concerning the political. There is certainly, within the political, a moment of negativity that requires the construction of an inside/outside relation and requires that sovereignty is in an ambiguous position vis-à-vis the juridical order. The problem, however, is the follow­ing: does the articulation of dimensions through which Agamben thinks the structure of the ban exhaust the system of possibilities that such a struc­ture opens? In other words: has not Agamben chosen just one of those pos­sibilities and hypostatized it so that it assumes a unique character? Let us consider the matter carefully. The essence of a ban is given by its effects— that is, to put somebody outside the system of differences constituting the legal order. But in order to assimilate all situations of being outside the law to that of homo sacer, as described by Agamben, some extra presuppositions have to be added. In the first place, the sheer separatedness—absence of rela­tion—of the outside involves that he/she is a naked individuality, dispos­sessed of any kind of collective identity. But, secondly, it also involves that the situation of the outsider is one of radical indefension, wholly exposed to the violence of those inside the city. Only at that price can sovereign power be absolute. Are, however, these two extra presuppositions justified? Do they logically emerge from the mere category of "being outside the law"? **Obviously not**. The outsider does not need to be outside any law. What is inherent to the category is only the fact of being outside the law of the city. Abandonment comes only from the latter. Let us consider the following passage from Franz Fanon, which I have discussed in another context: The lumpenproletariat, once it is constituted, brings all its forces to endanger the "security" of the town, and is the sign of the irrevocable decay, the gangrene ever present at the heart of colonial domination. So the pimps, the hooligans, the unemployed, and the petty criminals . . . throw themselves into the struggle like stout working men. These classless idlers will by militant and decisive action dis­cover the path that leads to nationhood. . . . The prostitutes too, and the maids who are paid two pounds a month, all who turn in circles between suicide and madness, will recover their balance, once more go forward and march proudly in the great procession of the awakened nation.' Here we have actors who are entirely outside the law of the city, who cannot be inscribed in any of the categories of the latter, but such an exter­iority is the **starting point for a new collective identification** opposed to the law of the city. **We do not have lawlessness as against law, but two laws that do not recognise each other**. In another work (SE), Agamben discusses the notion of "necessity" as elaborated by the Italian jurist Santi Romano and points out that, for Romano, revolutionary forces—strictly speaking, ac­cording to the State juridical order, outside the law—create their own new law. The passage from Romano quoted by Agamben is most revealing: After having recognised the antijuridical nature of the revolutionary forces, he adds that this is only the case with respect to the positive law of the state against which it is directed, but that does not mean that, from the very different point of view from which it defines itself, it is not a movement ordered and regulated by its own law. This also means that it is an order that must be classified in the category of originary juridical orders, in the now well-known sense given to this expression. In this sense, and within the limits of the sphere we have indicated, we can thus speak of a law of revolution. (SE, 28-29) So we have two incompatible laws. What remains as valid from the notion of ban as defined by Agamben is the idea of an uninscribable exteriority, but the range of situations to which it applies is much wider than those subsumable under the category of homo sacer. I think that Agamben has not seen the problem of the inscribable/uninscribable, of inside/outside, in its true universality. In actual fact, what the mutual ban between opposed laws describes is the constitutive nature of any radical antagonism—radi­cal in the sense that its two poles cannot be reduced to any super-game which would be recognised by them as an objective meaning to which both would be submitted. Now, I would argue that only when the ban is mutual do we have, sensu stricto, a political relation, for it is only in that case that we have a radical opposition between social forces and, as a result, a constant re­negotiation and re-grounding of the social bond. This can be seen most clearly if we go back for a moment to Agamben's analysis of Hobbes. As we have seen, he asserts that contrary to the contractarian view, the sov­ereign is the only one that preserves his natural right to do anything to anybody—that is, the subjects become bare life. The opposition between these two dimensions, however, does not stand; in order for the sovereign to preserve his natural right, he needs such a right to be recognised by the rest of the subjects, and such a recognition, as Agamben himself points out, finds some limits. Corresponding to this particular state of the "right of Punishing" which takes the form of a survival of the state of nature at the very heart of the state, is the subjects' capacity not to disobey but to resist violence exercised on their own person, "for. .. . no man is supposed bound by Covenant, not to resist violence; and consequently it cannot be intended, that he gave any right to another to lay violent hands upon his person." Sovereign violence is in truth founded not on a pact but on the exclu­sive inclusion of bare life in the state. (HS, 106-7) Agamben draws from the minimal nature of the notion of a right to re­sist violence against one's person a further proof of his argument concern­ing the interconnections between bare life, sovereignty, and the modern State. It is true that the Hobbesian view invites such a reading, but only if a conclusion is derived from it: that it amounts to a radical elimination of the political. When a supreme will within the community is not con­fronted by anything, politics necessarily disappears. From this viewpoint the Hobbesian project can be compared with another which is its oppo­site but, at the same time, identical in its anti-political effects: the Marx­ian notion of the withering away of the State. For Hobbes, society is inca­pable of giving itself its own law and, as a result, the total concentration of power in the hands of the sovereign is the prerequisite of any communi­tarian order. For Marx, a classless society has realised full universality and that makes politics superfluous. But it is enough that we introduce some souplesse within the Hobbesian scheme, that we accept that society is capa­ble of some **partial self-regulation**, to immediately see that its demands are going to be more than those deriving from bare life, that they are going to have a **variety and specificity that no "sovereign" power can simply ignore**. When we arrive at that point, however, the notion of "sovereignty" starts shading into that of "hegemony." This means that, in my view, Agamben has clouded the issue, for he has presented as a political moment what ac­tually amounts to a radical elimination of the political: a sovereign power which reduces the social bond to bare life. I have spoken of social self-regulation as being partial. By this I mean that social and political demands emerge from a variety of quarters, not all of which move in the same direction. This means that society requires con­stant efforts at re-grounding. Schmitt, as we have seen, asserted that the function of the sovereign—in the state of exception—is to establish the coherence between law and the wider communitarian order (one cannot apply law to chaos). If this is so, however, and if the plurality of demands requires a constant process of legal transformation and revision, the state of emergency ceases to be exceptional and becomes an integral part of the political construction of the social bond. According to Wittgenstein, to apply a rule requires a second rule specifying how the first one should be applied, a third one explaining how the second will be applied, and so on. From there he draws the conclusion that the instance of application is part of the rule itself. In Kantian terms—as Agamben points out—this means that in the construction of the social bond we are dealing with reflective rather than determinative judgements. Vico's remarks—also quoted by Agamben—about the superiority of the exception over the rule is also highly pertinent in this context. This explains why I see the history of the state of exception with different lenses than Agamben. While he draws a picture by which the becoming rule of the exception presents the unavoidable advance towards a totalitarian society, I try to determine, with the generalization of the "exceptional," also countertendencies that make it possible to think about the future in more optimistic terms. We discussed earlier what Santi Romano said concerning revolutionary laws. Now, that does not only apply to periods of radical revolutionary breaks— what Gramsci called "organic crises"—but also to a variety of situations in which social movements constitute particularistic political spaces and give themselves their own "law" (which is partially internal and partially exter­nal to the legal system of the State). There is a molecular process of par­tial transformations which is absolutely vital as an accumulation of forces whose potential becomes visible when a more radical transformation of a whole hegemonic formation becomes possible.

Condo

#### Normative stance against war isn’t sufficient – their alternative has to answer institutional questions about how to prevent conflict.

Nick **MEGORAN** Geography @ Newcastle **‘8** Militarism, Realism, Just War, or Nonviolence? Critical Geopolitics and the Problem of Normativity *Geopolitics* 13 p. 474-476

In what circumstances, if at all, should a state (or group of states) be considered right in making war? This is a question that is unavoidable to every scholar of international studies. The argument presented here is simply that critical geopolitics has failed to grasp this nettle and as a result this has limited both its utility as a source of political and moral reflection, and its impact on scholars beyond a relatively small and self-selecting readership. I suggest that engagement with two major schools of thought on the morality of military force, just war theory and nonviolence/pacifism could prove fruitful sources of reflection on this question and reinvigorate the subdiscipline both intellectually and politically. CRITICAL GEOPOLITICS AND THE NORMATIVE Critical geopolitical texts are thoroughly infused with the vocabularies of normative moral judgement. Dowler and Sharp desire an “anti-geopolitics that is angry at injustice, exploitation and subjugation.”1 Routledge calls for a critical geopolitics that identifies with social movements,2 Dalby for one that expresses solidarity with those who suffer violence and injustice,3 and Heffernan for one that celebrates “the gradual re-configuration of personal and political identities ‘from below’”.4 Polelle conceives of the goal of critical geopolitics as being “to alter present practices by criticising current and unjust geopolitical orderings of the world”.5 Dodds contends that “students of geopolitics should retain a sense of humanity, justice and commitment for those oppressed, tortured and deprived of basic human or community rights”, and that “critical geopolitics needs to continue to make a difference through our intellectual commitments and normative engagements”.6 If the strident normative language of critical geopolitics is striking, so too, paradoxically, is the marginal discussion of such ideas in those texts. The quotations cited above tend to be almost throw-away remarks, rhetorical gestures that are neither elaborated nor critically grounded in any form of justification or explication. The insubstantial nature of these rather flimsy gestures to moral reasoning has been observed, commonly by proponents of the approach themselves. Dalby notes that the ‘critical’ in critical geopolitics usually refers to the problematisation of discourse rather than the presence of a worked-out alternative political project.7 Dowler and Sharp likewise accept that whilst providing eloquent deconstructions of dominant political discourse, there is often little sense that it offers alternatives.8 Sharp criticises Toal’s critical geopolitics for “a rather vague, impersonal and uncommitted embodiment.”9 Murphy faults Dodds and Atkinson’s landmark text on geopolitical thought for failing to “wrestle with a broader range of values and ethics. What geopolitical positions are more constructive and moral than others? Are there examples when bad impulses have given way to good and vice versa?”10 Murphy’s conclusion that the book offers little sense of how such questions might be answered is generally true of critical geopolitical studies as a whole. Writing sympathetically from outside the subdiscipline, Kelly lambastes critical geopolitics for offering “neither a clear characterisation of a better society nor a specific road map for attaining such an improvement,”11 and observes that its advocates “have written so sparsely about the new community and its attainment.” A defence of critical geopolitics against this charge might be mounted on the grounds that ‘it’ is not conceived as a single, coherent ‘project’ but a series of tentative and tactical engagements with the deployment of geopolitical discourses in the service of exclusionary and violent state power, predicated on post-foundationalist philosophical frameworks. Toal and Dalby do indeed argue something similar in contending, admittedly a decade ago, that “critical geopolitics is very much a work in progress, a proliferation of research paths rather than a fully demarcated research field.”13 Indeed, Dalby argues that the task of critical geopolitics is not to take a definitive stand on certain issues, but rather to explicate the implicit or explicit political implications of knowing the world in particular ways.14 However, this is unsatisfactory for two reasons. The first is intellectual. In a critique from the right, Gottfried comments on Rorty’s work that although he might, following Dewey, dismiss metaphysical enquiry or objectivity, it is still fair to ask on what basis, besides subjective, rhetorical appeals to ‘social justice’ and ‘progressive’ values, he justifies normative calls to mould social attitudes.15 One can ask the same of critical geopolitics. It is beyond the scope of this article to address this, although it does inform the second reason why the defence cited above is inadequate. This is a practical concern: critical geopolitics does in fact sometimes take a particular stand on certain issues, notably wars. In many cases critical geopolitical analyses do not go beyond Dalby’s formula of explicating the political implications of knowing the world in certain ways: however, sometimes they clearly oppose certain wars and (more rarely) advocate others, either case being an example of taking a normative position. It is this question, in what circumstances and for what reasons critical geopolitics opposes or advocates the prosecution of particular wars, which this essay will examine. THE ETHICS OF WARFARE – FOUR TRADITIONS It is argued thus far that whilst many critical geopolitical texts formally eschew the adoption of normative political positions in favour of espousing intellectual engagements with the production of geopolitical knowledge, this is actually contradicted by both the adoption of strident normative language and, more significantly, opposition to or advocacy of actual wars. This will be demonstrated and explored in the section following this discussion of warfare. However, in order to critically examine geopolitical texts for evidence of their normative engagement with warfare, it is necessary to outline the ethical traditions within which the question of the legitimacy or illegitimacy of warfare has traditionally been considered. This is particularly important as it has not, to my knowledge, been done before within critical geopolitics.

#### Appeals for institutional restrain are a crucial supplement to political resistance to executive power.

David **COLE** Law @ Georgetown **’12** “The Politics of the Rule of Law: The Role of Civil Society in the Surprising Resilience of Human Rights in the Decade after 9/11” http://www.law.uchicago.edu/files/files/Cole%201.12.12.pdf p. 51-53

As I have shown above, while political forces played a significant role in checking President Bush, what was significant was the particular substantive content of that politics; it was not just any political pressure, but pressure to maintain fidelity to the rule of law. Politics standing alone is as likely to fuel as to deter executive abuse; consider the lynch mob, the Nazi Party in Germany, or xenophobia more generally. What we need if we are to check abuses of executive power is a politics that champions the rule of law. Unlike the politics Posner and Vermeule imagine, this type of politics cannot be segregated neatly from the law. On the contrary, it will often coalesce around a distinctly legal challenge, objecting to departures from distinctly legal norms, heard in a court case, as we saw with Guantanamo. Congress’s actions make clear that had Guantanamo been left to the political process, there would have been few if any advances. The litigation generated and concentrated political pressure on claims for a restoration of the values of legality, and, as discussed above, that pressure then played a critical role in the litigation’s outcome, which in turn affected the political pressure for reform. There is, to be sure, something paradoxical about this assessment. The rule of law, the separation of powers, and human rights are designed to discipline and constrain politics, out of a concern that pure majoritarian politics, focused on the short term, is likely to discount the long-term values of these principles. Yet without a critical mass of political support for these legal principles, they are unlikely to be effective checks on abuse, for many of the reasons Posner andVermeule identify. The answer, however, is not to abandon the rule of law for politics, but to develop and nurture a political culture that values the rule of law itself. Civil society organizations devoted to such values, such as Human Rights Watch, the Center for Constitutional Rights, and the American Civil Liberties Union, play a central role in facilitating, informing, and generating that politics. Indeed, they have no alternative. Unlike governmental institutions, civil society groups have no formal authority to impose the limits of law themselves. Their recourse to the law’s limits is necessarily indirect: they can file lawsuits seeking judicial enforcement, lobby Congress for statutory reform or other legislative responses, or seek to influence the executive branch. But they necessarily and simultaneously pursue these goals through political avenues – by appealing to the public for support, educating the public, exposing abuses, and engaging in public advocacy around rule-of-law values. Unlike ordinary politics, which tends to focus on the preferences of the moment, the politics of the rule of law is committed to a set of long-term principles. Civil society organizations are uniquely situated to bring these long-term interests to bear on the public debate. Much like a constitution itself, civil society groups are institutionally designed to emphasize and reinforce our long-term interests. When the ordinary political process is consumed by the heat of a crisis, organizations like the ACLU, Human Rights First, and the Center for Constitutional Rights, designed to protect the rule of law, are therefore especially important. While Congress and the courts were at best compromised and at worst complicit in the abuses of the post-9/11 period, civil society performed admirably. The Center for Constitutional Rights brought the first lawsuit seeking habeas review at Guantanamo, and went on to coordinate a nationwide network of volunteer attorneys who represented Guantanamo habeas petitioners. The ACLU filed important lawsuits challenging secrecy and government excesses, and succeeded in disclosing many details about the government’s illegal interrogation program. Both the ACLU and CCR filed lawsuits and engaged in public advocacy on behalf of torture and rendition victims, and challenging warrantless wiretapping. Human Rights Watch and Human Rights First wrote important reports on detention, torture, and Guantanamo, and Human Rights First organized former military generals and admirals to speak out in defense of humanitarian law and human rights. These efforts are but a small subset of the broader activities of civil society, at home and abroad, that helped to bring to public attention the Bush administration’s most questionable initiatives, and to portray the initiatives as contrary to the rule of law. At their best, civil society organizations help forge a politics of the rule of law, in which there is a symbiotic relationship between politics and law: the appeal to law informs a particular politics, and that politics reinforces the law’s appeal, in a mutually reinforcing relation. Posner and Vermeule understand the importance of politics as a checking force in the modern world, but fail to see the critical qualification that the politics must be organized around a commitment to fundamental principles of liberty, equality, due process, and the separation of powers – in short, the rule of law. Margulies and Metcalf recognize that politics as much as law determines the reality of rights protections, but fail to identify the unique role that civil society organizations play in that process. It is not that the “rule of politics” has replaced the “rule of law,” but that, properly understood, a politics of law is a critical supplement to the rule of law. We cannot survive as a constitutional democracy true to our principles without both. And our survival turns, not only on a vibrant constitution, but on a vibrant civil society dedicated to reinforcing and defending constitutional values.

#### Reformist limitations on the scope of hostilities are worth the risk of co-optation. They don’t solve our impacts.

Roger **NORMAND** Policy Director Center for Economic and Social Rights **AND** Chris **JOCHNICK** Legal Director Center for Economic and Social Rights **’94** “The Legitimation of Violence: A Critical Analysis of the Gulf War” 35 Harv. Int'l L.J. 387 L/N

We anticipate at least two major objections to this call for humanitarian reform. First, some may question our focus on strengthening the laws of war rather than abolishing war altogether. From this perspective, the organic link between "laws of war" and the traditional concept of competing, autonomous states leaves little space to empower groups and individuals at the expense of sovereigns. While some marginal benefits may accrue from tinkering with the laws of war, they are likely to pale in comparison to the overall costs of war itself. Notwithstanding the intuitive appeal of this critique, it seems clear that war will be a feature of international relations for the foreseeable future. Under these circumstances, even **minor limitations** on belligerent conduct and **marginal humanitarian gains are worth pursuing**. Such limitations need not be viewed as subverting efforts to abolish war, but rather as **stages** toward the realization of that goal. By focusing only on tomorrow's possibilities, the all-or-nothing approach neglects the struggles of today. The choice between challenging a nation's rights in war and challenging war itself represents different but **complementary methods** of achieving a **shared objective**.

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## Extinction

#### Survival outweighs

**Gelven ’94** (Michael, Prof. Phil. – Northern Illinois U., “War and Existence: A Philosophical Inquiry”, p. 136-137)

The personal pronouns, like "I" and "We," become governed existentially by the possessive pronouns, like "ours," "mine," "theirs"; and this in turn becomes governed by the adjective "own." What is authentic becomes what is our own as a way of existing. The meaning of this term is less the sense of possession than the sense of belonging to. It is a translation of the German eigen, from which the term eigentlich (authentic) is derived. To lose this sense of one's own is to abandon any meaningfulness, and hence to embrace nihilism. To be a nihilist is to deny that there is any way of being that is our own; for the nihilist, what is one's own has no meaning. The threat here is not that what is our own may yield to what is not, but rather that the distinction itself will simply collapse. Unless I can distinguish between what is our own and what is not, no meaningfulness is possible at all. This is the foundation of the we-they principle. The pronouns in the title do not refer to anything; they merely reveal how we think. Like all principles, this existential principle does not determine specific judgments, any more than the principle of cause and effect determines what the cause of any given thing is. The we-they principle is simply a rule that governs the standards by which certain judgments are made. Since it is possible to isolate the existential meanings of an idea from the thinglike referent, the notions of we-ness and they-ness can be articulated philosophically. On the basis of this primary understanding, it is possible to talk about an "existential value," that is, the weight o. rank given to ways of existing in opposition to other kinds of value, such as moral or psychological values. But the principle itself is not, strictly speaking, a principle of value; it is an ontological principle, for its foundation is in the very basic way in which I think about what it means to be. The ground of the we-they principle is, quite simply, the way in which we think about being. Thus, it is more fundamental than any kind of evaluating or judging. One of the things that the authentic I can do, of course, is to concern itself with moral questions. Whether from a deontological sense of obligation or from a utilitarian projection of possible happiness, an I that considers these matters nevertheless is presupposed by them. Although authenticity and morality are distinct, a sense of who one is must precede a decision about how to act. Thus, the question of authenticity comes before the question of obligation. And since the worth of the I is generated from the prior worth of the we, it follows there can be no moral judgment that cancels out the worth of the I or the We. This is not to say that anything that benefits the we is therefore more important than what ought to be done. It is merely to say that any proper moral judgment will in fact be consistent with the integrity of the we. Thus, I would be morally prohibited from offending someone else merely for my own advantage, but no moral law would ever require me to forgo my existential integrity. This is true not only for moral questions but for any question of value whatsoever: all legitimate value claims must be consistent with the worth of the I and the We. It is only because my existence matters that I can care about such things as morality, aesthetics, or even happiness. Pleasure, of course, would still be preferable to pain, but to argue that one ought to have pleasure or even that it is good to have pleasure would simply reduce itself to a tautology: if I define pleasure as the satisfaction of my wants, then to say I want pleasure is tautological, for I am merely saying that I want what I want, which may be true but is not very illuminating. The existential worth of existing is therefore fundamental and cannot be outranked by any other consideration. Unless I am first meaningful, I cannot be good; unless I first care about who I am, I cannot genuinely care about anything else, even my conduct. To threaten this ground of all values, the worth of my own being, then becomes the supreme assault against me. To defend it and protect it is simply without peer. It is beyond human appeal or persuasion.

## Battlefield

#### No impact secrecy

#### Authority shifted from CIA

Defense News, 5/24/13 [“White House Quietly Shifts Armed Drone Program from CIA to DoD”. http://www.defensenews.com/article/20130524/DEFREG02/305240010/White-House-Quietly-Shifts-Armed-Drone-Program-from-CIA-DoD]

WASHINGTON — The White House has quietly shifted lead responsibility for its controversial armed drone program from the CIA to the Defense Department, a move that could encounter resistance on Capitol Hill.

The decision is a landmark change in America’s 12-year fight against al-Qaida and raises new legal and operational questions while solving others. The shift could set off a bitter congressional turf war among the leaders of the committees that oversee the military and intelligence community, who already have sparred over the issue.

At issue is a months-long debate about whether the CIA should remain the lead organization for planning and conducting aerial strikes on al-Qaida targets from remotely piloted aircraft.

The Obama administration appears to have settled that debate, opting to hand the military control of most drone strikes while returning the CIA to its core missions of collecting and analyzing intelligence.

## Article ii

#### No impact – our advs are about application of law of war

#### Obama will not use Article II powers. He wants statutory cover

**Chesney et al. 13** – Professor of law @ University of Texas [Robert Chesney (Senior fellow @ Brookings Institution Distinguished scholar @ Robert S. Strauss Center for International Security and Law), Jack Goldsmith (Professor of Law @ Harvard Law School and a member of the Hoover Institution’s Jean Perkins Task Force on National Security and Law), Matthew C. Waxman (professor of law @ Columbia Law School, senior fellow @ Council on Foreign Relations, and a member of the Hoover Institution’s Jean Perkins Task Force on National Security and Law) & Benjamin Wittes (Senior fellow in governance studies @ BrookingsInstitution and a member of the Hoover Institution’s Jean Perkins Task Force on National Security and Law), “A Statutory Framework for Next-Generation Terrorist Threats,” A Nat ional Security an d law Essa y, Hoover Institution, 2013

First, it is worth bearing in mind that some administrations are more comfortable¶ resorting to claims of Article II authority than others. The Obama administration,¶ for example, has consciously distanced itself from the Bush administration on¶ this dimension, at least in the counterterrorism setting (as opposed to the¶ operation in support of the revolution in Libya, which relied on a surprisingly¶ bold stand-alone Article II argument). In a situation where a military response is¶ appropriate but officials are reluctant to act without statutory cover, a serious¶ problem arises unless there is time to seek and receive legislative support. Pg. 6

**This is our argument—a statuatory distinction between the two boosts norms**

**Blank 12** - Director of Emory Law's International Humanitarian Law Clinic [Laurie R. Blank, “Targeted Strikes: The Consequences of Blurring the Armed Conflict and Self-Defense Justifications,” William Mitchell Law Review, Vol. 38, 2012

B. Development and Implementation of the Law Going Forward

Blurring the lines between legal paradigms has longer-term consequences as well for the development and implementation of the law in the future. For example, one fundamental aspect of the LOAC is how it defines categories of individuals.139 How the law categorizes persons within an armed conflict is critical to the protections and rights such persons enjoy, giving this definitional aspect of the law great reach. Revisiting the substantive debate about whether suspected terrorist operatives are criminals or belligerents (whether entitled to prisoner of war status or not) is beyond the scope of this article. However, it is particularly interesting to note that in the course of nearly ten years of debate, conversation, legislation, and judicial opinions attempting to create and set the parameters of the category of enemy combatant, nearly all of that debate has focused on which legal paradigm to apply, not on the fact that these are individuals with basic rights. As the legal paradigms are now blurred—at least with regard to targeting—with the continual use of both paradigms to justify all strikes, further careful development and delineation between the armed conflict and self-defense framework will unfortunately remain stalled and pragmatic concerns about basic rights lost in the shuffle.

Beyond these ground-level concerns, the conflation of legal regimes also creates numerous missed opportunities to explore and engage the complex issues that arise on the hard-to-identify lines between armed conflict and self-defense. The past year or two has brought growing discussion about the geographic parameters of an armed conflict between a state and terrorist groups, from the question of whether any such parameters do exist to the follow-on questions of what those boundaries might be and from where to draw guiding principles for such analysis.140 This discussion is important not just for the sake of finding “answers” to these hard questions but—perhaps more—for the purpose of understanding the key issues and principles inherent in the analysis and the competing rights and values at stake. The LOAC has traditionally balanced a variety of interests, such as military necessity and humanity, and has developed over the years in response to the needs and changes of those in combat and those suffering from the deliberate and incidental effects of combat. Failure to engage directly with the tough issues that lie at the heart of the distinction between where a state is acting as part of an armed conflict and where it is acting solely in legitimate self-defense against a terrorist or other threat is, ultimately, a wasted opportunity to promote greater development in the law going forward. Non-answers to hard questions may be easy, but they are rarely productive in the end.

C. Enforcement Through Both Formal and Informal Means

Finally, effective implementation of and compliance with the law, whether the LOAC, the law of self-defense, or human rights law, depends on regular and respected mechanisms for enforcement. In the arena of international law, both formal (courts and tribunals) and informal (public opinion, response from other states) enforcement have value and effect. Any judicial body determining the lawfulness of state action or the criminal responsibility of individuals must first determine the applicable law in order to reach an appropriate result.141 When the legal regimes become blurred through repeated conflation, application of the law and thus enforcement will be hampered. The resulting consequence, of course, is that a lack of effective enforcement then undermines effective implementation of the law and protection of persons in the future. These problems often are highlighted in the more informal enforcement arena of media reporting, public opinion, advocacy reports, and other responses, where disputes over applicable law and appropriate analyses abound. When international or nongovernmental organization reports produce primarily disputes over which law is applied—rather than how the law is applied to the facts on the ground—the debate becomes centered on the law and legal disputes rather than on the victims, the perpetrators, and how to prevent legal violations in the future. The blurring of lines between armed conflict and self-defense takes these challenges to another level as well, however, creating a situation in which independent analysts may have difficulty identifying the key pieces of information necessary to an effective examination of the legality of the state’s policies and actions. Pg 1695-1700

## schlag

#### Fiat is a tool not a trap. Even if we have no chance to cause the energy changes we wish, we should build momentum and support for these ideas.

Elizabeth **SHOVE** Sociology @ Lancaster **AND** Gordon **WALKER** Geography @ Lancaster **‘7** “CAUTION! Transitions ahead: politics, practice, and sustainable transition management” *Environment and Planning C* 39 (4)

For academic readers, our commentary argues for loosening the intellectual grip of ‘innovation studies’, for backing off from the nested, hierarchical multi-level model as the only model in town, and for exploring other social scientific, but also systemic theories of change. The more we think about the politics and practicalities of reflexive transition management, the more complex the process appears: for a policy audience, our words of caution could be read as an invitation to abandon the whole endeavour. If agency, predictability and legitimacy are as limited as we’ve suggested, this might be the only sensible conclusion.However, we are with Rip (2006) in recognising the value, productivity and everyday necessity of an ‘illusion of agency’, and of the working expectation that a difference can be made even in the face of so much evidence to the contrary. The outcomes of actions are unknowable, the system unsteerable and the effects of deliberate intervention inherently unpredictable and, ironically, it is this that sustains concepts of agency and management. As Rip argues ‘illusions are productive because they motivate action and repair work, and thus something (whatever) is achieved’ (Rip 2006: 94). Situated inside the systems they seek to influence, governance actors – and actors of other kinds as well - are part of the dynamics of change: even if they cannot steer from the outside they are necessary to processes within. This is, of course, also true of academic life. Here we are, busy critiquing and analysing transition management in the expectation that somebody somewhere is listening and maybe even taking notice. If we removed that illusion would we bother writing anything at all? Maybe we need such fictions to keep us going, and maybe – fiction or no - somewhere along the line something really does happen, but not in ways that we can anticipate or know.